

# AGENDA

## Successor Agency to the El Cajon Redevelopment Agency Oversight Board

8:00 a.m., Wednesday, February 20, 2013

### BOARD MEMBERS:

#### **SAHAR ABUSHABAN**

*Chancellor of the California  
Community Colleges  
Representative*

#### **SCOTT BUXBAUM**

*County Board of Education  
Representative*

#### **GLORIA CHADWICK**

*Grossmont Healthcare District  
Representative*

#### **JIM GRIFFIN**

*County Board of Supervisors  
Representative*

#### **MICHAEL GRIFFITHS**

*City of El Cajon*

#### **MANJEET RANU**

*(Former RDA/MMPEG  
Employee) City of El Cajon*

#### **DEBRA TURNER- EMERSON**

*County Board of Supervisors  
Representative*

#### **OB LEGAL COUNSEL MEYERS NAVE**

### SUCCESSOR AGENCY

#### STAFF:

#### **DOUGLAS WILLIFORD**

*Executive Director/  
City Manager*

#### **MORGAN FOLEY**

*General Counsel*

#### **JENNY FICACCI**

*OB Acting Secretary / Housing  
Manager*

#### **HOLLY REED-FALK**

*Financial Operations Manager*

#### **VICTORIA DANGANAN**

*Senior Accountant*

#### **RON LUIS VALLES**

*Administrative Secretary*

### **Meeting Location: El Cajon Police Station**

### **Community Room #161**

**100 Civic Center Way, El Cajon, CA 92020**

#### **I. CALL TO ORDER & PLEDGE OF ALLEGIANCE:**

#### **II. ROLL CALL:**

#### **III. AGENDA CHANGES:**

#### **IV. PUBLIC COMMENT:** (This is the opportunity for a member of the public to address the Oversight Board on any item of business within the jurisdiction of the Board that is not on the agenda. Under State law no action can be taken on items brought forward under Public Comment, except to refer the item to the staff for administrative action or to place it on a future agenda.)

#### **V. ACTION ITEMS:**

1. Approval of Action Minutes – January 16, 2013, meeting
2. Approval of the Successor Agency Fiscal Year 2013-2014 Budget, including the Successor Agency Administration Budget
3. Approval of the Recognized Obligation Payment Schedule for the period July 1, 2013, to December 13, 2013 (ROPS 13-14A)
4. First Amendment to Affordable Housing Agreement – James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers
5. Second Amendment to Ground Lease – Domenico Donato

#### **VI. OTHER ITEMS FOR CONSIDERATION:**

#### **VII. STAFF COMMUNICATIONS:**

1. Upcoming work program

#### **VIII. BOARD REPORTS/COMMENTS:**

#### **IX. ADJOURNMENT:**

***We endeavor to be in total compliance with the Americans with Disabilities Act. If you require assistance or auxiliary aids in order to participate at Oversight Board meetings, please contact staff at (619) 441-1741 as far in advance of the meeting as possible.***



**DRAFT SUMMARY MINUTES**  
**Successor Agency to the El Cajon Redevelopment Agency**  
**Oversight Board**  
**Meeting - Wednesday, January 16, 2013**  
**El Cajon Police Station Community Room #161**  
**100 Civic Center Way, El Cajon, CA 92020**

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**BOARD PRESENT:** Sahar Abushaban, Gloria Chadwick, Jim Griffin, Michael Griffiths, Manjeet Ranu, and Debra Turner-Emerson (Chair)

**BOARD ABSENT:** Scott Buxbaum

**LEGAL COUNSEL:** George Eiser III, representing law firm of Meyers Nave

**STAFF PRESENT:** Jenny Ficacci, Holly Reed-Falk, Victoria Danganan, Nancy Palm and Ron Luis Valles

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**CALL TO ORDER AND PLEDGE OF ALLEGIANCE:**

The meeting was called to order at 8:00 a.m. by TURNER-EMERSON.

**PUBLIC COMMENT:**

No public comment. No member of the public was present.

**ACTION ITEM NO. 1: APPROVAL OF SUMMARY MINUTES – November 21, 2012**

CHADWICK made a motion, seconded by GRIFFIN, to approve the minutes.  
**Motion carried 6-0 (BUXBAUM, absent).**

**ACTION ITEM No. 2: APPROVAL OF PROMISSORY NOTE TO OBLIGATE THE CITY OF EL CAJON ACTING AS SUCCESSOR AGENCY TO REPAY A LOAN FROM THE CITY OF EL CAJON**

FICACCI summarized the staff report.

Discussion ensued over the tone of the Department of Finance's letter, and the city's response. EISER mentioned that the letter could be a form letter. Staff noted that there has been a good working relationship with the State, and should wait to receive the State's response before determining the City's action. In reply to a Board member's question on the personal liability of board members, staff will work with City Attorney and will provide that information at the next Oversight Board meeting.

RANU made a motion, seconded by CHADWICK, to adopt Resolution No. OB-01-13 approving the Promissory Note to acknowledge the receipt of a loan from the City of El Cajon, to the City of El Cajon acting as Successor Agency to the former El Cajon Redevelopment Agency, in the amount of \$662,382, in order to fund project management and administrative costs incurred on behalf of the Successor Agency; find that the approved Promissory Note is an enforceable obligation and should be included on the next Recognized Obligation Payment Schedule for reimbursement; and authorize the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, to execute the Promissory Note on behalf of the Successor, and direct the Secretary of the Oversight Board to deliver copies of the executed note to the County Auditor Controller, the State Controller's Office, and to post on the Successor Agency website upon approval by the Oversight Board.

**Motion carried 6-0 (BUXBAUM, absent).**

#### **STAFF COMMUNICATIONS:**

FICACCI, REED-FALK and DANGANAN presented the Basic Financial Statements and Independent Auditor's Report for the year ended June 30, 2012. No questions.

With regards to the upcoming work program, FICACCI noted that at the next meeting, we anticipate having the ROPS for July to December, 2013 on the agenda, along with the first amendment to the Affordable Housing Agreement and the budgets for the Successor Agency.

#### **BOARD REPORTS/COMMENTS:**

In response to questions, staff noted that they have been working with the State on the previous ROPS that were submitted. There were some questions regarding reserve funds on the bonds; however, no formal letter has been received and the State has until April 1, 2013, to respond. Additionally, staff noted guidelines in the Department of Finance's website, and they will be providing property valuation estimates on a few property profiles that did not have them in the Long Range Property Management Plan that was submitted to the Oversight Board at the November 21, 2012, meeting.

#### **ADJOURNMENT:**

CHADWICK made a motion, seconded by GRIFFIN, to adjourn the meeting of the El Cajon Successor Agency Oversight Board at 8:22 a.m. this 16<sup>TH</sup> day of January, 2013, to 8:00 a.m., February 20, 2013, in the Police Station's Community Room, 100 Civic Center Way, El Cajon, California.

**Motion carried 6-0 (BUXBAUM, absent).**

APPROVED:

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Debra Turner-Emerson, Chairperson

ATTEST:

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Jennifer Ficacci, Oversight Board Acting Secretary

**AGENDA REPORT  
SUCCESSOR AGENCY OVERSIGHT BOARD  
February 20, 2013, Meeting**

**SUBJECT: APPROVAL OF THE SUCCESSOR AGENCY FISCAL YEAR 2013-2014 BUDGET, INCLUDING THE ADMINISTRATION BUDGET**

**RECOMMENDED ACTION:** That the Oversight Board adopt the proposed Resolution to:

1. Approve the Successor Agency Fiscal Year 2013-2014 Budget in the amount of \$11,022,053;
2. Approve the Successor Agency Administration Budget – Fiscal Year 2013-2014 in the amount of \$250,000;
3. Authorize the Chair to submit the approved Budgets to the County Auditor Controller (CAC), the State Department of Finance (DOF), the County Administrative Officer (CAO), the State Controller's Office (SCO), and to post on the Successor Agency website upon approval by the Oversight Board; and
4. Authorize the Successor Agency staff to carry out activities outlined in the Cooperation Agreement approved by the Oversight Board on April 26, 2012, which are necessary to meet approved obligations outlined in the Budgets, including re-entering into third party service agreements for continuation of projects pursuant to City of El Cajon adopted policies, procedures and practices, in place.

**BACKGROUND:**

Presented for approval and adoption is the Successor Agency Fiscal Year 2013-2014 Budget, including the Successor Agency Administration Budget – Fiscal Year 2013-2014. Both Budgets were prepared in conjunction with the Capital Improvement Project Plan and City budget process that is currently underway and consist of project/program costs that will be included in the proposed City budget for Fiscal Year 2013-2014.

As required under Health and Safety Code (CH&SC) Section 34177(j), the Successor Agency must prepare a proposed administrative budget for each fiscal year and submit it to the Oversight Board for its approval. The proposed administrative budget must include:

1. Estimated amounts for Successor Agency administrative costs for the upcoming six-month fiscal period;
2. Proposed sources of payment for the costs identified; and
3. Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

Administrative cost allowances are limited to a maximum of three percent (3%) of the property tax allocated to the Successor Agency beginning in Fiscal Year 2012-2013 and

each fiscal year thereafter. The administrative budget amount shall not be less than two hundred fifty thousand dollars (\$250,000) for any fiscal year or such lesser amount as agreed to by the Successor Agency.

The Successor Agency has prepared its draft annual budget for Fiscal Year 2013-2014 and determined that the anticipated property taxes required to pay enforceable obligations and eligible project costs total \$8,258,309, therefore, an administrative allowance of 3% would equal \$247,749. Staff has prepared the Successor Agency Administration budget for Fiscal Year 2013-2014 at \$250,000 to be paid by the Redevelopment Property Tax Trust Fund (RPTTF).

Budgeted project costs for the Former Police Station (RD0801S) and Civic Center Revitalization Project (RDR0703S) continue to include estimated amounts programmed for needed hazardous materials abatement and planned demolition to prepare the properties for sale and new development. **However, expenditure of demolition costs are subject to prior receipt of a Finding of Completion, approval of the Long Range Property Management Plan, and approval of costs identified in each Recognized Obligation Payment Schedule (ROPS) by the Oversight Board and DOF.**

Although the Long Range Property Management Plan (LRPMP) was approved by the Oversight Board on November 21, 2012, it has not yet been approved by the DOF and is pending receipt of a Finding of Completion. Including these anticipated costs in the Budget and appropriating the necessary funds in the City budget provides for continuity and the ability to move forward with approved activities upon approval of the LRPMP without delays.

Two new projects have been included in the Fiscal Year 2013-2014 Budget with funding programmed from 2007 Tax Exempt Bond proceeds: 1) the Alley Improvement Project; and 2) Median Improvements. **Similar to planned demolition, Bond expenditures are subject to prior receipt of a Finding of Completion and approval by the DOF.**

The Greenovation Project, LM0707H, has been re-budgeted for Fiscal Year 2013-2014 from the Reserve Balance in the event that project properties do not close escrow until after July 1, 2013. The Reserve Balance is comprised of Low and Moderate-Income Housing Asset Funds (LMIHAF) received during the prior fiscal year.

The Budget includes funding for ongoing or one-time activities, including:

1. Alley Improvement Project: a capital improvement project to improve alleys located within the Redevelopment Project Area with funding targeted from the 2007 Tax Exempt Bond proceeds. ***This project is subject to receipt of a Finding of Completion and approval by the California Department of Finance (DOF) prior to expenditure of funds.***
2. Median Improvements: a capital improvement project for renovation and improvement existing medians through the Redevelopment Project Area. Funding is targeted from the 2007 Tax Exempt Bond proceeds and was identified in the Official

Statement of the Tax Allocation Bonds Issue of 2007. ***This project is subject to receipt of a Finding of Completion and approval by the California Department of Finance (DOF) prior to expenditure of funds.***

3. Greenovation Acquisition/Rehab/Resale Program: \$538,629 was funded in the prior fiscal year budget and has been re-budgeted from Reserve Balance in the event property escrows do not close until after July 1, 2013. The \$11,371 balance of the \$550,000 enforceable obligation with James and Marcia Miller, dba Bay Kitchen and Bath Remodelers is to be paid from RPTTF funds.
4. Successor Agency Administration: administrative cost allowance for the Successor Agency of not less than 3% of RPTTF funds received, or \$250,000, whichever is greater.
5. Successor Agency Debt Service Administration: payment of principal and interest on bonds, auditing and arbitrage costs, legal, and bank charges and fees.
6. Promissory Note due to City of El Cajon from Successor Agency: this Promissory Note is an Enforceable Obligation recommended by the DOF on December 21, 2012, and is the result of DOF's mandate to remit funds previously expended on the Chambers Sr. Residences and Weiland Development Company homebuyer's projects. The Note was approved by the Oversight Board on January 20, 2013.
7. Hazmat Testing/Park & Ballantyne: environmental remediation costs associated with a Reimbursement and Indemnity Agreement dated December 16, 2003.
8. Hazmat Testing/Prescott Promenade: environmental remediation costs associated with a Settlement Agreement dated September 15, 1995.
9. SW Corner/Environmental Testing: environmental remediation costs associated with a Reimbursement and Indemnity Agreement dated April 11, 2002.
10. Former Police Station (100 Fletcher Parkway): ongoing property operating, maintenance, hazardous abatement and demolition costs of a former Redevelopment Agency property until disposal. ***Demolition costs are subject to receipt of a Finding of Completion, and approval of the costs identified on the ROPS and the LRPMP, prior to demolition and disposition.***
11. Johnson Avenue Corridor Revitalization Project: ongoing property operating and maintenance costs for 588 N. Johnson and 531-555 Raleigh Avenues until disposal.
12. DDA Projects Monitoring: ongoing internal and external costs directly related to the servicing, legal, collections, monitoring and management costs associated with outstanding Disposition and Development Agreements, Owner Participation Agreements, Operating Agreements and other agreements and receivables not directly associated with a project.
13. Real Property Asset Management: ongoing maintenance and operating costs associated with former Redevelopment Agency properties not directly associated with a budgeted project, including utilities, repairs, landscaping, and maintenance until disposal.
14. Civic Center Complex Revitalization Project: ongoing property operating,

maintenance, hazardous abatement and demolition costs for 115 Rea, 118-130 Rea, 141 N. Magnolia Avenues, and Rea Parking Lot, until disposal. ***Demolition costs are subject to receipt of a Finding of Completion, and approval of the costs identified on the ROPS and the LRPMP, prior to demolition and disposition.***

Activities and projects identified in the Successor Agency Fiscal Year 2013-2014 Budget will be further outlined in ROPS 13-14A, and is a companion item on today's Oversight Board agenda.

Finally, in the absence of contracting procedures for the Oversight Board, the Successor Agency will continue to employ the policies, procedures and practices in place with the City of El Cajon with respect to execution and re-entering into contracts necessary for the continuation of activities outlined in the Budget, as authorized under the Cooperation Agreement for Reimbursement of Costs and City/Successor Agency Operations Loan, approved by the Oversight Board on April 26, 2012.


#### **FISCAL IMPACT:**

This action will approve the Successor Agency Fiscal Year 2013-2014 Budget with estimated funding of \$11,022,053, of which \$8,258,309 in debt service and project costs plus \$250,000 for Administrative Allowance will be paid by Redevelopment Property Tax Trust Funds. The balance of the budget will be paid from Reserve Balance (LMIHAF) funds of \$538,629 and \$1,975,115 will be paid by 2007 Tax Exempt Bond proceeds upon receipt of a Finding of Completion. ROPS 13-14A identifies the funding sources for each activity.

#### **ATTACHMENTS:**

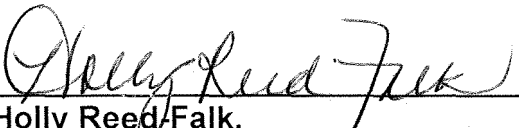
1. Proposed Resolution
2. Successor Agency Fiscal Year 2013-2014 Budget (ROPS 13-14A Reconciliation)
3. Successor Agency Administration – Fiscal Year 2013-2014
4. Project Sheets and Promissory Note (13)

Prepared by:


  
\_\_\_\_\_  
Jenny Ficacci,  
Housing Manager



**Reviewed by:**

  
\_\_\_\_\_  
Holly Reed Falk,  
Financial Operations Manager

**Approved by:**

  
\_\_\_\_\_  
Douglas Williford  
Executive Director/City Manager

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RESOLUTION NO. OB-02-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE  
SUCCESSOR AGENCY OF THE FORMER EL CAJON  
REDEVELOPMENT AGENCY APPROVING THE FISCAL  
YEAR 2013-2014 SUCCESSOR AGENCY BUDGET,  
INCLUDING THE SUCCESSOR AGENCY ADMINISTRATION  
BUDGET

WHEREAS, the Oversight Board (the "Oversight Board") of the Successor Agency of the former El Cajon Redevelopment Agency (the "Successor Agency") held a regularly scheduled meeting on February 20, 2013, at which time it considered a proposed Successor Agency Budget, including the Successor Agency Administration Budget for the period of July 1, 2013, to June 30, 2014; and

WHEREAS, the City of El Cajon as Successor Agency Fiscal Year 2013-2014 Budget totals \$11,022,053 from all funding sources, including Bond proceeds that are subject to receipt of a Finding of Completion from the California Department of Finance (DOF), of which \$250,000 is for Successor Agency Administration;

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference.
  - 2. Approval of the Successor Agency Budget and the Successor Agency Administrative Budget is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed budgets will not cause a significant adverse physical change to the environment either directly or indirectly.
- B. The Oversight Board hereby APPROVES the Successor Agency Fiscal Year 2013-2014 Budget of \$11,022,053 from all funding sources, including Bond proceeds that are subject to receipt of a Finding of Completion from the California Department of Finance (DOF).
- C. The Oversight Board hereby APPROVES the Successor Agency Administration Budget for Fiscal Year 2013-2014 of \$250,000 to be paid from Redevelopment Property Tax Trust Funds (RPTTF).

- D. The Oversight Board hereby AUTHORIZES the Chair to submit the approved Budgets for the period of July 1, 2013, to June 30, 2014, to the County Auditor Controller, the State Department of Finance, the County Administrative Officer, the State Controller's Office, and to post on the Successor Agency website not later than March 1, 2013.
- E. The Oversight Board hereby AUTHORIZES Successor Agency staff to carryout activities outlined in the Cooperation Agreement for Reimbursement of Costs and City/Successor Agency Operations Loan approved by the Oversight Board on April 26, 2012, which are necessary to meet obligations outlined in the ROPS, including re-entering into third party service agreements for continuation of projects pursuant to City of El Cajon adopted policies, procedures and practices, in place.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly scheduled meeting held this 20<sup>th</sup> day of February 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :

\_\_\_\_\_  
Debra Turner-Emerson, Chairperson

ATTEST:

\_\_\_\_\_  
Jennifer Ficacci, Acting Oversight Board Secretary

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**SUCCESSOR AGENCY**  
**FISCAL YEAR 2013-2014 BUDGET/ROPS**  
for the periods July 1, 2013 - December 2013 and January 1, 2014 - June 30, 2014

AGENDA ITEM # \_\_\_\_\_

Activity/ Project	Activity/Project Name	ROPS Item #'s	July-Dec 2013	Jan-Jun 2014	Total Fiscal Year 2013-14
<b><u>Bond Proceeds</u></b>					
RD1015S	Alley Improvement Project (Note 2)	59	\$ 275,000	\$ 320,000	\$ 595,000
RDR0705S	Median Improvements (Note 2)	60	\$ 462,800	\$ 917,315	\$ 1,380,115
	<b>Total Bond Proceeds</b>		<b>\$ 737,800</b>	<b>\$ 1,237,315</b>	<b>\$ 1,975,115</b>
<b><u>Reserve Balance (LMIHAF)</u></b>					
LM0707H	Greenovation Acquisition/Rehab/Resale Program	34	\$ 538,629	\$ -	\$ 538,629
<b><u>Administrative Allowance</u></b>					
0590110	Successor Agency Administration (Note 1)	8	\$ 157,221	\$ 92,779	\$ 250,000
<b><u>RPTTF</u></b>					
0490000	Successor Agency Debt Service Fund	1-5	\$ 3,093,830	\$ 2,360,338	\$ 5,454,168
0790000	Promissory Note due to City	58	\$ 663,430	\$ -	\$ 663,430
RD0704S	Hazmat Testing/Park & Ballantyne	11	\$ 48,750	\$ 23,750	\$ 72,500
RD0705S	Hazmat Testing/Prescott Promenade	12	\$ 21,000	\$ 21,000	\$ 42,000
RD0706S	SW Corner/Environmental Testing	14	\$ 15,000	\$ 15,000	\$ 30,000
RD0801S	Former Police Station (100 Fletcher Parkway)	15-16	\$ 1,254,756	\$ 73,071	\$ 1,327,827
RD1017S	Johnson Avenue Corridor Revitalization Project	17	\$ 19,000	\$ 19,000	\$ 38,000
RD1201S	DDA Projects Monitoring	18	\$ 75,750	\$ 10,750	\$ 86,500
RD1202S	Real Property Asset Management	19	\$ 34,556	\$ 21,400	\$ 55,956
RDR0703S	Civic Center Complex Revitalization Project	20-21	\$ 430,247	\$ 46,310	\$ 476,557
LM0707H	Greenovation Acquisition/Rehab/Resale Program	34	\$ 11,371	\$ -	\$ 11,371
	<b>Total RPTTF</b>		<b>\$ 5,667,690</b>	<b>\$ 2,590,619</b>	<b>\$ 8,258,309</b>
<b>FISCAL YEAR 2013-2014 BUDGET/ROPS for Oversight Board Approval</b>			<b>\$ 7,101,340</b>	<b>\$ 3,920,713</b>	<b>\$ 11,022,053</b>

<b>NOTE (1)</b> (A) Successor Agency Administration Allowance (3% of Total RPTTF )	\$ 247,749
(B) Minimum Successor Agency Administration Allowance	\$ 250,000
<b>Greater of (A) or (B) = Successor Agency Administration Allowance FY2013-14</b>	<b>\$ 250,000</b>

**NOTE (2)** Subject to FOC & DOF approval

## SUCCESSOR AGENCY ADMINISTRATION FISCAL YEAR 2013-2014

PROJECT NAME: Successor Agency Administration

ACTIVITY:

0590110

PROJECT NO:

**Description:**

The purpose of this activity is to receive revenues and pay administration costs of the Successor Agency (SA), not to exceed the following limits: 5% of the property tax allocated to the SA during FY2011-2012, with a minimum of \$250,000; and 3% of the property tax allocated to the SA during FY2012-2013 and beyond, with a minimum of \$250,000.

**Justification:**

Pursuant to ABx1 26, the City of El Cajon affirmed its intent to act as the Successor Agency to the former El Cajon Redevelopment Agency on January 10, 2012. The Successor Agency is responsible, subject to Oversight Board approval, for the payment of Enforceable Obligations (EO), maintaining reserves, performing obligations pursuant to any EO, to remit unencumbered redevelopment agency funds, dispose of assets, enforce and former redevelopment agency agreements and collect revenues, transfer housing functions and assets, wind down the affairs of the redevelopment agency, continue development of properties, prepare an administrative budget, provide administrative cost estimates to the County Auditor-Controller for each six-month fiscal period, and prepare a Recognized Obligation Payment Schedule (ROPS) for each six-month fiscal period.

**Scheduling:**

Ongoing activity. Funds during FY2012-2013 and beyond will be received from Redevelopment Property Tax Trust Fund (RPTTF) payments received from the County of San Diego Auditor-Controller or other funds, including retained assets.

**Relationship to General & Community Plans:**

Consistent with the provisions of ABx1 26.

**Operating Budget Impact:**

The City as Successor Agency will receive RPTTF monies or utilize other assets, including retained funds, for payment of administrative costs for this activity upon approval of an administrative budget by the Oversight Board, with a minimum of \$250,000 per year. Expenditures that exceed the 3% allowance or \$250,000 limit must be paid by the Successor Agency and covered elsewhere.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Salaries & Benefits (7000)						-
Office Supplies (8150)		1,000	500	500	1,000	2,000
Accounting & Auditing (8310)		12,025	6,000	6,000	12,000	24,025
Legal Services (8345)		8,000	10,000	10,000	20,000	28,000
Records Management (8355)		314	175	175	350	664
Other Prof/Tech Services (8395)		-	-	-	-	-
Internal Prof/Technical Services (8396)		228,011	140,146	75,704	215,850	443,861
Advertising (8522)		250	125	125	250	500
Postage & Shipping (8568)		100	125	125	250	350
Overhead Reimbursement (8510)		-	-	-	-	-
Training/Meetings (8594)		300	150	150	300	600
<b>PROJECT COST TOTAL:</b>	-	250,000	157,221	92,779	250,000	500,000

<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)		-	-	-	-	-
Redevelopment Property Tax Trust Funds (RPTTF)		250,000	157,221	92,779	250,000	500,000
<b>FUNDING TOTAL:</b>	-	250,000	157,221	92,779	250,000	500,000



## SUCCESSOR AGENCY CAPITAL IMPROVEMENT PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: Alley Improvement Project

ACTIVITY:  
PROJECT NO:

0597900  
RD1015S

**Description:**

This project will target alleys within the Redevelopment Project Area that are in need of major repair, thereby relieving surrounding traffic congestion and intensify public and private use.

**Justification:**

Current alley conditions deter public and private use and invite criminal activity. This project will provide infrastructure improvements to alleys located within the Project Area that are currently deteriorated, have serious deficiencies, or are underutilized or blighted.

**Scheduling:**

The Project will be initiated in FY 2013-14 upon receipt of issuance of a Finding of Completion by the California Department of Finance ("DOF") and approval of the project on each Recognized Obligation Payment Schedule ("ROPS") by the DOF and an appointed Oversight Board. Projects will be budgeted each year, or intermittently, until bond proceeds are fully expended.

**Relationship to General & Community Plans:**

Consistent with the General and Redevelopment Agency Plans.

**Operating Budget Impact:**

Project costs to be paid from the proceeds of the former El Cajon Redevelopment Agency Tax Allocation Bonds Issue of 2007 now under the control of the Successor Agency. Expenditure of project funds are subject to approval by the appointed Oversight Board and the DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Architectural Services (8315)					-	-
Engineering Services-Internal (8336)					-	-
Legal Services (8345) (34)					-	-
Other Prof/Tech Services (8395)					-	-
Internal Prof/Tech Services (8396)					-	-
Advertising (8522)					-	-
Contributions (8530)			275,000	320,000	595,000	595,000
Overhead Reimbursement/External (8531)					-	-
Permits & Fees (8560) (34)					-	-
Land Acquisition (9050)					-	-
Construction-Buildings (9060)					-	-
Construction-Bldgs (9060)					-	-
Infrastructure (9065)					-	-
<b>PROJECT COST TOTAL:</b>	-	-	275,000	320,000	595,000	595,000

<b>Source(s) of Funds:</b>						-
Successor Agency RDA 2007 Bond (0597)			275,000	320,000	595,000	595,000
					-	-
<b>FUNDING TOTAL:</b>	-	-	275,000	320,000	595,000	595,000

# SUCCESSOR AGENCY CAPITAL IMPROVEMENT PROJECT

## FISCAL YEAR 2013-2014

**PROJECT NAME:** Median Improvements

**ACTIVITY:**

**0597900**

**PROJECT NO:**

**RDR0705S**

**Description:**

This project provides funding for the renovation and improvement of existing medians throughout the Redevelopment Project Area.

**Justification:**

The former El Cajon Rededevlopment Agency previously commissioned a study to analyze the existing conditions of median islands through the Project Area. Bond proceeds will be used to provide upgrades to median island infrastructure, including the reconstruction of median islands, irrigation, cross walks, lighting, and where applicable, compliance with the Americans With Disabilities Act.

**Scheduling:**

Design and construction to be completed in fiscal year 2014-15 upon receipt of issuance of a Finding of Completion by the California Department of Finance ("DOF") and approval of the project on each Recognized Obligation Payment Schedule ("ROPS") by the DOF and the appointed Oversight Board.

**Relationship to General & Community Plans:**

Consistent with the General and Redevelopment Agency Plans.

**Operating Budget Impact:**

Project costs to be paid from the proceeds of the former El Cajon Redevelopment Agency Tax Allocation Bonds Issue of 2007 now under the control of the Successor Agency. Expenditure of project funds are subject to approval by the appointed Oversight Board and the DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Architectural Services (8315)					-	-
Consulting Services (8325)					-	-
Engineering Services-Internal (8336)					-	-
Other Prof/Tech Services (8395)					-	-
Advertising (8522)					-	-
Contributions (8530)			462,800	917,315	1,380,115	1,380,115
Overhead Reimbursement/External (8531)					-	-
Permits & Fees (8560)					-	-
Printing & Binding (8570)					-	-
Construction-Buildings (9060)					-	-
Land Improvements (9055)					-	-
Land Improvements Contingency (9055)					-	-
Infrastructure (9065)					-	-
						-
<b>PROJECT COST TOTAL:</b>	-	-	462,800	917,315	1,380,115	1,380,115

<b>Source(s) of Funds:</b>						-
						-
Successor Agency RDA 2007 Bond (0597)			462,800	917,315	1,380,115	1,380,115
					-	-
<b>FUNDING TOTAL:</b>	-	-	462,800	917,315	1,380,115	1,380,115

# HOUSING AUTHORITY PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: Greenovation Acquisition/Rehabilitation/Resale Program

ACTIVITY:

298900

PROJECT NO:

LM0707H

## Description:

This project will provide funding for the acquisition of substandard properties with recurring code violations or properties currently owned by large banks/servicers that are for sale at a discount to government entities. Each property will be rehabilitated to include much needed health and safety, green and energy efficient improvements to single-family or multi-family properties. Each unit will then be re-sold to low-and moderate- income households under the California Dream First-Time Homebuyer Program through a return of program funds. Multi-family properties will be retained by the Housing Authority. Improvements may include low flow toilets and fixtures, programmable thermostats, solatube or skylights, high "R" value insulation, tankless waterheaters, whole house fans, energy efficient windows and doors, solar panels, xeriscape landscaping, etc.

## Justification:

As the costs of housing and daily living expenses continue to escalate and natural resources dwindle, household income available for home improvements declines and properties suffer with deferred maintenance. The program will increase owner-occupied homeownership or increase the number of affordable housing units in the City, increase affordability with reduced utility costs, improve and extend the life of existing housing stock, eliminate blighting conditions, mandate energy efficient improvements, minimize the strain on natural resources, and improve the social, economic and environmental vitality of our community.

## Scheduling:

Implementation of the Program occurred in March 2011 and has been delayed due to ABx1 26 and dissolution of the former redevelopment agency. Transfer of former Low and Moderate-Income Housing Assets and Functions to the Housing Authority, including the existing contract with Bay Kitchen and Bath, occurred effective February 1, 2012.

## Relationship to General & Community Plans:

The Project is consistent with the General Plan designation for housing and meets the objectives of Community Redevelopment Law for blight removal and creation of affordable housing.

## Operating Budget Impact:

No impact to the General Fund. All costs will be paid with Low and Moderate-Income Housing Funds received by the Housing Authority from the Successor Agency to pay the Enforceable Obligation with Bay Kitchen and Bath Remodelers and eligible project management costs, other funds returned to the Housing Authority, or lease revenues.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan-June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) (47)		1,000	1,000	3,000	4,000	5,000
Other Prof/Tech Services (8395)		10,500	11,000	2,141	13,141	23,641
Internal Prof/Tech Services (8396)		5,000	5,000	2,141	7,141	12,141
Advertising (8522)					-	-
Bank Charges & Fees (8524)		1,000			-	1,000
Permits & Fees (8560)					-	-
Insurance (8516)				5,000	5,000	5,000
Property Taxes (8573)				600	600	600
Maintenance Agrmts (8576)				6,800	6,800	6,800
Utilities (8598)				6,360	6,360	6,360
Land Acquisition (9050)					-	-
Construction-Buildings (9060)					-	-
Other Misc. Expenses (8524, 8568, 8576 & 8594)					-	-
Land Improvements / Abatement & Demo (9055)		19,629	55,371		55,371	75,000
Contingency (9060)					-	-
Loan Disbursements (9990) balance			11,371		11,371	11,371
Loan Disbursements (9990) PY carryover		538,629	538,629	-	538,629	1,077,258
<b>PROJECT COST TOTAL:</b>	-	575,758	622,371	26,042	648,413	1,224,171

<b>Source(s) of Funds:</b>						
Redevelopment Property Tax Trust Fund (RPTTF)	-	-	11,371	-	11,371	11,371
Housing Authority Fund (298) - LM0707H	-	575,758	611,000	26,042	637,042	1,212,800
Lease Revenue					-	-
2005 Tax Exempt Low-Mod Bond Proceeds (0295)					-	-
<b>FUNDING TOTAL:</b>	-	575,758	622,371	26,042	648,413	1,224,171

# SUCCESSOR AGENCY DEBT SERVICE FUND

## Fiscal Year 2013-2014 Annual Budget

**ACTIVITY: SUCCESSOR AGENCY DEBT  
SERVICE FUND**

**ACTIVITY NO: 0490000**

**Mission Statement:**

With the dissolution of redevelopment agencies throughout the State of California effective February 1, 2012, the mission or purpose of the Successor Agency Debt Service Fund is to account for Redevelopment Property Tax Trust Funds (RPTTF) to be used for the payment of enforceable obligations, including debt service payments for the 2007, 2005 and 2000 tax allocation bonds and to pay for ongoing financial services required by the bond covenants.

**Description:**

The Successor Agency Debt Service Fund accounts for Redevelopment Property Tax Trust Funds (RPTTF) received from the County Auditor-Controller's Office (CAC) after February 1, 2012, to pay enforceable obligations that are associated with debt service payments and debt compliance reporting. This fund also accounts for cash and investments held by the fiscal agents as required by the bond covenants.

**Prior Fiscal Year Highlights:**

	2011-12 Actual	2012-13 Estimated	2013-14 July-Dec	2013-14 Jan-June	2013-14 Proposed
Accounting & Auditing (8310)	6,500	5,000	15,000	-	15,000
Legal Services (8345)	-	2,000	1,000	-	1,000
Bank Charges & Fees (8524) - BNY, Bondlogix	2,120	13,000	13,000	-	13,000
Bank Charges & Fees (8524) - County of SD	-	250	250	-	250
Principal (8810) - 2007 Bonds	-	315,000	330,000	172,500	502,500
Principal (8810) - 2005 Bonds	-	1,010,000	1,045,000	542,500	1,587,500
Principal (8810) - 2000 Bonds	-	30,000	35,000	20,000	55,000
Interest (8820) - 2007 Bonds	306,659	607,020	300,360	293,347	593,707
Interest (8820) - 2005 Bonds	763,053	1,505,906	742,852	721,953	1,464,805
Interest (8820) - 2000 Bonds	612,507	1,223,876	611,368	610,038	1,221,406
Arbitrage Costs (8830)		-			-
Pass Through to Other Agencies (8850)		-			-
AB1484 Clawback (8860)	2,297,975				
Transfer Out (9910)	250,000	-			
					-
<b>PROJECT COST TOTAL:</b>	<b>4,238,814</b>	<b>4,714,894</b>	<b>3,093,830</b>	<b>2,360,338</b>	<b>5,454,168</b>

<b>Source(s) of Funds:</b>					
Successor Agency Debt Svc Funds (0490)	4,238,814	-	-		-
Redevelopment Property Tax Trust Fund (RPTTF)		4,714,894	3,093,830	2,360,338	5,454,168
					-
<b>FUNDING TOTAL:</b>	<b>4,238,814</b>	<b>4,714,894</b>	<b>3,093,830</b>	<b>2,360,338</b>	<b>5,454,168</b>

# SUCCESSOR AGENCY DEBT SERVICE FUND

## Fiscal Year 2013-2014 Annual Budget

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**ACTIVITY: SUCCESSOR AGENCY DEBT  
SERVICE FUND**

**ACTIVITY NO: 0490000**

**Goals:**

1. Ensure that the Agency faithfully performs and abides by all of the covenants, undertakings and provisions contained in the 2000, 2005 and 2007 bond issues, including the covenants and agreements for the benefit of the bond owners;
2. Ensure the transmission of accurate and timely payments of all additional outstanding Enforceable Obligations debt service payments.

**Financial Comments:**

All expenditures are paid from the Successor Agency Debt Service Fund; there is no impact to the General Fund. The Successor Agency Debt Service Fund will receive RPTTF from the County to pay debt service obligations identified in an approved ROPS. Expenditures anticipated to be incurred during the first six months of FY2013-14 are included in the ROPS for the period July 1, 2013 to December 31, 2013 (ROPS 13-14A), and will be brought before the Oversight Board on February 20, 2013.

Principal payments budgeted during the January 2014 to June 2014 period include one-half of the bond principal payments due October 1<sup>ST</sup> in FY2014-15. This special accounting or reserving ensures that sufficient revenues are received to pay uneven debt service payments due in October of each year. This approach is suggested by the DOF in their published Frequently Asked Questions (FAQ's) for bonds.

**PROMISSORY NOTE**  
(Variable Interest)

\$662,382.00

El Cajon, California  
JANUARY 17, 2013

FOR VALUE RECEIVED, the CITY OF EL CAJON, solely in its capacity as the SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic ("Borrower") promises to pay to the CITY OF EL CAJON, a charter city and municipal corporation in the state of California ("Lender") at 200 Civic Center Way, El Cajon, California 92020, or at such other address as Lender may direct from time-to-time in writing, the amount of Six Hundred Sixty-two Thousand Three Hundred Eighty-two Dollars (\$662,382.00) (the "Note Amount"). All sums payable hereunder shall be payable in lawful money of the United States of America.

1. Interest Rate. The loan shall bear interest on an adjustable rate, to be equivalent to the rate of interest that the Lender would otherwise have received on its investments with the Local Agency Investment Fund ("LAIF"), from the date of disbursement by Lender until paid.
2. Installments. Borrower promises to pay the Note Amount in one or more installments (each, an "Installment") from Redevelopment Property Tax Trust Fund ("RPTTF") monies received by Borrower from the County Auditor-Controller's office for enforceable obligation project expenditures listed on a Recognized Obligations Payment Schedule ("ROPS") approved by the California Department of Finance ("DOF") in the following manner: On or about June 2, 2013, or such date as the Borrower next receives payment of RPTTF monies based on a DOF-approved ROPS the Borrower shall pay to the Lender the Note Amount, plus interest accrued through the date of this first Installment, with the payment first applied to interest accrued and the balance applied to the payment of principal. Should the first Installment of RPTTF funds be insufficient to pay the entire Note Amount, the unpaid balance shall continue to accrue interest and the balance of the Note Amount, plus interest accrued through the date of payment, shall be due at the second Installment, which shall be on or about January 2, 2014, or such date as the Borrower receives its next payment of RPTTF funds from the County Auditor-Controller's office. The Note Amount, including accrued interest, may be prepaid without penalty.
3. Acceleration. At its option, Lender may determine that Borrower is in default and may, consequently, accelerate the maturity of all installments, making the

unpaid balance of the Note Amount due immediately without presentment for payment or any notice, if Borrower fails to pay an installment when due.

4. Borrower Assignment Prohibited. In no event shall Borrower assign or transfer any portion of this Promissory Note without the prior express written consent of Lender, which consent may be given or withheld at Lender's sole discretion.
5. Non-Waiver. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.
6. Successors Bound. This Promissory Note shall be binding upon the parties hereto and their respective successors and assigns.

Executed the date set forth above.

**"BORROWER"**

CITY OF EL CAJON, solely in its capacity as the  
SUCCESSOR AGENCY TO THE EL CAJON  
REDEVELOPMENT AGENCY, a public body, corporate  
and politic

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

Douglas Williford, City Manager

ATTEST:

Kathie J. Rutledge  
Kathie J. Rutledge, CMC, City Clerk

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: Hazmat Testing / Park & Ballantyne

ACTIVITY:

0590900

PROJECT NO:

RD0704S

**Description:**

Funding for the on-going testing of a former Brownfields site as required by the San Diego County Department of Environmental Health (DEH) and Region 9 Water Quality Control Board, pursuant to a Reimbursement and Indemnity Agreement between the Agency and Priest Development Corporation dated December 16, 2003, that is considered an Enforceable Obligation.

**Justification:**

This activity includes remediation of the site of a leaking underground storage tank (LUST) from a former gasoline station. The Redevelopment Agency purchased the property for the purposes of converting a known Brownfields location to residential development and entered into an Accommodation Agreement on April 16, 1996, for environmental cleanup of the property. The Agency then entered into a Disposition and Development Agreement with Priest Development Corporation on January 29, 2003, and a Reimbursement and Indemnity Agreement with Priest Development Corporation on December 16, 2003, whereby the Agency indemnified the developer and/or agreed to reimburse the developer for hazardous waste removal activities. With the assistance of the County of San Diego LUST team, the Redevelopment Agency successfully achieved clearance in order to begin the development of 103 single-family townhomes. Testing of the site requires four consecutive quarters to meet County requirements for closure status. As of January 23, 2012, the County Department of Environmental Health (DEH) has required preparation of a Workplan to complete downgradient investigations, which will likely involve installation of monitoring wells on private property and ongoing bi-annual or quarterly testing.

**Scheduling:**

Ongoing project until testing results in minimal findings and clearance through the County Department of Environmental Health (DEH).

**Relationship to General & Community Plans:**

Consistent with the General and Redevelopment Agency Plans.

**Operating Budget Impact:**

Funding will be provided from the Redevelopment Property Tax Trust Fund (RPTTF), or other funds received, subject to approval by the Oversight Board and DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) - MLEBF	-	2,000	1,250	1,250	2,500	4,500
Other Prof/Tech Services (8395) - SCS Engineers	-	25,070	17,500	17,500	35,000	60,070
Other Prof/Tech Services (8395) - County VAP	-	3,600	2,500	2,500	5,000	8,600
Internal Prof/Tech Services (8396)	1,492	4,565	2,500	2,500	5,000	11,057
Contributions (8530)	-	25,000	25,000		25,000	50,000
Permits & Fees (8560)	-				-	-
Contingency (9060)	-				-	-
<b>PROJECT COST TOTAL:</b>	<b>1,492</b>	<b>60,235</b>	<b>48,750</b>	<b>23,750</b>	<b>72,500</b>	<b>134,227</b>

<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)	-	-				-
Successor Agency Tax Incr Funds (0590)	-	-			-	-
Redevelopment Property Tax Trust Fund (RPTTF)	-	32,202	48,750	23,750	72,500	104,702
State Grants (4632)	18,974	28,033			-	47,007
					-	-
<b>FUNDING TOTAL:</b>	<b>18,974</b>	<b>60,235</b>	<b>48,750</b>	<b>23,750</b>	<b>72,500</b>	<b>151,709</b>



# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

**PROJECT NAME:** Hazmat Testing / Prescott Promenade

**ACTIVITY:**  
**PROJECT NO:**

**0590900**  
**RD0705S**

**Description:**

This activity provides for ongoing testing and monitoring costs of a former Brownfields Site, as required under a Settlement Agreement between Phyllis Chrisman, Texaco, Shell Oil, Unocal, and the former El Cajon Redevelopment Agency, executed on September 15, 1995. The property associated with this activity is 201 E. Main Street, Site 4 of the Long Range Property Management Plan, APN 488-211-21-00.

**Justification:**

This activity includes remediation of the site of a leaking underground storage tank (LUST) from a former gasoline station. The Redevelopment Agency purchased the property for the purposes of converting a known Brownfields location to public open space and entered into a Settlement Agreement with the former owner, Texaco, Shell Oil, and Unocal for shared responsibility of hazardous waste cleanup efforts. A portion of sales proceeds are still held in an escrow account to pay remediation costs. However, the Agency is responsible for 20% of all future cleanup costs, with a right to reimbursement of \$.20 for each dollar recovered, if any. With the assistance of the County of San Diego LUST team, the Redevelopment Agency successfully achieved clearance to develop the Prescott Promenade park used on a daily basis as urban in-fill open space. However, continued testing will be required and the site requires four consecutive quarters to meet County requirements for closure status. Funding during FY2013-14 will allow for the former Agency's proportionate share of testing required by the County DEH, if any.

**Scheduling:**

Ongoing project until testing results in minimal findings and clearance through the County Department of Environmental Health (DEH).

**Relationship to General & Community Plans:**

Consistent with ABx1 26, the Settlement Agreement, the General Plan and Redevelopment Agency Plan.

**Operating Budget Impact:**

Funding will be provided from the Redevelopment Property Tax Trust Fund (RPTTF), or other funds received, subject to approval by the Oversight Board and DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) - MLEBF	-	1,000	1,000	1,000	2,000	3,000
Other Prof/Tech Services (8395) - Environmental	-	30,000	17,500	17,500	35,000	65,000
Internal Prof/Tech Services (8396)	-	4,000	2,500	2,500	5,000	9,000
						-
<b>PROJECT COST TOTAL:</b>	-	35,000	21,000	21,000	42,000	77,000
<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)	-	-				-
Successor Agency Tax Incr Funds (0590)	-	-	-		-	-
Redevelopment Property Tax Trust Fund (RPTTF)	-	35,000	21,000	21,000	42,000	77,000
Successor Agency 2007 Bond Proceeds (0597)	-	-			-	-
					-	-
<b>FUNDING TOTAL:</b>	-	35,000	21,000	21,000	42,000	77,000

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: SW Corner / Environmental Testing

ACTIVITY:  
PROJECT NO:

0590900  
RD0706S

**Description:**

Funding for the on-going testing of a former Brownfields site as required by the San Diego County Department of Environmental Health (DEH) and Region 9 Water Quality Control Board, pursuant to a Reimbursement and Indemnity Agreement executed by the Agency and Priest Development Corporation on April 11, 2002, and is considered an Enforceable Obligation.

**Justification:**

The subject property is the former site of a leaking underground storage tank from a diesel gasoline station and dry cleaners. The Redevelopment Agency purchased the property for the purposes of converting a known Brownfields location to mixed-use, residential/commercial development. On April 11, 2002, the Agency entered into a Reimbursement and Indemnity Agreement with Priest Development Corporation where the Agency agreed to pay for costs associated with the contamination cleanup of the 2.27 acre site. With the assistance of the County of San Diego LUST team, the Redevelopment Agency successfully achieved clearance allow the development of 28 single-family townhomes and 20,000 square feet of commercial/retail space. Testing of the site requires four consecutive quarters to meet County requirements for closure status. Funding during FY2012-2013 will allow for ongoing testing required by the County DEH.

**Scheduling:**

Ongoing project until testing results in minimal findings and clearance through the County Department of Environmental Health (DEH). Closure is anticipated during FY2013-14.

**Relationship to General & Community Plans:**

Consistent with ABx1 26, the Reimbursement and Indemnity Agreement, the General Plan and Redevelopment Agency Plan.

**Operating Budget Impact:**

Funding will be provided from the Redevelopment Property Tax Trust Fund (RPTTF), or other funds received, subject to approval by the Oversight Board and DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) - MLEBF					-	-
Other Prof/Tech Services (8395) - Hargrave Enviro	6,039	18,000	10,000	10,000	20,000	44,039
Other Prof/Tech Services (8395) - County VAP	1,576	2,500	2,500	2,500	5,000	9,076
Internal Prof/Tech Services (8396)	1,072	3,295	2,500	2,500	5,000	9,367
Permits & Fees (8560)					-	-
Other Misc. Expenses (8524, 8568, 8576 & 8594)					-	-
Contingency (9060)					-	-
<b>PROJECT COST TOTAL:</b>	<b>8,687</b>	<b>23,795</b>	<b>15,000</b>	<b>15,000</b>	<b>30,000</b>	<b>62,482</b>

<b>Source(s) of Funds:</b>						
Redevelopment Capital Funds (590)	8,687				-	8,687
Transfer In from 0490000-9910 (0590)						-
Successor Agency Tax Incr Funds (0590)					-	-
Redevelopment Property Tax Trust Fund (RPTTF)		23,795	15,000	15,000	30,000	53,795
					-	-
<b>FUNDING TOTAL:</b>	<b>8,687</b>	<b>23,795</b>	<b>15,000</b>	<b>15,000</b>	<b>30,000</b>	<b>62,482</b>

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: Former Police Station (100 Fletcher Parkway)

ACTIVITY:

0590900

PROJECT NO:

RD0801S

**Description:**

This activity provides for the funding of activities associated with the acquisition, General Plan and zoning amendments, hazardous materials testing, abatement, demolition, and preparation of the former Police Station Headquarters for new development. The property associated with this activity is 100 Fletcher Parkway, Site #15 identified in the Long Range Property Management Plan, APN 483-071-52-00.

**Justification:**

With completion of the new Public Safety Facility in August 2011, the former police station headquarters, which is located on a key parcel within the Project Area at the intersection of Magnolia Avenue, Fletcher Parkway, Highway 67, and Interstate 8, became available for redevelopment. The Agency entered into an Enforceable Obligation with the City through execution of a Purchase and Sale Agreement, Promissory Note and Deed of Trust, and acquired the property on June 16, 2011, for the as-demolished value of \$4.85M. With a \$1M down-payment, the balance of \$3.85M was amortized over a 5-year period under the Promissory Note and Deed of Trust.

**Scheduling:**

Council approval to amend the General Plan and various zoning designations occurred on April 26, 2011; acquisition occurred on June 16, 2011. Phase 1 testing is complete and efforts to acquire the adjacent Caltrans property in order to generate the greatest return to taxing entities will now proceed outside Successor Agency activities and was approved by the City Council on January 8, 2013. The method and timing of disposal of the property will also be subject to Oversight Board approval and City Council, and a lot-consolidation with the Caltrans property acquired by the City will be recommended to yield the largest project possible. Demolition is anticipated during FY13-14, with sale of the property anticipated no later than FY14-15.

**Relationship to General & Community Plans:**

Redevelopment of this site is consistent with the General and Redevelopment Agency Plans.

**Operating Budget Impact:**

This project, including demolition, project management and maintenance until disposition, will be funded from Redevelopment Property Tax Trust Funds (RPTTF) and proceeds from the sale of property. Demolition costs remain subject to Oversight Board and Department of Finance approval of the LRPMP.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) - MLEBF		5,000	2,500	2,500	5,000	10,000
Other Prof/Tech Services (8395) - Ahlee	243	-	-	-	-	243
Other Prof/Tech Services (8395) - Appraiser	5,000	-	-	-	-	5,000
Other Prof/Tech Services (8395) - Ninyo & Moore	655	10,000	800	800	1,600	12,255
Other Prof/Tech Services (8395) - Helix	-	-	-	-	-	-
Other Prof/Tech Services (8395) - Title & Misc	-	500	650	650	1,300	1,800
Internal Prof/Tech Services (8396) - Maintenance	11,116	51,556	25,778	25,778	51,556	114,228
Internal Prof/Tech Services - Demolition (8396)			18,100	18,100	36,200	36,200
Property Insurance (8516)	-	3,700	-	4,000	4,000	7,700
Permits & Fees (8560) - demo, PM, erosion	50	-	500	10,500	11,000	11,050
Property Taxes (8573)	-	1	250	250	500	501
Repairs & Maintenance (8576)	-	-	1,000	1,000	2,000	2,000
Service/Maintenance Contracts (8584) - fencing	-	679	5,000	-	5,000	5,679
Utilities (8598) - SDGE, Helix, Sewer	5,472	18,986	9,493	9,493	18,986	43,444
Land Acq/Promissory Note (9050)	-	840,665	840,665	-	840,665	1,681,330
Demolition (9050) - Incl abatement	-	-	318,200	-	318,200	318,200
Demolition (9050) - contingency 10%	-	-	31,820	-	31,820	31,820
Other Misc. Expenses (8524, 8568, 8576 & 8594)	-	-	-	-	-	-
<b>PROJECT COST TOTAL:</b>	<b>22,536</b>	<b>931,087</b>	<b>1,254,756</b>	<b>73,071</b>	<b>1,327,827</b>	<b>2,281,450</b>

<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)	-	931,087	-	-	-	931,087
Successor Agency Tax Incr Funds (0590)	22,536	-	-	-	-	22,536
Redevelopment Property Tax Trust Fund (RPTTF)	-	-	1,254,756	73,071	1,327,827	1,327,827
					-	-
<b>FUNDING TOTAL:</b>	<b>22,536</b>	<b>931,087</b>	<b>1,254,756</b>	<b>73,071</b>	<b>1,327,827</b>	<b>2,281,450</b>

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT

## FISCAL YEAR 2013-2014

**PROJECT NAME:** Johnson Avenue Corridor Revitalization Project

**ACTIVITY:**

0590900

**PROJECT NO:**

RD1017S

**Description:**

This project was initiated to revitalize the Johnson Avenue corridor with retail, automotive sales and miscellaneous service uses. One or more parcels may be combined in order to facilitate mid to large retail uses or mid to large automotive dealerships. The Agency's goal is to establish the Corridor as a vibrant and distinct commercial district that invites shoppers and other visitors to El Cajon. Sustainable design and development practices will be encouraged. This project also provided for funding of expenses associated with testing, remediation and/or monitoring of three sites required through the County Department of Environmental Health. The properties associated with this activity include the following sites identified in the Long Range Property Management Plan: Site 10 (588 N. Johnson Avenue) APN 482-250-34-00; and Site 11 (531-555 Raleigh Avenue) APN 482-250-36-00.

**Justification:**

The former El Cajon Redevelopment Agency sought to implement the Redevelopment Plan for the Project Area by pursuing the acquisition, demolition and redevelopment of properties located on the West side of Johnson Avenue, South of Interstate 8. This project also provided for the ongoing expenses associated with testing and/or remediation of contaminated soils required through the County Department of Environmental Health (DEH), which was achieved in November 2012.

**Scheduling:**

Acquisition of land initiated in FY 2009-10 and demolition of three Johnson Avenue parcels occurred in Spring 2010. During FY2010-11, the Agency entered into a Disposition and Development Agreement (DDA) with Inland Properties (US) Inc. for the sale of two parcels and the development of a Kenworth dealership. Under the DDA, Inland has constructed and will maintain a large commercial truck sales and service center for not less than 15 years. Completion of the Kenworth project occurred in April 2012. This project also provides for the ongoing testing and remediation of contaminated soils and a closure letter was received by DEH on November 1, 2012. Follow-up reporting may be required for the State and sale of the property is anticipated during FY2013-14.

**Relationship to General & Community Plans:**

The acquisition and development of properties in the Johnson Avenue Corridor are consistent with the General Plan and the objectives of the Redevelopment Agency Plan.

**Operating Budget Impact:**

Ongoing project management and maintenance costs until disposition will be paid from the Redevelopment Property Tax Trust Fund (RPTTF) and rents received, subject to approval by the Oversight Board and the California Department of Finance (DOF).

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) - MLEBF			2,500	2,500	5,000	5,000
Other Prof/Tech Services (8395) - County VAP	284	4,000	450	450	900	5,184
Other Prof/Tech Services (8395) - Ninyo & Moore	8,789	-	1,000	1,000	2,000	10,789
Other Prof/Tech Services (8395) - Appraiser			2,500	2,500	5,000	5,000
Internal Prof/Tech Services (8396)	11,358	2,000	5,000	5,000	10,000	23,358
Property Insurance (8516)		628	350	350	700	1,328
Property Taxes (8573)		29	100	100	200	229
Repairs & Maintenance (8576)	83	10,000	5,000	5,000	10,000	20,083
Maintenance Agreements (8584) - fencing	330	900	500	500	1,000	2,230
Utilities (8598) - SDGE, helix, sewer	1,250	2,691	1,600	1,600	3,200	7,141
Other Misc. Expenses (8524,8530)					-	-
<b>PROJECT COST TOTAL:</b>	<b>22,094</b>	<b>20,248</b>	<b>19,000</b>	<b>19,000</b>	<b>38,000</b>	<b>80,342</b>

<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)						-
Successor Agency Tax Incr Funds (0590)	22,094					22,094
Redevelopment Property Tax Trust Fund (RPTTF)		20,248	19,000	19,000	38,000	58,248
Lease Revenues		39,343			-	39,343
<b>FUNDING TOTAL:</b>	<b>44,188</b>	<b>59,591</b>	<b>19,000</b>	<b>19,000</b>	<b>38,000</b>	<b>119,685</b>

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

**PROJECT NAME:** DDA Projects Monitoring

**ACTIVITY:**

0590900

**PROJECT NO:**

RD1201S

**Description:**

This activity provides for internal or external costs directly related to the enforcement, negotiations, collections, and management of agreements that are Enforceable Obligations of the former El Cajon Redevelopment Agency, including: Disposition and Development Agreements (DDA), Owner Participation Agreements (OPA), Operating Agreements (OA), Reimbursement and Indemnity Agreements, and other agreements that are not directly related to an ongoing project.

**Justification:**

Section 34167(d) and 34171(d) of the California Health and Safety Code provide for the definition of Enforceable Obligations, which includes, but is not limited to in part, "any legally binding and enforceable agreement or contract". As many contracts and agreements with the former El Cajon Redevelopment Agency could continue for years, the staff of the Successor Agency is tasked with the ongoing monitoring and enforcement of such agreements, which could include legal enforcement, collections, renegotiations, or termination.

**Scheduling:**

Ongoing until all contracts and agreements are paid, fulfilled or terminated.

**Relationship to General & Community Plans:**

Required pursuant to ABx1 26.

**Operating Budget Impact:**

Funding will be provided from the Redevelopment Property Tax Trust Fund (RPTTF), or other funds received, subject to approval by the Oversight Board and DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) -MLEBF, outside counsel	667	5,000	70,000	5,000	75,000	80,667
Other Prof/Tech Services (8395)		-	250	250	500	500
Internal Prof/Technical Services (8396)	1,970	5,000	5,000	5,000	10,000	16,970
Advertising (8522)	60	-	500	500	1,000	1,060
Other Misc. Expenses (8524,8530)					-	-
<b>PROJECT COST TOTAL:</b>	<b>2,697</b>	<b>10,000</b>	<b>75,750</b>	<b>10,750</b>	<b>86,500</b>	<b>99,197</b>

<b>Source(s) of Funds:</b>						
Transfer In from 0490000-9910 (0590)						-
Successor Agency Tax Incr Funds (0590)		-			-	-
Redevelopment Property Tax Trust Fund (RPTTF)		10,000	75,750	10,750	86,500	96,500
Interest on Loans	20,964	13,964			-	34,928
Rental Income	4,046					
Miscellaneous Reimbursement	50,193	46,010			-	96,203
Loan Proceeds		44,650				
<b>FUNDING TOTAL:</b>	<b>75,203</b>	<b>114,624</b>	<b>75,750</b>	<b>10,750</b>	<b>86,500</b>	<b>227,631</b>

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT

## FISCAL YEAR 2013-2014

**PROJECT NAME:** Real Property Asset Management

**ACTIVITY:**  
**PROJECT NO:**

**0590900**  
**RD1202S**

**Description:**

This project provides for ongoing operating and maintenance costs associated with properties transferred from the former El Cajon Redevelopment Agency to the City of El Cajon as Successor Agency where no ongoing project exists. The properties associated with this activity include the following sites identified in the Long Range Property Management Plan: Site 1 & 2 (156 E. Main St and adj lot) APN 488-083-15 and 16; Site 3 (149 Rea Avenue) APN 488-083-27-00; Site 4 (201 E. Main Street) APN 488-211-21-00; Site 5 (alley) APN 488-212-19-00; Site 6 (de minimis parcel) APN 488-212-20-00; and Site 7 (parking lot adjacent to Lexington Sr. Apartments) APN 488-212-22-00.

**Justification:**

Pursuant to Section 34181 of the California Health and Safety Code, the Oversight Board shall direct the Successor Agency to dispose of all assets and properties of the former redevelopment agency. This activity would include the use of Successor Agency staff to: prepare Property Asset Management Plans; solicitation of proposals for appraisal, brokerage or other services; negotiations with buyers and tenants; lease negotiations; revenue collections; preparing summary reports; holding public hearings; maintaining the property; operating expenses; and other activities necessary for property disposition.

**Scheduling:**

Ongoing activity until sale/transfer of properties. Disposal of properties is subject to approval of a Long Range Property Management Plan by the California Department of Finance (DOF), anticipated for Spring 2013. Staff anticipates all properties, now under the temporary control of the City as successor agency, will be disposed of by FY2017-18.

**Relationship to General & Community Plans:**

In conformance with ABx1 26 and the Long Range Property Management Plan.

**Operating Budget Impact:**

Funding will be provided from the Redevelopment Property Tax Trust Fund (RPTTF), or other funds received, subject to approval by the Oversight Board and DOF.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Consulting Services (8325)					-	-
Legal Services (8345) - MLEBF	868	6,000	5,000	5,000	10,000	16,868
Other Prof/Tech Services (8395) - appraiser (42)		4,500	6,500		6,500	11,000
Other Prof/Tech Services (8395) - Title/Recording		8,500	3,000	3,000	6,000	14,500
Internal Prof/Technical Services (8396)	16,922	32,250	12,900	12,900	25,800	74,972
Property Insurance (8516)	1,765				-	1,765
Advertising (8522)		1,000	500	500	1,000	2,000
Property Taxes (8573)		6,363	6,656		6,656	13,019
Repairs & Maintenance (8576)					-	-
Utilities (8598)					-	-
Other Misc. Expenses (8524,8530)					-	-
<b>PROJECT COST TOTAL:</b>	<b>19,555</b>	<b>58,613</b>	<b>34,556</b>	<b>21,400</b>	<b>55,956</b>	<b>134,124</b>

<b>Source(s) of Funds:</b>						-
Transfer In from 0490000-9910 (0590)						-
Successor Agency Tax Incr Funds (0590)	19,555					19,555
Redevelopment Property Tax Trust Fund (RPTTF)		58,613	34,556	21,400	55,956	114,569
Rental Income		1,927			-	1,927
Miscellaneous Reimbursement		1,781			-	1,781
<b>FUNDING TOTAL:</b>	<b>19,555</b>	<b>62,321</b>	<b>34,556</b>	<b>21,400</b>	<b>55,956</b>	<b>137,832</b>

# SUCCESSOR AGENCY CAPITAL FUNDS PROJECT FISCAL YEAR 2013-2014

PROJECT NAME: Civic Center Complex Revitalization Project

ACTIVITY:

0590900

PROJECT NO:

RDR0703S

## Description:

Formerly known as Mixed Use Parking Structure Project or Mixed Use Project #1, this project primarily served to identify the site for construction of a 200-space parking garage to service the downtown area, a hotel development or other mixed use projects including retail, office, housing and open space. The properties associated with this activity include the following sites identified in the Long Range Property Management Plan: Site 8 (Magnolia employee parking lot) APN 488-072-38-00; Site 9 (Rea public parking lot) APN 488-072-40-00; Site 12 (115 Rea Avenue) APN 488-083-03-00; Site 13 (141 N. Magnolia Avenue) APN 488-082-18-00; and Site 14 (118-130 Rea Avenue) APN 488-082-12-00.

## Justification:

As downtown El Cajon revitalization continues, the need for public and private parking facilities increases. Prior staff discussions with the Building Industry Association of San Diego and the Urban Land Institute indicate that increased density, allowed under the pending Downtown Specific Plan, will further intensify the lack of parking needed for such increases and necessitates the construction of vertical parking structures due to limited land.

## Scheduling:

Site identification and initiation of land acquisition began in FY 2006-07; temporary parking facilities completed in FY 2008-09; acquisition of all properties completed in November 2010. The former Redevelopment Agency entered into an Exclusive Negotiation Agreement (ENA) with E. Neal Arthur in March 2011 for the development of a full-service upscale hotel with name brand identity to serve business and leisure travelers. Although expired, the City desires to acquire the property during FY2012-13 or FY2013-14 in order to further discussions for development of a hotel on three contiguous parcels. The City as Successor Agency has programmed demolition of the properties during FY12-13; however, demolition and disposal are both subject to approval of a Long Range Property Management Plan (LRPMP) by the California Department of Finance (DOF) and each Recognized Obligation Payment Schedule (ROPS).

## Relationship to General & Community Plans:

The development of this property for parking, commercial, housing, or a hotel is consistent with the General Plan and the objectives of the Redevelopment Agency Plan.

## Operating Budget Impact:

This project will be funded from Redevelopment Property Tax Trust Fund (RPTTF) or other funds received. Demolition costs remain subject to Oversight Board and DOF approval of the LRPMP.

	Prior Year(s) Expend Actual	Current Year Expend Estimate	Appropriation FY 13-14 July-Dec	Appropriation FY 13-14 Jan to June	Appropriation FY 13-14	Est. Project Costs Through FY 13-14
Legal Services (8345) -MLEBF		2,000	5,000	5,000	10,000	12,000
Other Prof/Tech Services (8395) - Ahlee					-	-
Other Prof/Tech Services (8395) - Ninyo & Moore		3,000	17,500	17,500	35,000	38,000
Other Prof/Tech Services (8395) - Appraiser		14,000	4,000	4,000	8,000	22,000
Internal Prof/Technical Services (8396)	765	9,809	18,200	18,200	36,400	46,974
Property Insurance (8516)		2,141	1,250	1,250	2,500	4,641
Permits & Fees (8560) - demo, erosion			250	250	500	500
Property Taxes (8573)		10,988	11,537		11,537	22,525
Repairs & Maintenance (8576)			5,000		5,000	5,000
Utilities (8598) - SDGE, helix, sewer	324	220	110	110	220	764
Land - Demolition (9050) - incl abatement			334,000		334,000	334,000
Land - Demolition (9050) - contingency 10%			33,400		33,400	33,400
Contingency (9060)					-	-
<b>PROJECT COST TOTAL:</b>	<b>1,089</b>	<b>42,158</b>	<b>430,247</b>	<b>46,310</b>	<b>476,557</b>	<b>519,804</b>

<b>Source(s) of Funds:</b>						-
Transfer In from 0490000-9910 (0590)						-
Successor Agency Tax Incr Funds (0590)	1,089				-	1,089
Redevelopment Property Tax Trust Fund (RPTTF)		42,158	430,247	46,310	476,557	518,715
					-	-
<b>FUNDING TOTAL:</b>	<b>1,089</b>	<b>42,158</b>	<b>430,247</b>	<b>46,310</b>	<b>476,557</b>	<b>519,804</b>

**AGENDA REPORT  
SUCCESSOR AGENCY OVERSIGHT BOARD  
February 20, 2013, Meeting**

**SUBJECT: APPROVAL OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JULY 1, 2013, TO DECEMBER 31, 2013 (“ROPS 13-14A”)**

**RECOMMENDED ACTION:** That the Oversight Board adopt the proposed Resolution to:

1. Approve the Recognized Obligation Payment Schedule for the period July 1, 2013, to December 31, 2013 (“ROPS 13-14A”);
2. Authorize the Chair to execute the approved ROPS 13-14A for submission to the County Auditor Controller (CAC), the State Department of Finance (DOF), the County Administrative Officer (CAO), the State Controller’s Office (SCO), and to post on the Successor Agency website upon approval by the Oversight Board; and
3. Authorize the Successor Agency staff to carry out activities outlined in the Cooperation Agreement for Reimbursement of Costs and City/Successor Agency Loan (Cooperation Agreement) approved by the Oversight Board on April 26, 2012, which are necessary to meet approved obligations outlined in the ROPS 13-14A, including re-entering into third party service agreements for continuation of projects pursuant to City of El Cajon adopted policies, procedures and practices, in place.

**BACKGROUND:**

Pursuant to ABx1 26, Health and Safety Code Section 34177(l), the Successor Agency must prepare a series of Recognized Obligation Payment Schedule(s) for each six-month period outlining each enforceable obligation and identify the funding source as follows:

1. Low and Moderate Income Housing Fund (removed in ROPS 13-14A);
2. Bond Proceeds;
3. Reserve Balances;
4. Administrative cost allowance;
5. The Redevelopment Property Tax Trust Fund (RPTTF), but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation; and
6. Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency.

The ROPS for the period July 2013 through December 2013 was prepared in conjunction with the Capital Improvement Project Plan and City budget process that is currently



underway. ROPS 13-14A consists of project/program costs that will be included in the proposed City budget for Fiscal Year 2013-2014.

Project costs for the Former Police Station (RD0801S) and Civic Center Revitalization Project (RDR0703S) continue to include estimated amounts programmed for needed hazardous materials abatement and planned demolition to prepare the properties for sale and new development. **However, expenditure of demolition costs are subject to prior receipt of a Finding of Completion, approval of the Long Range Property Management Plan, and approval of costs identified in each Recognized Obligation Payment Schedule (ROPS) by the Oversight Board and DOF.**

Although the Long Range Property Management Plan (LRPMP) was approved by the Oversight Board on November 21, 2012, it has not yet been approved by DOF pending receipt of a Finding of Completion. Including these anticipated costs in the Budget and appropriating the necessary funds in the City and Successor Agency budget provides for continuity and the ability to move forward with proposed activities without delay, upon approval of the LRPMP.

Two new projects have been included in the Fiscal Year 2013-2014 Budget with funding programmed from the 2007 Tax Exempt Bond proceeds: 1) the Alley Improvement Project; and 2) Median Improvements. **Similar to planned demolition, Bond expenditures are subject to prior receipt of a Finding of Completion and approval by the DOF.**

The Greenovation Project, LM0707H, has been re-budgeted for Fiscal Year 2013-2014 from the Reserve Balance in the event that project properties do not close escrow until after July 1, 2013. The Reserve Balance is comprised of Low and Moderate-Income Housing Asset Funds (LMIHAF) received during the prior fiscal year.

The ROPS for the period of July 1, 2013, through December 31, 2013, is attached and must be approved by the Oversight Board and submitted to the CAC, Controller's Office, DOF, and posted on the Successor Agency's website not later than March 1, 2013.

Actions by the Oversight Board for any ROPS must be reviewed by the DOF within 45 days. Within five days of the DOF determination, a Successor Agency may request additional review and request a meet and confer on disputed items.

Finally, in the absence of contracting procedures for the Oversight Board, the Successor Agency will continue to employ the policies, procedures and practices in place with the City of El Cajon with respect to execution and re-entering into contracts necessary for the continuation of activities outlined in the ROPS. These activities are authorized under the Cooperation Agreement approved by the Oversight Board on April 26, 2012

**FISCAL IMPACT:**

This action will approve the Recognized Obligation Payment Schedule for the period of July 1, 2013, through December 31, 2013, with total estimated funding at \$7,101,340. The ROPS identifies the funding sources for each obligation.


**ATTACHMENTS:**

1. Proposed Resolution
2. Proposed Recognized Obligation Payment Schedule for the period July 1, 2013, to December 31, 2013 ("ROPS 13-14A")
3. Successor Agency Fiscal Year 2013-2014 Budget (ROPS 13-14A Reconciliation)


**Prepared by:**

  
\_\_\_\_\_  
**Jenny Ficacci,**  
**Housing Manager**

**Reviewed by:**

  
\_\_\_\_\_  
**Holly Reed-Falk,**  
**Financial Operations Manager**

**Approved by:**

  
\_\_\_\_\_  
**Douglas Williford**  
**Executive Director/City Manager**

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## RESOLUTION NO. OB-03-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JULY 1, 2013, TO DECEMBER 31, 2013 ("ROPS 13-14A")

WHEREAS, the Oversight Board (the "Oversight Board") of the Successor Agency of the former El Cajon Redevelopment Agency (the "Successor Agency") held a regularly scheduled meeting on February 20, 2013, at which time it considered a proposed Recognized Obligation Payment Schedule for the period of July 1, 2013, to December, 2013 ("ROPS 13-14A"); and

WHEREAS, the Successor Agency requested funding under ROPS 13-14A totaling \$11,022,053 for Fiscal Year 2013-14 from all sources, including \$1,975,115 from Bond Proceeds that are subject to receipt of a Finding of Completion from the California Department of Finance, Admin Allowance, and Redevelopment Property Tax Trust Funds (RPTTF);

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY, AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference.
  - 2. Approval of the ROPS 13-14A is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because the proposed amendments will not cause a significant adverse physical change to the environment either directly or indirectly.
- B. The Oversight Board hereby APPROVES the Recognized Obligation Payment Schedule for the period of July 1, 2013, to December 31, 2013, in the form and content attached hereto as **Exhibit "A"** and incorporated herein by this reference, with a total due during Fiscal Year of \$11,022,053, including \$1,975,115 from Bond proceeds that are subject to receipt of a Finding of Completion from the DOF, subject to any minor conforming, technical, or clarifying changes approved by the City Manager, or designee.
- C. The Oversight Board hereby AUTHORIZES the Chair to execute the approved Recognized Obligation Payment Schedule for the period of July 1, 2013, to December 31, 2013, for submission to the County Auditor Controller, the State

Department of Finance, the County Administrative Officer, the State Controller's Office, and to post on the Successor Agency website not later than March 1, 2013.

- D. The Oversight Board hereby AUTHORIZES Successor Agency staff to carryout activities outlined in the Cooperation Agreement for Reimbursement of Costs and City/Successor Agency Operations Loan approved by the Oversight Board on April 26, 2012, which are necessary to meet obligations outlined in the ROPS 13-14A, including re-entering into third party service agreements for continuation of projects pursuant to City of El Cajon adopted policies, procedures and practices, in place.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly scheduled meeting held this 20<sup>th</sup> day of February 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :

\_\_\_\_\_  
Debra Turner-Emerson, Chairperson

ATTEST:

\_\_\_\_\_  
Jennifer Ficacci, Acting Oversight Board Secretary

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**SUCCESSOR AGENCY  
FISCAL YEAR 2013-2014 BUDGET/ROPS**

AGENDA ITEM # \_\_\_\_\_

for the periods July 1, 2013 - December 2013 and January 1, 2014 - June 30, 2014

Activity/ Project	Activity/Project Name	ROPS Item #'s	July-Dec 2013	Jan-Jun 2014	Total Fiscal Year 2013-14
<b><u>Bond Proceeds</u></b>					
RD1015S	Alley Improvement Project (Note 2)	59	\$ 275,000	\$ 320,000	\$ 595,000
RDR0705S	Median Improvements (Note 2)	60	\$ 462,800	\$ 917,315	\$ 1,380,115
	<b>Total Bond Proceeds</b>		<b>\$ 737,800</b>	<b>\$ 1,237,315</b>	<b>\$ 1,975,115</b>
<b><u>Reserve Balance (LMIHAF)</u></b>					
LM0707H	Greenovation Acquisition/Rehab/Resale Program	34	\$ 538,629	\$ -	\$ 538,629
<b><u>Administrative Allowance</u></b>					
0590110	Successor Agency Administration (Note 1)	8	\$ 157,221	\$ 92,779	\$ 250,000
<b><u>RPTTF</u></b>					
0490000	Successor Agency Debt Service Fund	1-5	\$ 3,093,830	\$ 2,360,338	\$ 5,454,168
0790000	Promissory Note due to City	58	\$ 663,430	\$ -	\$ 663,430
RD0704S	Hazmat Testing/Park & Ballantyne	11	\$ 48,750	\$ 23,750	\$ 72,500
RD0705S	Hazmat Testing/Prescott Promenade	12	\$ 21,000	\$ 21,000	\$ 42,000
RD0706S	SW Corner/Environmental Testing	14	\$ 15,000	\$ 15,000	\$ 30,000
RD0801S	Former Police Station (100 Fletcher Parkway)	15-16	\$ 1,254,756	\$ 73,071	\$ 1,327,827
RD1017S	Johnson Avenue Corridor Revitalization Project	17	\$ 19,000	\$ 19,000	\$ 38,000
RD1201S	DDA Projects Monitoring	18	\$ 75,750	\$ 10,750	\$ 86,500
RD1202S	Real Property Asset Management	19	\$ 34,556	\$ 21,400	\$ 55,956
RDR0703S	Civic Center Complex Revitalization Project	20-21	\$ 430,247	\$ 46,310	\$ 476,557
LM0707H	Greenovation Acquisition/Rehab/Resale Program	34	\$ 11,371	\$ -	\$ 11,371
	<b>Total RPTTF</b>		<b>\$ 5,667,690</b>	<b>\$ 2,590,619</b>	<b>\$ 8,258,309</b>
<b>FISCAL YEAR 2013-2014 BUDGET/ROPS for Oversight Board Approval</b>			<b>\$ 7,101,340</b>	<b>\$ 3,920,713</b>	<b>\$ 11,022,053</b>

<b>NOTE (1) (A) Successor Agency Administration Allowance (3% of Total RPTTF )</b>	<b>\$ 247,749</b>
<b>(B) Minimum Successor Agency Administration Allowance</b>	<b>\$ 250,000</b>
<b>Greater of (A) or (B) = Successor Agency Administration Allowance FY2013-14</b>	<b>\$ 250,000</b>

**NOTE (2)** Subject to FOC & DOF approval





## SUCCESSOR AGENCY CONTACT INFORMATION

### Successor Agency

ID: 282  
County: San Diego  
Successor Agency: El Cajon

### Primary Contact

Honorific (Ms, Mr, Mrs)

First Name

Last Name

Title

Address

City

State

Zip

Phone Number

Email Address

Victoria

Danganan

Senior Accountant

200 Civic Center Way

El Cajon

CA

92020

619-441-1720

vdangana@cityofelcajon.us

### Secondary Contact

Honorific (Ms, Mr, Mrs)

First Name

Last Name

Title

Phone Number

Email Address

# SUMMARY OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE

Filed for the July 1, 2013 to December 31, 2013 Period

Name of Successor Agency: EL CAJON (SAN DIEGO)

Outstanding Debt or Obligation	Total
Total Outstanding Debt or Obligation	\$121,199,345

Current Period Outstanding Debt or Obligation	Six-Month Total
A Available Revenues Other Than Anticipated RPTTF Funding	\$1,276,429
B Enforceable Obligations Funded with RPTTF	\$5,667,690
C Administrative Allowance Funded with RPTTF	\$157,221
D Total RPTTF Funded (B + C = D)	\$5,824,911
E Total Current Period Outstanding Debt or Obligation (A + B + C = E) <i>Should be same amount as ROPS form six-month total</i>	\$7,101,340
F Enter Total Six-Month Anticipated RPTTF Funding	\$5,824,911
G Variance (F - D = G) <i>Maximum RPTTF Allowable should not exceed Total Anticipated RPTTF Funding</i>	\$0

## Prior Period (July 1, 2012 through December 31, 2012) Estimated vs. Actual Payments (as required in HSC section 34186 (a))

H Enter Estimated Obligations Funded by RPTTF <i>(lesser of Finance's approved RPTTF amount including admin allowance or the actual amount distributed)</i>	\$4,227,883
I Enter Actual Obligations Paid with RPTTF	\$4,000,434
J Enter Actual Administrative Expenses Paid with RPTTF	\$180,284
K Adjustment to Redevelopment Obligation Retirement Fund (H - (I + J) = K)	\$47,165
L Adjustment to RPTTF (D - K = L)	\$5,777,746

Certification of Oversight Board Chairman:

Pursuant to Section 34177(m) of the Health and Safety code,

I hereby certify that the above is a true and accurate Recognized

Obligation Payment Schedule for the above named agency.

Name	Title
/s/	
Signature	Date

**EL CAJON (SAN DIEGO)**  
**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS 13-14A)**  
**July 1, 2013 through December 31, 2013**

Oversight Board Approval Date: \_\_\_\_\_

Item #	Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2013-14	Funding Source					
									Bond Proceeds	Reserve Balance	Admin Allowance	RPTTF	Other	Six-Month Total
							\$121,199,345	\$11,022,053	\$737,800	\$538,629	\$157,221	\$5,667,690	\$0	\$7,101,340
1	Tax allocation bonds	8/25/2000	10/1/2030	Bank of New York	2000 Bonds - Housing/Non-housing projects (0490000)	Central Business District/ Amended Area	33,099,448	1,276,406	0	0	0	646,368	0	646,368
2	Tax allocation bonds	8/17/2005	10/1/2036	Bank of New York	2005 Bonds - Refund 1997 issue & Housing/Non-housing projects (0490000)	Central Business District/ Amended Area	56,216,646	3,052,306	0	0	0	1,787,853	0	1,787,853
3	Tax allocation bonds	3/14/2007	10/1/2037	Bank of New York	2007 Bonds - Non-housing projects (0490000)	Central Business District/ Amended Area	23,361,584	1,096,207	0	0	0	630,360	0	630,360
4	Contract for administration/operation	1992	Upon retirement of debt	Bank of New York/ Bondlogistix/ Bond Counsels	Fiscal agent, arbitrage, and bond counsel fees (0490000)	Central Business District/ Amended Area	14,250	14,250	0	0	0	14,250	0	14,250
5	Contract for administration/operation	1985	Upon retirement of debt	RAMS,LLP CPA (current auditors)	Financial auditing services (0490000 & 0590110)	Central Business District/ Amended Area	15,000	15,000	0	0	0	15,000	0	15,000
6	Professional services contract	12/1/2010	12/1/2015	Rosenow Spevacek	General redevelopment/project consulting (0590110)	Central Business District/ Amended Area	194,621	0	0	0	0	0	0	0
7	Contract for administration/operation	6/29/2011	Upon completion of all obligations of former redevelopment agency	McDougal Love Eckis Boehmer & Foley & Oversight Board Legal Counsel	Legal services - successor agency (0590110)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
8	Contract for administration/operation	6/29/2011	Upon completion of all obligations of former redevelopment agency	City of El Cajon - Successor Agency	Administration Allowance (0590110)	Central Business District/ Amended Area	250,000	250,000	0	0	157,221	0	0	157,221
9	Professional services contract	3/2/2011	3/2/2013	Andrew A. Smith Company	Appraisal of Agency owned properties	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
10	Professional services contract	9/15/2010	9/15/2015	Ninyo & Moore	Ongoing environmental testing (RD0801S, RD1017S RD0703S)	Central Business District/ Amended Area	410,755	0	0	0	0	0	0	0
11	Contract for administration/operation	6/29/2011	Upon completion of project	City of El Cajon/Vendors	Hazmat Test Park/ Ballantyne - Environment project management and monitoring Park Magnolia Villas (RD0704S )	Central Business District/ Amended Area	72,500	72,500	0	0	0	48,750	0	48,750
12	Contract for administration/operation	6/29/2011	Upon completion of project	City of El Cajon/Vendors	Hazmat Test Prescott Promenade - Environmental project management and monitoring Prescott Promenade (RD0705S )	Central Business District/ Amended Area	42,000	42,000	0	0	0	21,000	0	21,000
13	Professional services contract	9/14/2010	9/13/2012	Hargrave Environmental Consulting, Inc.	Ongoing environmental testing - Southwest Corner (RD0706S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
14	Contract for administration/operation	6/29/2011	Upon completion of project	City of El Cajon/Vendors	SW Corner Environmental Testing - Environmental project management and monitoring - Priest Development Corp DDA (RD0706S )	Central Business District/ Amended Area	30,000	30,000	0	0	0	15,000	0	15,000
15	Contract for administration/operation	6/29/2011	Upon sale of property	City of El Cajon/Vendors	Former Police Station - GP and zoning amendments, project management and monitoring, property management and disposition (RD0801S )	Central Business District/ Amended Area	487,162	487,162	0	0	0	414,091	0	414,091
16	Promissory note	6/16/2011	12/1/2015	City of El Cajon	Promissory note on purchase and sale agreement of 100 Fletcher Parkway (RD0801S)	Central Business District/ Amended Area	2,452,107	840,665	0	0	0	840,665	0	840,665
17	Contract for administration/operation	6/29/2011	Upon sale of property	City of El Cajon/Vendors	Johnson Ave Corridor - Property and project management, environmental coordination, and disposition (RD1017S )	Central Business District/ Amended Area	38,000	38,000	0	0	0	19,000	0	19,000
18	Contract for administration/operation	6/29/2011	Upon termination of DDAs	City of El Cajon/Vendors	DDAs Project Monitoring - SW Corner (Promenade Square LLC), NW Corner (Priest Development Corp), Smith's DDA, St Madelines Sophies Center (RD1201S )	Central Business District/ Amended Area	86,500	86,500	0	0	0	75,750	0	75,750
19	Contract for administration/operation	6/29/2011	Upon sale of property	City of El Cajon/Vendors	Real Property Asset Management - Property management and disposition of agency properties (RD1202S )	Central Business District/ Amended Area	55,956	55,956	0	0	0	34,556	0	34,556

Item #	Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2013-14	Funding Source					
									Bond Proceeds	Reserve Balance	Admin Allowance	RPTTF	Other	Six-Month Total
20	Rental subsidies	6/29/2011	Pursuant to relocation law and upon sale of property	Property owners/tenants	Civic Center Plaza Revitalization - Relocation agreements/obligations associated with Civic Center Complex properties (RDR0703S)	Central Business District/ Amended Area	TBD	0	0	0	0	0	0	0
21	Contract for administration/operation	6/29/2011	Upon sale of property	City of El Cajon/Vendors	Civic Center Revitalization - Project and property management, disposition, Rea/Magnolia Hotel ENA (RDR0703S )	Central Business District/ Amended Area	476,557	476,557	0	0	0	430,247	0	430,247
22	Owner Participation Agreement	3/9/2011	Upon completion of project	JKC Palm Springs Automotive, Inc.	Facade and major tenant improvements loans (RD0702S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
23	Owner Participation Agreement	3/8/2011	Upon completion of project	Parkway Plaza GP, LLC	Facade and major tenant improvements loans (RD0702S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
24	Contract for administration/operation	6/29/2011	Upon completion of project	City of El Cajon/Vendors	Facade Improvement - Project management and monitoring (RD0702S )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
25	Contract for administration/operation	6/29/2011	Upon completion of project	City of El Cajon/Vendors	Civic Center Plaza Improvements - Project management and other construction services and supplies/materials (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
26	Contract for administration/operation	4/19/2011	Upon completion of project	GAFCON, Inc.	Construction project management - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
27	Construction contract	4/19/2011	Upon completion of project	Ledcor Construction	Construction contract- Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
28	Federal/state required payments	6/29/2011	6/30/2013	City of El Cajon	Unfunded PERS liability and compensated absences for former redevelopment agency employees through January 31, 2012 (0810000)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
29	July - December 2011 enforceable obligations	6/27/2012		City of El Cajon - Successor Agency/ RORF	July-December 2011 enforceable obligation for which no tax increment or RPTTF was received as a result of the "July 2012 True-up process."	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
30	Affordable Housing Agreement	3/11/2009	Upon sale of last housing unit	Weiland Development Co homebuyers	First Time Homebuyer funding of 26 inclusionary housing units (LM0702H )	Central Business District/ Amended Area	12,814	0	0	0	0	0	0	0
31	Contract for administration/operation	6/29/2011	Upon completion of project	El Cajon Housing Authority/ Vendors	First Time Homebuyer - Project management and monitoring (LM0702H )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
32	Disposition Development Agreement	3/23/2010	Upon completion of project	Chambers Senior Residences, L.P.	Construction loans affordable senior housing-Linda Way (LM0704H)	Central Business District/ Amended Area	649,568	0	0	0	0	0	0	0
33	Contract for administration/operation	6/29/2011	Upon completion of project	El Cajon Housing Authority/ Vendors	Linda Way - Project management and monitoring (LM0704H )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
34	Affordable Housing Agreement	3/24/2011	Upon completion of project	Bay Kitchen and Bath Remodelers	Greenovation - acquisition and substantial rehabilitation housing projects (LM0707H )	Central Business District/ Amended Area	550,000	550,000	0	538,629	0	11,371	0	550,000
35	Contract for administration/operation	6/29/2011	Upon completion of project	El Cajon Housing Authority/ Vendors	Greenovation - Project management and monitoring (LM0707H )	Central Business District/ Amended Area	45,334	0	0	0	0	0	0	0
36	Contract for administration/operation	1972	6/30/2012	County of San Diego	Tax increment administration and collection fees (0490000)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
37	Professional services contract	9/22/2009	3/20/2012	Wimmer Yamada and Caughey	Architectural services- Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
38	Professional services contract	6/15/2010	6/14/2012	SCS Engineers	Hazardous material testing - Park/Ballantyne (RD0704S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
39	Professional services contract	6/15/2010	6/30/2012	H.M. Pitt Labs, Inc.	Environmental testing - Johnson Ave Corridor (RD1017S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
40	Rental subsidies	7/8/2008	6/30/2012	Overland Pacific Cutler, Inc.	Relocation services for tenants on Agency properties	Central Business District/ Amended Area	0	0	0	0	0	0	0	0



Item #	Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2013-14	Funding Source					
									Bond Proceeds	Reserve Balance	Admin Allowance	RPTTF	Other	Six-Month Total
41	Professional services contract	2/24/2011	6/30/2012	Rosenow Spevacek	Consulting services amendment of redevelopment plan	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
42	Professional services contract	3/16/2011	6/30/2012	HVS Consulting & Valuation	Consulting & valuation services Civic Center Complex (RDR0703S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
43	Professional services contract	5/23/2011	6/30/2012	AES Property Services	Graffiti abatement services (RD0707S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
44	Owner Participation Agreement	2/11/2010	6/30/2012	Downtown El Cajon Brewing Company	Business retention & recruitment tenant improvement loans (RD0701S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
45	Contract for administration/operation	6/14/2011	6/30/2012	Greater Downtown El Cajon PBID	Special assessments (PBID) on Agency properties	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
46	Professional services contract	8/4/2008	6/30/2012	Recon Environmental Consultants	Environmental services-Specific Plan 182 (MF0011S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
47	Professional services contract	8/21/2009	8/21/2011	Schmidt Design Group	Architectural services-Median Improvements (RD1015S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
48	Professional services contract	6/21/2010	6/30/2012	Overland Pacific Cutler, Inc.	Relocation services 120 Rea Ave tenants - Civic Center Complex (RDR0703S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
49	Professional services contract	10/1/2010	6/30/2012	Anderson Valuation, Inc.	Appraisal of Agency owned properties	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
50	Professional services contract	10/6/2010	6/30/2012	Community Housingworks	Housing loss mitigation (298110)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
51	Contract for administration/operation	6/29/2011	6/30/2012	City of El Cajon/Vendors	Specific Plan 182 - Project management and monitoring (MF0011S )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
52	Contract for administration/operation	6/29/2011	6/30/2012	City of El Cajon/Vendors	Business Retention/Recruit - Project monitoring (RD0701S )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
53	Contract for administration/operation	6/29/2011	6/30/2012	City of El Cajon/Vendors	Graffiti Removal - Project management and monitoring graffiti abatement (RD0707S )	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
54	Contract for administration/operation	6/5/2009	6/30/2012	Geocon	Soil testing services - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
55	Contract for administration/operation	7/24/2009	6/30/2012	Kleinfelder West, Inc.	Construction/soil inspection services - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
56	Professional services contract	5/25/2011	6/30/2012	Helix Environment Planning Inc.	Air quality and greenhouse gas testing services - 100 Fletcher Parkway (RD0801S) (RD0801S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
57	Professional services contract	5/25/2011	6/30/2012	Kimley-Horn	Traffic engineering services - 100 Fletcher Parkway (RD0801S)	Central Business District/ Amended Area	0	0	0	0	0	0	0	0
58	Promissory note	41,290	Upon payment in full	City of El Cajon	Loan from City to cover cash shortages for payment of enforceable obligations on Items # 30 and 32	Central Business District/ Amended Area	663,430	663,430	0	0	0	663,430	0	663,430
59	Alley Improvements Project	41,456	Upon completion of project	City of El Cajon/Vendors	Alley Improvements (RD1015S)	Central Business District/ Amended Area	595,000	595,000	275,000	0	0	0	0	275,000
60	Median Island Improvements Project	41,456	Upon completion of project	City of El Cajon/Vendors	Median Island Improvements (RDR0705S)	Central Business District/ Amended Area	1,380,115	1,380,115	462,800	0	0	0	0	462,800

EL CAJON (SAN DIEGO)  
Pursuant to Health and Safety Code section 34186 (a)  
PRIOR PERIOD ESTIMATED OBLIGATIONS vs. ACTUAL PAYMENTS  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS II)  
July 1, 2012 through December 31, 2012

Item #	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
					Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
					\$2,021,434	\$2,841,053	\$342,731	\$300,136	\$0	\$0	\$180,284	\$180,284	\$5,287,926	\$4,000,434	\$0	\$0
1	Tax allocation bonds	Bank of New York	2000 Bonds - Housing/Non-housing projects (0490000)	Central Business District/ Amended Area									642,508	642,508		
2	Tax allocation bonds	Bank of New York	2005 Bonds - Refund 1997 issue & Housing/Non-housing projects (0490000)	Central Business District/ Amended Area									1,773,053	1,773,053		
3	Tax allocation bonds	Bank of New York	2007 Bonds - Non-housing projects (0490000)	Central Business District/ Amended Area									621,660	621,659		
4	Contract for administration/operation	Bank of New York/ Bondlogistix/ Bond Counsels	Fiscal agent, arbitrage, and bond counsel fees (0490000)	Central Business District/ Amended Area									15,667	4,939		
5	Contract for administration/operation	RAMS,LLP CPA (current auditors)	Financial auditing services (0490000 & 0590110)	Central Business District/ Amended Area							5,000	12,025	5,000	5,000		
6	Professional services contract	Rosenow Spevacek	General redevelopment/project consulting (0590110)	Central Business District/ Amended Area												
7	Contract for administration/operation	McDougal Love Eckis Boehmer & Foley & Oversight Board Legal Counsel	Legal services - successor agency (0590110)	Central Business District/ Amended Area							11,504	2,996				
8	Contract for administration/operation	City of El Cajon - Successor Agency	Administration Allowance (0590110)	Central Business District/ Amended Area							163,780	165,263				
9	Professional services contract	Andrew A. Smith Company	Appraisal of Agency owned properties	Central Business District/ Amended Area												
10	Professional services contract	Ninyo & Moore	Ongoing environmental testing (RD0801S, RD1017S RDR0703S)	Central Business District/ Amended Area									57,000	1,435		
11	Contract for administration/operation	City of El Cajon/Vendors	Hazmat Test Park/ Ballantyne - Environment project management and monitoring Park Magnolia Villas (RD0704S )	Central Business District/ Amended Area									80,223	3,217		
12	Contract for administration/operation	City of El Cajon/Vendors	Hazmat Test Prescott Promenade - Environmental project management and monitoring Prescott Promenade (RD0705S )	Central Business District/ Amended Area												
13	Professional services contract	Hargrave Environmental Consulting, Inc.	Ongoing environmental testing - Southwest Corner (RD0706S)	Central Business District/ Amended Area									12,000	11,520		
14	Contract for administration/operation	City of El Cajon/Vendors	SW Corner Environmental Testing - Environmental project management and monitoring - Priest Development Corp DDA (RD0706S )	Central Business District/ Amended Area									6,234	2,445		
15	Contract for administration/operation	City of El Cajon/Vendors	Former Police Station - GP and zoning amendments, project management and monitoring, property management and disposition (RD0801S )	Central Business District/ Amended Area									440,950	29,270		
16	Promissory note	City of El Cajon	Promissory note on purchase and sale agreement of 100 Fletcher Parkway (RD0801S)	Central Business District/ Amended Area									840,666	840,665		
17	Contract for administration/operation	City of El Cajon/Vendors	Johnson Ave Corridor - Property and project management, environmental coordination, and disposition (RD1017S )	Central Business District/ Amended Area									38,386	5,665		
18	Contract for administration/operation	City of El Cajon/Vendors	DDAs Project Monitoring - SW Corner (Promenade Square LLC), NW Corner (Priest Development Corp), Smith's DDA, St Madelines Sophies Center (RD1201S )	Central Business District/ Amended Area									18,890	3,424		
19	Contract for administration/operation	City of El Cajon/Vendors	Real Property Asset Management - Property management and disposition of agency properties (RD1202S )	Central Business District/ Amended Area									105,302	18,661		
20	Rental subsidies	Property owners/tenants	Civic Center Plaza Revitalization - Relocation agreements/obligations associated with Civic Center Complex properties (RDR0703S)	Central Business District/ Amended Area												
21	Contract for administration/operation	City of El Cajon/Vendors	Civic Center Revitalization - Project and property management, disposition, Rea/Magnolia Hotel ENA (RDR0703S )	Central Business District/ Amended Area									436,824	36,972		



Item #	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
					Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
22	Owner Participation Agreement	JKC Palm Springs Automotive, Inc.	Facade and major tenant improvements loans (RD0702S)	Central Business District/ Amended Area			325,000	289,869								
23	Owner Participation Agreement	Parkway Plaza GP, LLC	Facade and major tenant improvements loans (RD0702S)	Central Business District/ Amended Area												
24	Contract for administration/operation	City of El Cajon/Vendors	Facade Improvement - Project management and monitoring (RD0702S )	Central Business District/ Amended Area			17,731	10,267								
25	Contract for administration/operation	City of El Cajon/Vendors	Civic Center Plaza Improvements - Project management and other construction services and supplies/materials (RDR0708S)	Central Business District/ Amended Area												
26	Contract for administration/operation	GAFCON, Inc.	Construction project management - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area												
27	Construction contract	Ledcor Construction	Construction contract- Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area												
28	Federal/state required payments	City of El Cajon	Unfunded PERS liability and compensated absences for former redevelopment agency employees through January 31, 2012 (0810000)	Central Business District/ Amended Area												
29	July - December 2011 enforceable obligations	City of El Cajon - Successor Agency/ RORF	July-December 2011 enforceable obligation for which no tax increment or RPTTF was received as a result of the "July 2012 True-up process."	Central Business District/ Amended Area												
30	Affordable Housing Agreement	Weiland Development Co homebuyers	First Time Homebuyer funding of 26 inclusionary housing units (LM0702H )	Central Business District/ Amended Area	200,000	212,814										
31	Contract for administration/operation	El Cajon Housing Authority/ Vendors	First Time Homebuyer - Project management and monitoring (LM0702H )	Central Business District/ Amended Area	12,142	6,128										
32	Disposition Development Agreement	Chambers Senior Residences, L.P.	Construction loans affordable senior housing-Linda Way (LM0704H)	Central Business District/ Amended Area	1,515,298	2,614,866										
33	Contract for administration/operation	El Cajon Housing Authority/ Vendors	Linda Way - Project management and monitoring (LM0704H )	Central Business District/ Amended Area	6,100	5,491										
34	Affordable Housing Agreement	Bay Kitchen and Bath Remodelers	Greenovation - acquisition and substantial rehabilitation housing projects (LM0707H )	Central Business District/ Amended Area	263,894											
35	Contract for administration/operation	El Cajon Housing Authority/ Vendors	Greenovation - Project management and monitoring (LM0707H )	Central Business District/ Amended Area	24,000	1,755										
36	Contract for administration/operation	County of San Diego	Tax increment administration and collection fees (0490000)	Central Business District/ Amended Area									193,563			
37	Professional services contract	Wimmer Yamada and Caughey	Architectural services- Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area												
38	Professional services contract	SCS Engineers	Hazardous material testing - Park/Ballantyne (RD0704S)	Central Business District/ Amended Area												
39	Professional services contract	H.M. Pitt Labs, Inc.	Environmental testing - Johnson Ave Corridor (RD1017S)	Central Business District/ Amended Area												
40	Rental subsidies	Overland Pacific Cutler, Inc.	Relocation services for tenants on Agency properties	Central Business District/ Amended Area												
41	Professional services contract	Rosenow Spevacek	Consulting services amendment of redevelopment plan	Central Business District/ Amended Area												
42	Professional services contract	HVS Consulting & Valuation	Consulting & valuation services Civic Center Complex (RDR0703S)	Central Business District/ Amended Area												
43	Professional services contract	AES Property Services	Graffiti abatement services (RD0707S)	Central Business District/ Amended Area												
44	Owner Participation Agreement	Downtown El Cajon Brewing Company	Business retention & recruitment tenant improvement loans (RD0701S)	Central Business District/ Amended Area												
45	Contract for administration/operation	Greater Downtown El Cajon PBID	Special assessments (PBID) on Agency properties	Central Business District/ Amended Area												



Item #	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
					Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
46	Professional services contract	Recon Environmental Consultants	Environmental services-Specific Plan 182 (MF0011S)	Central Business District/ Amended Area												
47	Professional services contract	Schmidt Design Group	Architectural services-Median Improvements (RD1015S)	Central Business District/ Amended Area												
48	Professional services contract	Overland Pacific Cutler, Inc.	Relocation services 120 Rea Ave tenants - Civic Center Complex (RDR0703S)	Central Business District/ Amended Area												
49	Professional services contract	Anderson Valuation, Inc.	Appraisal of Agency owned properties	Central Business District/ Amended Area												
50	Professional services contract	Community Housingworks	Housing loss mitigation (298110)	Central Business District/ Amended Area												
51	Contract for administration/operation	City of El Cajon/Vendors	Specific Plan 182 - Project management and monitoring (MF0011S )	Central Business District/ Amended Area												
52	Contract for administration/operation	City of El Cajon/Vendors	Business Retention/Recruit - Project monitoring (RD0701S )	Central Business District/ Amended Area												
53	Contract for administration/operation	City of El Cajon/Vendors	Graffiti Removal - Project management and monitoring graffiti abatement (RD0707S )	Central Business District/ Amended Area												
54	Contract for administration/operation	Geocon	Soil testing services - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area												
55	Contract for administration/operation	Kleinfelder West, Inc.	Construction/soil inspection services - Civic Center Plaza Improvements (RDR0708S)	Central Business District/ Amended Area												
56	Professional services contract	Helix Environment Planning Inc.	Air quality and greenhouse gas testing services - 100 Fletcher Parkway (RD0801S)	Central Business District/ Amended Area												
57	Professional services contract	Kimley-Horn	Traffic engineering services - 100 Fletcher Parkway (RD0801S)	Central Business District/ Amended Area												

**EL CAJON (SAN DIEGO)**

**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS 13-14A) -- Notes (Optional)**

**July 1, 2013 through December 31, 2013**

<b>Item #</b>	<b>Project Name / Debt Obligation</b>	<b>Notes/Comments</b>
1	Tax allocation bonds	
2	Tax allocation bonds	
3	Tax allocation bonds	
4	Contract for administration/operation	
5	Contract for administration/operation	In the tab "Prior Period Payments", Administration Allowance funds expended for auditing were higher than anticipated due to the (2) Diligence Review Reports required per AB1484.
6	Professional services contract	
7	Contract for administration/operation	
8	Contract for administration/operation	
9	Professional services contract	
10	Professional services contract	
11	Contract for administration/operation	All expenditures are consultant and project management costs associated with a Reimbursement and Indemnity Agreement between the former Agency and Priest Development Corporation, dated December 16, 2003, for hazardous waste remediation, testing and monitoring. Ongoing testing is required by the County Department of Environmental Health (DEH) and the State Water Resources Control Board (SWRCB) until case-closure is obtained.
12	Contract for administration/operation	All expenditures are consultant and project management costs associated with a Settlement Agreement between the former property owner, the former Agency and three gasoline corporations, dated September 15, 1995, for hazardous waste remediation, testing and monitoring on former Agency property that is now a public park: Prescott Promenade. Ongoing testing is required by DEH and the SWRCB until case-closure is obtained.
13	Professional services contract	
14	Contract for administration/operation	All expenditures are consultant and project management costs associated with a Reimbursement and Indemnity Agreement between the former Agency and Priest Development Corporation, dated April 11, 2002, for hazardous waste remediation, testing and monitoring. Ongoing testing is required by DEH and the SWRCB until case-closure is obtained.
15	Contract for administration/operation	All expenditures are consultant, project management, maintenance, and operations costs of a former Agency property located at 100 Fletcher Parkway. \$320,020 in hard costs for demolition have been budgeted to clear the functionally obsolete former Police Station Headquarters for new development, but expenditure of demolition funds is subject to approval of the LRPMP by the DOF.
16	Promissory note	
17	Contract for administration/operation	All expenditures are consultant, project management, maintenance, and operations costs of a former Agency property located at 588 N. Johnson Ave and 531-555 Raleigh Avenue. Two of the three units are currently leased, with one sub-lessee, for a total of three tenants.
18	Contract for administration/operation	All expenditures are internal or external costs directly related to the enforcement, negotiations, collections, and management of agreements that are Enforceable Obligations of the former Agency. Significant legal/enforcement costs are anticipated on ROPS 13-14A due to the bankruptcy of Downtown El Cajon Brewing Co. Inc. to ensure repayment of approximately \$601,000 in outstanding loans receivable to the Agency.
19	Contract for administration/operation	All expenditures are consultant, project management, maintenance, and operations costs of the remaining former Agency properties where no other project has been identified. Ongoing maintenance includings landscaping, utilities, property taxes, fencing, and repairs.
20	Rental subsidies	
21	Contract for administration/operation	All expenditures are consultant, project management, maintenance, and operations costs of five former Agency properties located at: Rea Avenue Parking Lot, 118-130 Rea Avenue, 115 Rea Avenue, 141 N. Magnolia Avenue, and Magnolia Employee Parking Lot. \$367,400 in hard costs for demolition have been budgeted to clear the functionally obsolete properties at 118-130 Rea and 141 N. Magnolia Avenue for a new hotel development, but expenditure of demolition funds are subject to approval of the LRPMP by the DOF.
22	Owner Participation Agreement	
23	Owner Participation Agreement	



July 1, 2013 through December 31, 2013

Item #	Project Name / Debt Obligation	Notes/Comments
24	Contract for administration/operation	
25	Contract for administration/operation	
26	Contract for administration/operation	
27	Construction contract	
28	Federal/state required payments	
29	July - December 2011 enforceable obligations	
30	Affordable Housing Agreement	In the tab "Prior Period Payments", actual LMIHF amount exceeded estimated amount. Based on DOF's recommendation on its DDR-LMIHF determination letter dated 12/21/2012, the Successor Agency requested a loan from the City for the amount in excess of the estimate to cover the cash shortfall. See note 58 for additional notes/comments.
31	Contract for administration/operation	
32	Disposition Development Agreement	In the tab "Prior Period Payments", actual LMIHF amount exceeded estimated amount. Based on DOF's recommendation on its DDR-LMIHF determination letter dated 12/21/2012, the Successor Agency requested a loan from the City for the amount in excess of the estimate to cover the cash shortfall. See note 58 for additional notes/comments.
33	Contract for administration/operation	
34	Affordable Housing Agreement	In the tab "Prior Period Payments", LMIHF estimate amount is anticipated to be disbursed by 06/30/2013 and will be reported in ROPS III. This item is the balance of the \$550,000 Enforcable Obligation with James and Marcia Miller, dba Bay Kitchen and Bath Remodelers, not disbursed in ROPS 2 or ROPS 3.
35	Contract for administration/operation	
36	Contract for administration/operation	Obligation has been retired since the County's administrative costs are deducted first prior to distribution of RPTTF.
37	Professional services contract	Retired
38	Professional services contract	Retired
39	Professional services contract	Retired
40	Rental subsidies	Retired
41	Professional services contract	Retired
42	Professional services contract	Retired
43	Professional services contract	Retired
44	Owner Participation Agreement	Retired
45	Contract for administration/operation	Retired
46	Professional services contract	Retired
47	Professional services contract	Retired
48	Professional services contract	Retired
49	Professional services contract	Retired
50	Professional services contract	Retired
51	Contract for administration/operation	Retired
52	Contract for administration/operation	Retired
53	Contract for administration/operation	Retired
54	Contract for administration/operation	Retired
55	Contract for administration/operation	Retired
56	Professional services contract	Retired
57	Professional services contract	Retired

July 1, 2013 through December 31, 2013

Item #	Project Name / Debt Obligation	Notes/Comments
58	Promissory note	Successor Agency requested a loan from the City to cover payment of enforceable obligations items # 30 and 32. ROPS item#30 was for a senior housing project that was ahead of the construction schedule and required disbursements of project funds for \$649,568 to the developer. ROPS item#32 for \$12,814 was the portion of a housing loan disbursement that exceeded the \$200,000 payment estimated in ROPS2. Since the amounts could not be retained from the LMIHF balances per the DDR determination and the items were not listed on approved ROPS 2 and 3, the disbursements resulted to shortfalls in the Successor Agency's cash. To address its cash flow shortage, the Agency requested a loan from the City pursuant to HSC section 34173 (h) and DOF's recommendation in its LMIHF DDR determiniation letter date December 21, 2012. The total amount requested include accrued interest of \$1,048 for the period 1/17/2013-7/1/2013.
59	Contract for administration/operation	The Alley Improvements project is a 2007 Tax Exempt Bond Proceeds funded project and expenditures are subject to receipt of a Finding and Completion (FOC) and DOF approval. The FOC is anticipated to be received in April 2013, therfore the Successor Agency requests conditional approval "subject to issuance of a Finding of Completion".
60	Contract for administration/operation	The Median Island Improvements project is a 2007 Tax Exempt Bond Proceeds funded project and expenditures are subject to receipt of a Finding and Completion (FOC) and DOF approval. The FOC is anticipated to be received in April 2013, therefore the Successor Agency requests conditional approval "subject to issuance of a Finding of Completion".

**AGENDA REPORT  
SUCCESSOR AGENCY OVERSIGHT BOARD  
February 20, 2013, Meeting**

**SUBJECT: FIRST AMENDMENT TO AFFORDABLE HOUSING AGREEMENT –  
JAMES C. MILLER AND MARCIA M. MILLER, DBA BAY KITCHEN AND  
BATH REMODELERS**

**RECOMMENDED ACTION:** That the Oversight Board:

Adopt the next RESOLUTION in order approving a First Amendment to the Affordable Housing Agreement (AHA) between James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers with terms and conditions as set forth in this report.

**BACKGROUND:** On October 12, 2010, the former El Cajon Redevelopment Agency (“Agency”) Board authorized the Executive Director to enter into an Affordable Housing Agreement (“AHA”) with James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (“Borrower”) for the acquisition, rehabilitation and resale of properties under the Greenovation Program. The Agreement was assigned to the El Cajon Housing Authority (“Authority”) as part of the dissolution process in January 2012.

Since execution of the AHA, staff has been diligently working with the Borrower to identify potential properties; and although there have been many good prospects, the Borrower is competing with cash buyers offering very short escrow closings. Through our analysis, staff believes a successful strategy would be to expand the project scope to include multi-family properties, which provides a greater impact to the community and allows for a longer due diligence period necessary for inspection and acquisition of property.

Based on these conditions, additional amendments to the AHA are recommended, including the ability to: acquire multi-family properties with a price of up to \$500,000 or fair market value, whichever is less, plus closing costs; acquire units occupied by lower income households; acquire units that require substantial rehabilitation or rehabilitation to the extent approved by the Executive Director; authorize earnest money deposits not to exceed \$5,000; and authorize properties to be transferred to the Authority for approved liens and encumbrances, in lieu of resale under the California Dream First-Time Homebuyer Program. These recommendations would add/supplement the current Agreement provisions and extend the Agreement by one-year, as authorized under Section 1.5 of the AHA.

The El Cajon Housing Authority Board approved the First Amendment, with terms as presented above, at its joint meeting with the City Council held on January 22, 2013.

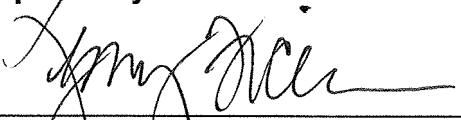
**FISCAL IMPACT:** Impact to Redevelopment Property Tax Trust Funds by \$11,371 as identified on ROPS 13-14A. This activity is an enforceable obligation totaling \$550,000 and was identified on all previously approved Recognized Obligation Payment Schedules

(ROPS). \$538,629 was funded during Fiscal Year 2012-2013 with Low and Moderate-Income Housing Asset Funds.

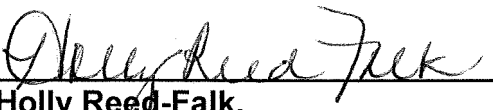
**ATTACHMENTS:**

1. Proposed Resolution
2. Affordable Housing Agreement dated March 14, 2011
3. Draft First Amendment to Affordable Housing Agreement


**Prepared by:**

  
\_\_\_\_\_  
**Jenny Ficacci,**  
**Housing Manager**

**Reviewed by:**

  
\_\_\_\_\_  
**Holly Reed-Falk,**  
**Financial Operations Manager**

**Approved by:**

  
\_\_\_\_\_  
**Douglas Williford**  
**Executive Director/City Manager**

## RESOLUTION NO. OB-04-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE FIRST AMENDMENT TO THE AFFORDABLE HOUSING AGREEMENT – JAMES C. MILLER AND MARCIA M. MILLER, dba BAY KITCHEN AND BATH REMODELERS.

WHEREAS, Section 34180 (a) of the California Health and Safety Code provides that Successor Agency actions to establish new repayment terms for outstanding loans, where the terms have not been specified prior to the effective date of Section 34180, are subject to Oversight Board review and approval; and

WHEREAS, Section 34181 (e) of the California Health and Safety Code provides that the Oversight Board shall direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities; present proposed termination or amendment agreements to the Oversight Board for its approval; and approve any amendments to or early termination of those agreements if it finds that the amendments or early termination would be in the best interest of the taxing entities; and

WHEREAS, the Oversight Board (the "Oversight Board") of the Successor Agency of the former El Cajon Redevelopment Agency (the "Successor Agency") held a special meeting on February 20, 2013, at which time it considered an a First Amendment under that certain Affordable Housing Agreement in the amount not to exceed \$550,000 between the former El Cajon Redevelopment Agency and the borrower, James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (the "Borrower"), dated October 12, 2010 (the "AHA"), for the purpose of acquiring, substantially rehabilitating and reselling substandard properties to low and moderate-income households under the Greenovation Program; and

WHEREAS, the AHA was assigned by the former El Cajon Redevelopment Agency to the El Cajon Housing Authority (Authority) on January 31, 2012, as the successor to the housing assets and functions of the former El Cajon Redevelopment Agency, and the AHA was further approved by the DOF on August 23, 2012, in Exhibit C of the El Cajon Housing Successor Agency Asset Report Form; and

WHEREAS, the Successor Agency anticipates expenditure of \$538,629 of the AHA to be expended during Fiscal Year 2012-2013, and was identified and approved on both the July to December 2012 and January to June 2013 six-month Recognized Obligation Payment Schedule; and

WHEREAS, approval of the amendment would result in the disbursement of \$11,371 in Redevelopment Property Tax Trust Funds, which is the remaining balance of the AHA, during Fiscal Year 2013-2014; and

WHEREAS, the proposed amendment would expand the terms to include an extension by one-year authorized under Section 1.5 of the AHA; authorize multi-family properties with a price limit of \$500,000; authorize the payment of earnest money deposits; authorize rehabilitation approved by the Executive Director; and authorize the transfer of rehabilitated properties to the El Cajon Housing Authority in lieu of marketing the properties to the public; and

WHEREAS, due to the current market conditions and to ensure the successful completion of the Greenovation Program with Borrower, approval of the amendment would have minimal impact to the Successor Agency, the City of El Cajon, and all taxing entities sharing in the balance of the enforceable obligation to the Successor Agency; and

WHEREAS, the El Cajon Housing Authority approved the First Amendment, substantially in the form as presented in **Exhibit "A"**, on January 22, 2013.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference; and
  - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
  - 3. The proposed amendment would have a minimal impact to the taxing entities.
- B. The Oversight Board hereby APPROVES the proposed amendment to the AHA, to extend the term expiration by 1-year, with additional terms as presented in **Exhibit "A"**, with such changes as may be approved by the Authority Executive Director.
- C. The Executive Director of the Authority, or any person designated by the Executive Director, is hereby authorized to execute the First Amendment.

[The remainder of this page intentionally left blank.]



PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a special meeting held this 20<sup>th</sup> day of February, 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

\_\_\_\_\_  
Debra Turner-Emerson, Chairperson

ATTEST:

\_\_\_\_\_  
Jennifer Ficacci, Acting Oversight Board Secretary

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## AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement") is made as of this 14<sup>TH</sup> day of MARCH, 2011, by and between the **EL CAJON REDEVELOPMENT AGENCY**, a public body corporate and politic (the "Agency") and **JAMES C. MILLER and MARCIA M. MILLER, dba BAY KITCHEN AND BATH REMODELERS**, a sole proprietorship (hereinafter referred to as the "Borrower"). The Agency and the Borrower are collectively referred to as the "Parties".

### **RECITALS**

- A. On October 12, 2010 the Agency authorized the Executive Director to enter into agreements and related contracts with JAMES C. MILLER and MARCIA M. MILLER, dba BAY KITCHEN AND BATH REMODELERS, a sole proprietorship for participation in the Agency's Greenovation Program (the "Program").
- B. Borrower is a SOLE PROPRIETORSHIP and has experience in developing or the rehabilitation of housing, including affordable housing, in the County of San Diego, including in the City of El Cajon. The Borrower desires the use of Agency Low- and Moderate-Income Housing Funds (the "Program Loan") for the purpose of participating in the Program established by the Agency to eliminate blight throughout the inner city by substantially rehabilitating substandard, vacant or foreclosed single-family properties, while providing affordable housing opportunities for the citizens of El Cajon.
- C. The Program Loan shall be used by the Borrower for such activities as:
  - Acquisition, Substantial Rehabilitation and resale of single family properties located in the City of El Cajon boundaries that must be sold to eligible first time homebuyers. Pursuant to California Health and Safety Code Section 33413(b)(2)(A)(iv), Substantial Rehabilitation means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land ("Substantial Rehabilitation"). Each unit that is acquired, substantially rehabilitated and resold under the Program ("Project Unit") will be encumbered with a Promissory Note, Deed of Trust and other security documents (the "Project Unit Loan"). The purchase of said real property shall be vacant, foreclosed or sub-standard single-family units and offered as for sale and owner occupied, units under the Agency's California First-Time Homebuyer Program ("Affordable Units"). It is the intent of Borrower to repay all outstanding Project Unit Loans at the completion of the substantial rehabilitation and at sale of the units. As such, Agency funds will remain within the financial structure of the project thereby requiring all such housing units to be affordable to and occupied by low- and moderate-income persons or families as indicated above.
- D. Initially, upon approval of each Greenovation Project Budget (Exhibit "A"), Project Unit Loan shall be secured by a deed of trust and other security documents including restrictions on the Property (the "Project Unit Deed of Trust").
- E. The acquisition, substantial rehabilitation and resale of vacant, foreclosed or sub-standard single-family homes to eligible buyers who utilize the California Dream First-Time Homebuyer Program ("Eligible Buyer") shall be known as the "Project." All of said units shall be sold as affordable homes to low- and moderate-income families as further set forth by this Agreement for a period of not less than forty-five years (45) from the date of recordation of a Project Unit Deed of Trust.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the recitals stated above, the mutual covenants set forth below, the Parties agree, promise and declare as follows:

### **ARTICLE I. LOAN PROVISIONS**

Section 1.1 - The Program Loan. The Agency will fund the Program Loan to Borrower in an amount not to exceed **FIVE HUNDRED FIFTY THOUSAND UNITED STATES DOLLARS (\$550,000.00)**. Said Program Loan shall be comprised of the sum of all outstanding Project Unit Loan amounts (as hereinafter defined), be revolving in nature, subject to periodic repayments, and shall be secured by each Project Unit through a Project Unit Deed of

Trust and other security documents. At no time shall the sum of all Project Unit Loans outstanding exceed the total Program Loan amount according to the terms and conditions set forth below:

(a) Project Unit Loan. The loan amount of each Project Unit shall be subject to approval by the Agency Executive Director or designee after a review of each Greenovation Project Budget. The Agency states that none of the funds loaned pursuant to this Agreement shall constitute Federal funds within the meaning of Section 42 of the Internal Revenue Code.

(b) Funding. Each Project Unit Loan shall be funded in accordance with the following requirements:

1) Following execution of this Agreement, and security documents applicable to each Project Unit including, but not limited to, the Note, Deed of Trust, Memorandum of Affordable Housing Agreement, the Unsecured Environmental Indemnity Agreement, and the Notice of Affordability Restrictions on Transfer of Property, as described below, the Agency shall disburse a portion of the Project Unit Loan, in an amount sufficient to complete the acquisition of each Project Unit, to escrow in such form as required by Agency;

2) Disbursement by the Agency of the Project Unit Loan shall be completed as follows:

a) No later than three (3) business days after written request for payment following approval by the Agency of the Greenovation Project Budget and receipt of all requested documentation to close escrow for a Project Unit, the Agency will deliver funds to the Borrower by wire transfer to such account designated by the Borrower, in writing, with instructions sufficient to make the wire transfer.

b) No later than thirty (30) days after written request for payment and receipt of all requested documentation and appropriate releases for construction draws.

c) The Agency, at its sole discretion, may contract out fund control to an outside company of its choosing.

d) Disbursement may be made without prejudice to resolve disputes concerning payment.

(c) Promissory Note.

(1) Each Project Unit Loan shall be evidenced by a promissory note executed by Borrower, in favor of the Agency, in the amount set forth in Paragraph 1.1(a), in the form and format set forth in Exhibit "B" attached to this Agreement and incorporated by this reference (the "Note").

(2) The Note shall bear interest the annual rate of 3.25%. Principal and interest shall be due and payable on the earlier of six (6) months from date of recordation of the Project Unit Deed of Trust. The Executive Director or designee may extend this period in the event a determination is made that the delay is outside the control of Borrower, but in no event shall the maturity date exceed eighteen (18) months. Principal and interest may be prepaid in whole or in part at any time, and from time to time, without notice or penalty.

(3) Should the Borrower agree to or actually sell, convey, transfer or dispose of the Property described in each Project Unit Deed of Trust securing the Note, or any part of it, or any interest in it, without first obtaining the written consent of the Agency, then all obligations secured in this Note may be declared due and payable at the option of the Agency. Consent to one transaction of this type will not constitute a waiver of the right to require consent to future or successive transactions.

(d) Points.

Borrower shall pay no points to the Agency for obtaining this Program Loan.

(e) Default Interest Rate.

If the Borrower defaults under the terms of this Affordable Housing Agreement, the Project Unit Loan security documents, including the Note, the Project Unit Deed of Trust, and/or any security agreements or other deeds of trust secured by the Property, interest shall be due and payable from the Borrower to the Agency in the amount of ten (10%) per annum from the date of said default.

Section 1.2 – Security.

(a) Project Unit Deed of Trust. Borrower shall execute and deliver to the Agency each Project Unit Deed of Trust (in the form and format set forth in Exhibit "F" attached to this Agreement and incorporated by this reference), and such separate security agreements, UCC-1 Financing Statements, consents or certificates, and other documents or instruments as the Agency may require in its sole discretion in connection with the Project Unit Loan. Specifically, Borrower agrees that any Notice of Default and/or copy of any Notice of Sale will be mailed to the Agency in compliance with Section 2924(b) of the California Civil Code.

Section 1.3 – No Partnership or Joint Venture. The relationship between the Agency and Borrower created by this Agreement shall not be one of partnership or joint venture, but rather shall be one of secured lender and borrower.

Section 1.4 – Indemnification. Borrower agrees and promises to protect, defend, indemnify, and hold harmless the Agency, the City of El Cajon, and their respective elected and appointed officers, agents, employees and representatives from any and all liabilities, losses, damages arising from the operation and construction of each Project Unit and the Project, including, but not limited to, claims for injury or death to any person occurring on each Project Unit or Project, contracts executed by Borrower, and any losses from the Property and Project, including losses from negative cash flows. It is expressly understood that Borrower is solely and exclusively responsible for any and all problems, claims, work, construction, clean up efforts and the like associated with the construction of the Project and any alleged toxic contamination or waste on the Property. Neither the Agency, nor the City of El Cajon, has any obligation whatsoever regarding these issues.

Section 1.5 – Term of Agreement. Subject to provisions of Section 1.13 "Termination" of this Agreement, the term of this Agreement shall be for a period of two (2) years from the date of execution of this Agreement, as first shown above. Such term may be extended upon written agreement of both parties to this Agreement. Such extension is contingent upon the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, authorization, reduction in funds and/or change in regulations.

Section 1.6 – Conditions to Agency Obligations and Covenants of Borrower. The obligation of the Agency to fund each Project Unit Loan is subject to the following conditions and Borrower agrees to perform any and all covenants hereinafter set forth in a timely manner.

(a) This Agreement or a Memorandum of Affordable Housing Agreement and the Notice of Affordability Restrictions on Transfer of Property fully executed by Borrower, shall have been delivered to the Agency along with all other fully executed security documents and instruments provided for herein;

(b) Borrower represents, warrants and agrees that: (i) funds advanced by the Agency pursuant to each Project Unit Loan are advanced wholly or in part for the benefit of the Borrower, (ii) Borrower is responsible for all obligations created by each Project Unit Loan, including, without limitation, the repayment of all principal and interest, if any;

(c) Borrower agrees to and shall use the funds herein solely for and in connection with those purposes set forth in Recital C of this Agreement;

(d) Borrower shall also enter into an Unsecured Environmental Indemnity Agreement in favor of the Agency and shall provide a certificate of insurance naming the Agency and the City of El Cajon as additional insureds on its insurance policies. Said policies shall be acceptable to the Executive Director of the Agency and to General Counsel and shall insure against any and all losses which may occur as a result of problems, claims, work, clean-up efforts, and the like, associated with the toxic contamination and/or hazardous waste clean-up on the Property as well as the construction of the Project. ;

(e) Borrower agrees that because Agency funds will assist in the construction or substantial rehabilitation of the Project, Borrower warrants that the residential units constructed or substantially rehabilitated with these funds shall be "affordable" to low- and moderate-income households. "Affordable" has a meaning as set forth in § 50052.5(b) of the California Health and Safety Code in effect as of the date of approval of this Affordable Housing Agreement by the Agency. The Borrower, before entering into an agreement for purchase and sale of any unit, shall obtain verification from the Agency, in writing, that said proposed sale to buyer meets the affordability requirements of this section and Recital E.;

(f) The Borrower shall, in accordance with the Greenovation RFP approved July 13, 2010:

- (1) Create and update an Inventory list of vacant for-sale single-family homes and conduct a thorough visual and physical inspection of potential properties;
  - (2) Determine the substantial rehabilitation needs, include documented code violations and Green or sustainable improvements ("Improvements") for each Project Unit that equal not less than 25% of the after-rehabilitation sales price;
  - (3) Determine the after-rehabilitation value (the after-rehabilitation sales price to a low and moderate-income household buyer);
  - (4) Recommend properties that should be acquired by the Borrower through submission of Greenovation Project Budget sheet for each Project Unit that identifies: all funding sources, including; Agency funding, potential rebates, private financing, and other grant funding; anticipated acquisition cost that does not exceed fair market value or \$250,000, whoever is less; substantial rehabilitation costs; and costs of sale (Exhibit "A")
  - (5) Prepare a list of Qualified Contractors for a Bid List, solicit a minimum of (3) rehabilitation bids from local contractors on the Bid List, and cooperate with the City Staff if the Agency must coordinate bids due to conflicts of interest, and ensure that improvements are consistent with the Property Guidelines;
  - (6) Use City of El Cajon contractors, suppliers, vendors, and other sub-consultants wherever possible;
  - (7) Request acquisition/construction draws from the Agency in accordance with the percentage of work completed, the Greenovation Project Budget (Exhibit "A"), as may be amended, and supporting documentation approved by the Agency;
  - (8) Coordinate permits, inspections and completion with the City Building and Fire Safety Division; and
  - (9) List and market the Project Unit properties for sale to low and moderate-income households who utilize the California Dream First-Time Homebuyer Program.
- (g) The Borrower, shall, at its sole cost and expense, obtain an ALTA lender's policy naming the Agency as a named insured, and insuring that the Agency's interest is subject to no superior liens, encumbrances, special assessments or taxes with the exception of the Project Unit Loan encumbering each Project Unit site and further that the Borrower shall, at its sole cost and expense obtain all required building permits, inspections and approvals;
- (h) Borrower shall provide the Agency with insurance as referenced on Exhibit "C" hereto naming the Agency and the City of El Cajon, as additional insureds, at the sole cost and expense of the Borrower. Said insurance shall remain in full force and effect during the term of this Agreement.
- (i) The Borrower's financials and related data will be required by the Agency prior to execution of this Agreement and Project Unit security documents.
- (j) The Agency may act as fund control or may contract out fund control functions and must approve the fund-control set-up and draw requests for each Project Unit Loan.
- (k) The Borrower shall remit all refunds and rebates to the Agency upon receipt for supplies, equipment, materials, or other expenses paid with Agency funds. Such refunds and rebates shall constitute a return of Project Unit Loan funds and shall be applied as a payment in accordance with the Project Unit Loan Note. In the event a refund or rebate is received after the payoff a Project Unit Loan, such refunds or rebates shall be considered a return of public funds and be applied to the Agency Low and Moderate-Income Housing Fund.

Section 1.7 – Borrower's Representations and Warranties. Borrower represents, warrants, and can demonstrate that:

- (a) The Borrower is a validly and lawfully formed entity and in good standing under California law;
- (b) Execution of each Project Unit Trust Deed has been duly authorized by the Borrower and shall not result, with the passage of time or the giving of notice, or both, in breach of, or in acceleration of, performance under any contract or document to which the Borrower may be a party;
- (c) All approvals have been obtained in connection with the Borrower's execution of Project Unit security documents, including this Agreement, the Note, the Project Unit Trust Deed, and related agreements and

documents, to the effect that no breach of or acceleration of performance under any other agreement or document to which Borrower is a party will result from such execution; and

(d) Borrower agrees to use said funds solely for and in connection with the purposes referenced in Recital C of this Agreement.

Section 1.8 - Usury. If a court of competent jurisdiction determines, by way of final, unappealable order or judgment, that the interest rate charged under the Note is usurious, then such rate shall automatically and retroactively be reduced to the maximum rate allowed under applicable law.

Section 1.9 - Equal Opportunity. During the term of this Agreement, the Borrower agrees as follows:

(a) The Borrower will not discriminate against any employee, person, or applicant for employment because of race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. The Borrower will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(b) The Borrower will, in all solicitations or advertisements for employees or contractor or subcontractors placed by or on behalf of the Borrower, state that all qualified applicants will receive consideration for employment without regard to race, age, sexual orientation, marital status, color, religion, sex, handicap, or national origin.

(c) The Borrower will cause the foregoing provisions to be inserted in all contracts and subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

(d) The Borrower hereby agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, and the California Fair Employment Practices Act.

Section 1.10 - Status Reports. Borrower shall provide the Agency with detailed written status reports concerning the status of construction, sales, affirmative marketing compliance, marketing, financing and development of the Project. These reports shall be submitted monthly to the Agency during the term of this Agreement. Time is of the essence in submitting said reports. Reports shall be submitted to the Department of Redevelopment and Housing.

Section 1.11 - Construction Observations. The Agency shall be and is hereby authorized to inspect and review the status of construction and development of the Project, as referenced in Section 1.16 of this Agreement without liability for said inspection and review.

Section 1.12 - Architectural and Design Review. Prior to obtaining building, land development, public and/or private improvement, subdivision and any other permits for construction and/or development of the Project, or any part thereof, the Borrower shall submit plans for the review and approval by the Executive Director, if requested. Said approval shall not be unreasonably withheld. Approval or rejection of the plans shall be communicated to the Borrower, no later than twenty-one (21) days after the date of receipt of said plans. Failure of the Executive Director to approve or reject the design, within the required time frame, shall constitute approval of the plans. In the event of rejection or disapproval of the plans, the Borrower shall cause the design to be altered to address the concerns of the Executive Director, and shall thereafter submit the plans for review and approval of the process detailed above to begin anew.

Section 1.13 - Termination. This Agreement and the relationship created herein shall terminate upon full satisfaction of all of Borrower's obligations under this Agreement with the exception of Recital E of this Agreement. The Agency reserves the right to terminate this Agreement in the event Borrower is deemed to be in default or fails to perform any material obligation under this Agreement by providing thirty (30) days written notice of termination to Borrower. In the event such notice is given, Borrower shall cease immediately all work in progress.

Borrower may terminate this Agreement at any time upon thirty (30) days written notice of termination to Agency.

If either Borrower or Agency fails to perform any material obligation under this Agreement, then, in addition to any other remedies, either Borrower or Agency may terminate this Agreement immediately upon written notice.

Upon termination of this Agreement by either Borrower or Agency, all property, assets, funds advanced by or belonging exclusively to Agency, which is in Borrower's possession or advanced under this Agreement, shall be returned to Agency. Borrower shall furnish to Agency a final invoice for services performed and expenses incurred by Borrower, prepared as set forth in Section 1.21 of this Agreement. The final invoice shall be reviewed and paid in the same manner as set forth in Section 1.21 of this Agreement.

Section 1.14 - Insurance. Borrower shall, at Borrower's sole cost and expense, maintain such insurance, as is required by the Agency, in full force and effect, during the entire term of this Agreement. The insurance shall name the Agency and the City of El Cajon as additional insureds and shall include, but not be limited to, those coverages referenced in Exhibit "C" to this Agreement and as referenced in Section 1.6(h) of this Agreement.

Section 1.15 - Commencement of Construction and Compliance with Plans and Specifications. Borrower, following recordation of each Project Unit Deed of Trust and the consummation of the loan, will promptly commence preparations necessary for new construction and continue such construction diligently and without delay in a good and workmanlike manner. Borrower will complete such improvements in accordance with the plans and specifications approved by Agency and the City of El Cajon, including any additional specifications prescribed by the Agency, and in compliance with all requirements of governmental authorities having or asserting jurisdiction.

No change shall be made in the plans and specifications approved by the Agency and the City of El Cajon, including any additional specifications prescribed by the Agency, without its written consent. Should any deviation from the plans and specifications, including any additional specifications prescribed by the Agency, occur on the construction of said improvements without the express written authorization by the Agency, such deviation shall be considered a default of this Agreement.

Section 1.16 - Stoppage of Work by the Agency. The Agency or its agents shall have the right at all times to enter upon the Property and the Improvements during the period of construction. If the work of construction is not in conformance with the plans and specifications or is not otherwise satisfactory to the Agency, such shall constitute a default hereunder.

Section 1.17 – Default by Borrower. In the event of a default by Borrower in the performance of any of the terms, covenants and conditions contained in this Agreement, or any Project Unit security documents, including the Note or Deed of Trust given in conjunction herewith, or in the event of the commencement of Bankruptcy proceedings by or against Borrower, all sums disbursed or advanced by the Agency shall immediately become due and payable. The Agency shall thereafter be released from any and all obligations to Borrower under the terms of this Agreement.

Section 1.18 – Cessation of Work, Completion by the Agency. Should the work of constructing the improvements cease, specifically including stoppage by the Agency in accordance with Section 1.16 hereof, or should said work for any reason whatsoever not progress continuously in a manner satisfactory to the Agency, it being the sole judge as to this requirement, then the Agency may, at its option and without notice, declare Borrower to be in default hereunder, and the Agency may thereupon, should it so elect, take possession of said property and let contracts for the completion of said improvements and pay the cost thereof, plus a fee of fifteen percent (15%) for supervision of construction; in which event such amount shall be considered an additional loan to Borrower, and the repayment thereof, together with interest thereon at the rate provided in the promissory note, shall be secured by the deed of trust securing said note and shall be repaid within thirty (30) days after the completion of said improvements, and Borrower agrees to pay the same; Borrower further authorizes The Agency at its option at any time, whether default exists or not, either in its own name or in the name of Borrower, to do any act or thing necessary or expedient in the opinion of the Agency to secure the performance of construction contracts and assure the completion of construction of the improvements substantially in accordance with the plans and specifications, disbursing all or any part of the loan funds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, the Agency shall have the right to avail itself of any other rights or remedies to which it may be entitled under any existing law or laws.

Section 1.19 – Indemnification. Borrower agrees to indemnify and hold harmless the Agency from and against any and all claims, damages, losses, liability or expense, including but not limited to, any claim made by any person performing labor or furnishing material by way of a mechanic's lien, stop notice, equitable lien, or other proceeding, and any claims made by any purchasers of the subject property of their successors, or any other person with regard to any claimed defects in design or construction of the improvements.

Section 1.20 – DRE Processing. [Reserved].



Section 1.21 – Project Management Fees. Agency agrees to pay Borrower a project management fee ("Project Management Fee") in an amount not greater than fifteen percent (15%) of the approved total substantial rehabilitation amount approved by the Agency in each Project Unit Loan, Greenovation Project Budget (Exhibit "A"), unless Borrower is in default of any part of this Agreement. Borrower shall invoice Agency for Project Management Fee based on a percentage of approved total substantial rehabilitation completed on each Project Unit. Borrower agrees to execute a Professional Services Agreement for said Project Management Fees and comply with El Cajon Municipal Code Chapter 3.22 relating to Professional Services Contracts if required.

Section 1.22 – Books and Records. The undersigned Borrower shall maintain and cause its contractor to maintain accurate books and records for not less than 5-years upon completion of the project showing all of the income and disbursements made in connection with the work of improvements and such books and records shall be available for inspection and copy by the Agency upon request.

Section 1.23 – Agency's Reliance on Statements and Disclosure of Borrower. Borrower has made certain statements in order to induce the Agency to make said loan and enter into this Agreement, and in the event Borrower has made material misrepresentations or omissions it is a breach of this Agreement, and the act of doing so shall not affect any remedies the Agency may have under the deed of trust securing said loan for such misrepresentation or omission.

Section 1.24 – Agency not Liable for Acts or Omissions of Borrower or Others. Agency shall in no way be liable for any acts or omissions of Borrower, any agent or contractor employed by Borrower, or any person furnishing labor and/or materials used in or related to the construction of said improvements.

Section 1.25 – Time of the Essence. Time is of the essence in this Agreement and of each and every provision hereof. The waiver by the Agency of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

Section 1.26 – Subordination of Program Loan. Except as referenced in Section 1.21 of this Agreement, the Agency will not subordinate its Note and Project Deed of Trust to any lien, encumbrance deed of trust, or mortgage.

Section 1.27 – Payment of Taxes. Prior to or at the close of escrow, all taxes and assessments against the Property shall be pro rated and paid current.

## ARTICLE II. MISCELLANEOUS PROVISIONS

Section 2.1 – Governmental Requirements Superior. All provisions of this Agreement and of all the other documents relating to this Program Loan shall be subject and subordinate to any and all federal, state and local statutes, regulations, and ordinances, and shall be subject to modification to comply therewith.

Section 2.2 – Notice. Any Notice under this Agreement shall be deemed given upon actual personal delivery to the notified Party or upon the expiration of two (2) days from the insertion of the notice, properly addressed and certified mail, return receipt requested, postage prepaid, in a U. S. Mail depository within California, or upon the expiration of seven (7) days from the insertion of the notice in a U. S. Mail depository outside of California. Notices shall be sent to the addresses for the Parties as set forth below or as changed by either Party from time to time by written notice to the other Party.

Agency: El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Executive Director

And to: Melissa Ayres, Director of Community Development  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA 92020

Borrower: BaY Kitchen and Bath Remodelers  
Attn: James C. Miller and Marcia M.  
5480 Baltimore Drive #201  
La Mesa, CA 91942

Section 2.3 – Severability. If any provision of this Agreement is deemed to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed from the rest of the Agreement, and the remaining provisions shall continue in full force and effect.

Section 2.4 – Non-Waiver of Agency’s Rights. No right, remedy, or power of the Agency under this Agreement shall be deemed to have been waived by any act or conduct on the part of the Agency or by any failure to exercise or delay in exercising such right, remedy or power. Every such right, remedy or power of the Agency shall continue in full force and effect until specifically waived or released by an instrument in writing executed by the Agency. No delay or omission of the Agency to exercise any right or power arising upon the occurrence of any default under this Agreement, or any Project Unit security documents, including the Note, the Project Unit Deed of Trust, the Notice of Affordability Restrictions on Transfer of Property or the Unsecured Environmental Indemnity Agreement, shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement, or any Project Unit security documents, including the Note, the Project Unit Deed of Trust, the Notice of Affordability Restrictions on Transfer of Property or the Unsecured Environmental Indemnity Agreement to the Agency may be exercised from time to time and as often as may be deemed expedient.

Section 2.5 – Exhibits Incorporated. All exhibits to which reference is made in this Agreement are deemed incorporated into this Agreement whether or not the exhibits are actually attached to this Agreement.

Section 2.6 – Construction of Agreement. The provisions contained in this Agreement shall not be construed in favor of or against either Party, but shall be construed as if both Parties contributed equally to its preparation. This Agreement shall be construed in accordance with the laws of the State of California.

Section 2.7 – Assignment. Borrower shall not assign its rights nor delegate its duties under this Agreement without the prior written consent of the Agency. Any attempt at assignment or delegation in violation of this Section 2.7 shall be void. The Agency shall have the full right and authority to assign all or part of its rights and delegate all or part of its duties under this Agreement.

Section 2.8 – Integration. This Agreement represents the entire agreement between the Parties on the subject matter of this Agreement, and supersedes any other agreements, promises or representations, oral or written, pertaining to such subject matter.

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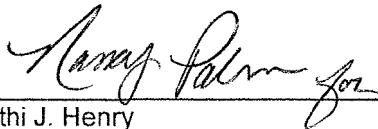
Section 2.9 – Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

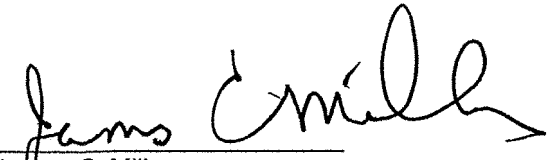
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

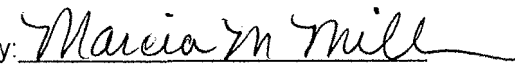
**AGENCY:**

**BORROWER:**

EL CAJON REDEVELOPMENT AGENCY,

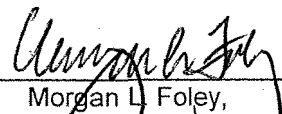
By:   
Kathi J. Henry  
Executive Director

By:   
James C. Miller  
Its: OWNER

By:   
Marcia M. Miller  
Its: OWNER

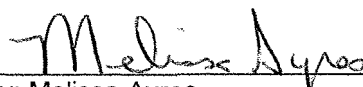
APPROVED FOR FORM BY:

APPROVED FOR FORM BY:

By:   
Morgan L. Foley,  
General Counsel to El Cajon  
Redevelopment Agency

BY: \_\_\_\_\_

APPROVED AS TO CONTENT:

  
By: Melissa Ayres  
Director of Community Development

## ACKNOWLEDGMENT

State of California,  
County of San Diego

On March 10, 2011 before me, Jennifer L. Ficacci, Notary Public (insert name and title of the officer) personally appeared Marcia M. Miller who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Jennifer L. Ficacci  
Signature of Notary



## ACKNOWLEDGMENT

State of California,  
County of San Diego

On March 11, 2011 before me, Diane M. McMullen, Notary Public (insert name and title of the officer) personally appeared James L. Miller who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Diane M. McMullen  
Signature of Notary



**EXHIBIT "A"**  
**TO**  
**AFFORDABLE HOUSING AGREEMENT**

GREENOVATION PROJECT BUDGET				
	Description/Payee	Estimate	TOTAL COST Eligible Cost	Ineligible Cost
PROPERTY ADDRESS:				
ACQUISITION				
	Site and/or Land Cost	Seller: John Smith	\$179,000.00	\$179,000.00
	Appraisal	Comps only	\$0.00	\$0.00
	Title/Escrow/Recording	Chicago Title & County	\$900.00	\$900.00
	Other (specify)			
	Other (specify)			
(A) TOTAL ACQUISITION COSTS			\$179,900.00	\$179,900.00 \$0.00
SUBSTANTIAL REHABILITATION (from Greenovation Checklist)				
	Site (work)	See checklist	\$2,500.00	\$2,500.00
	Foundation	See checklist	\$0.00	\$0.00
	Landscape	See checklist	\$4,600.00	\$4,600.00
	Structural Frame & Building Envelope	See checklist	\$7,000.00	\$7,000.00
	Exterior Finish	See checklist	\$12,000.00	\$12,000.00
	Insulation	See checklist	\$2,000.00	\$2,000.00
	Plumbing	See checklist	\$5,000.00	\$5,000.00
	Heating, Ventilation & AC	See checklist	\$5,000.00	\$5,000.00
	Renewable Energy	See checklist	\$0.00	\$0.00
	Building Performance	See checklist	\$7,500.00	\$7,500.00
	Finishes	See checklist	\$8,000.00	\$8,000.00
	Flooring	See checklist	\$6,500.00	\$6,500.00
	Appliances & Lighting(1)	See checklist	\$3,500.00	\$1,500.00 \$2,000.00
	Other (specify)	See checklist	\$5,000.00	\$5,000.00
	Standard Work Write Up Items	See checklist	\$3,500.00	\$3,500.00
	Innovations	See checklist	\$3,000.00	\$3,000.00
	Construction Contingency	See checklist	\$5,000.00	\$5,000.00
	Architectural, Engineering (plans)	See checklist	\$0.00	\$0.00
	Permits	See checklist	\$1,500.00	\$1,500.00
(B) TOTAL SUBSTANTIAL REHABILITATION			\$79,600.00	\$77,600.00 \$2,000.00
SOFT & CARRYING COSTS, COSTS OF SALE				
	Appraisal	Pacific appraisal	\$350.00	\$350.00
	Title/Escrow/Recording	Chicago Title	\$900.00	\$900.00
	Financing Costs ((A) + (B) x 3.25% for 6 mos)	Interest due El Cajon Redevelopment Agency	\$4,218.88	\$4,200.63
	Fund Control (incl inspections)	n/a	\$0.00	\$0.00
	Insurance	Liability and Property ins costs - 6 mos	\$200.00	\$200.00
	Taxes (1.25% of PP for 6 mos)	SD County tax collector	\$1,118.75	\$1,118.75
	Relocation	n/a	\$0.00	\$0.00
	Project Mgmt Fees (15% of TOTAL SUBST REHAB (B))	Per Affordable Housing Agreement	\$11,940.00	\$11,790.00
	Commissions (6% total)	Selling and Buying Agent based on ARV	\$16,800.00	\$16,800.00
	Interest	To Agency at 3.25%	\$0.00	\$0.00
	Other (specify)	n/a	\$0.00	\$0.00
(C) TOTAL SOFT & CARRYING COSTS, COSTS OF SALE			\$35,525.63	\$35,359.38 \$0.00
TOTAL PROJECT BUDGET			\$295,025.63	\$292,859.38 \$2,000.00
Total Purchase Price/Acquisition Cost (A)		\$179,900.00		
Total After Rehabilitation Value (Sales Price or "ARV")		\$280,000.00		
25% Substantial Rehabilitation Required		\$70,000.00		
Eligible Substantial Rehabilitation Achieved (B)		\$77,600.00		
% of Substantial Rehabilitation (25% of (B) required)		27.71%		
Eligible Total Project Budget		\$292,859.38		
Net Profit/Loss (ARV minus Total Project Budget)		(\$12,659.38)		
Project Mgmt Fees (15% of TOTAL SUBST REHAB (B))		\$11,790.00		
Net Profit/Loss on Project Unit Loan		(\$1,069.38)		
Borrower/Date				
Approved By Agency/Date				

EXHIBIT "B"  
TO  
AFFORDABLE HOUSING AGREEMENT

**DO NOT DESTROY THIS NOTE: WHEN PAID, THIS NOTE AND THE DEED OF TRUST SECURING IT MUST BE SURRENDERED TO TRUSTEE FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.**

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$ \_\_\_\_\_, 2011  
\_\_\_\_\_, El Cajon, CA \_\_\_\_\_  
APN: \_\_\_\_\_

**FOR VALUE RECEIVED**, and in consideration of the Program Loan made by the EL CAJON REDEVELOPMENT AGENCY ("Agency") pursuant to that Affordable Housing Agreement, dated \_\_\_\_\_, 2011 (the "Affordable Housing Agreement") the undersigned ("Maker") promises to pay to the Agency, or order, at 200 Civic Center Way, within the City of El Cajon, California, or such other place as the holder may from time to time designate by written notice to Maker the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). So long as Maker is not in default under the terms of this Note, and the Affordable Housing Agreement, this Note in the amount of \$ \_\_\_\_\_ shall bear interest at the rate of three and one-quarter percent (3.25%) per annum. Otherwise, this Note shall bear interest at the rate set forth in paragraph 4, below.

1. Due Date and Right of Prepayment. All disbursements of principal of the Agency Loan made by the Agency to the Maker pursuant to the Affordable Housing Agreement and all payments and prepayments made on account of the unpaid principal balance or interest on the Note shall be recorded by the Agency on the Schedule 1 attached to this Note. Upon conveyance of each unit, Borrower shall pay to the Agency a sum to be applied toward the principal and accrued interest on the promissory note. Notwithstanding the foregoing, Agency's loan and all interest thereof, shall be repaid in full, prior to the sale, by Borrower. The Real Property is more fully described in the Deed of Trust security this Note (the "Property"). This Note may be prepaid in whole or in part at any time and from time to time, without notice or penalty. Principal and interest shall be due and payable on the earlier of six (6) months from date of recordation of the Deed of Trust. The Executive Director or designee may extend this period in the event a determination is made that the delay is outside the control of Maker, but in no event shall the maturity date exceed eighteen (18) months.

2. Security for Note. This Note is secured by the Project Deed of Trust and will be recorded in the Office of the County Recorder of San Diego County. The Project Deed of Trust is not a purchase money deed of trust within the meaning of California Code of Civil Procedure Section 580b. This Note shall also be secured by a security agreement.

3. Acceleration Upon Default. In the event of any default under the terms of this Note, of the deed of trust or security agreement securing this Note at the option of the holder of this Note, and after written notice to Maker providing Maker with ten (10) days in which to cure any default, all principal and interest due under this Note shall immediately become due and payable, without further notice. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

4. Default Interest Rate. If the Borrower defaults under the terms of the Affordable Housing Agreement, this Note, the Project Deed of Trust, and/or any security agreements or other deeds of trust securing the same, interest shall be due and payable from the Borrower to the Agency in the amount of ten percent (10%) per annum from the date of said default.

5. Costs Paid by Maker. Maker agrees to pay the following costs, expenses, and attorneys' fees paid or incurred by the holder of this Note, or adjudged by a court: (a) reasonable costs of collection, costs, and expenses, and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (b) costs of suit and such sum as the court may adjudge as attorneys' fees in any action to enforce payment of this Note or any part of it.

6. Payment and Interest Calculation. Principal and interest shall be payable in lawful money of the United States of America. Interest shall be computed based on a 30-day month and the actual number of days elapsed. Payment shall be applied to interest first and then to any unpaid principal balance.

7. Incorporation of Affordable Housing Agreement. The provisions of the Affordable Housing Agreement by and between Maker and the Agency are expressly incorporated in this Note by this reference. To the extent of any inconsistency between this Note and the Affordable Housing Agreement, the Affordable Housing Agreement shall control and govern.

MAKER:

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

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

**SCHEDULE 1**  
**DISBURSEMENTS AND PAYMENTS OF PRINCIPAL OR INTEREST**

Date	Amount of Disbursement	Amount of Principal or Interest Paid or Prepaid	Unpaid Principal Balance	Accrued Interest	Notation Made By



**EXHIBIT "C"**  
**STATEMENT OF**  
**INSURANCE REQUIREMENTS**

(Including All Successors and Assigns of the Borrower)

Borrower acknowledges the receipt of these insurance requirements and agrees to maintain in full force and effect, the following policies during the term of all the Agency's loan at Borrower's sole cost and expense. All policies shall contain a provision requiring thirty (30) days advance written notice to the Agency of cancellation. Borrower agrees to maintain the following insurance coverages:

**Required Insurance.** To at all times provide, maintain and keep in force at Borrower's sole expense the following policies of insurance:

(a) Insurance against loss or damage to the improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount no less than the original amount of the Note plus any senior liens or encumbrances or the full replacement cost of the improvements, including the cost of debris removal (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), whichever is greater, and with not more than Five Hundred Dollars (\$500.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsements";

(b) Comprehensive commercial or general liability insurance, including coverage for elevators and escalators, if any, on the Property insuring against claims for "personal injury", including, without limitation, bodily injury, death or property damage occurring on, in or about the Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than Two Million Dollars (\$2,000,000) aggregate limit and One Million Dollars for each personal injury or death to any one or more persons or damage to property (as that amount may be increased from time to time by Agency in its reasonable discretion);

(c) Workers' compensation insurance (including employer's liability insurance, if requested by Agency) for all employees of Borrower engaged on or with respect to the Property in such amount as is reasonably satisfactory to Agency, or if such limits are established by law, in such amounts;

(d) During the course of any construction or repair of improvements on the Property, builder's completed value risk insurance against "all risks of physical loss", including collapse and transit coverage, during construction of such improvements, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

(e) Insurance against flood damage, including surface waters, if the Property is located in an area considered a flood risk by the United States Department of Housing and Urban Development;

(f) Such other insurance (including, but not limited to, earthquake insurance), and in such amounts, as may from time to time be required by Agency against the same or other hazards.

All policies of insurance required by this Statement of Insurance Requirements shall include endorsements naming the Agency and the City of El Cajon and their respective elected and appointed officers, officials, directors, employees and agents as additional insureds, except for any policy of workers' compensation insurance.

All policies of insurance required by the terms of the Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy, notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

**Delivery of Policies, Payment of Premiums.** All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Agency. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Agency in form satisfactory to Agency. Borrower shall furnish Agency with an original copy of all policies of required insurance. At least thirty (30) days prior to the expiration of each such policy, Borrower shall furnish Agency with evidence satisfactory to Agency of the payment of premium and the reissuance of a policy continuing insurance in force as required by the Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which terms shall include any reduction in

the scope of limits of coverage, without at least thirty (30) days prior written notice to Agency. In the event Borrower fails to provide the policies of insurance required by the Deed of Trust, Agency may procure such insurance or single-interest insurance for such risks covering Agency's interest, and Borrower will pay all premiums thereon promptly upon demand by Agency, and until such payment is made by Borrower the amount of all such premiums, together with interest thereon at the rate of nineteen percent (19%) per annum or the maximum rate allowed by law, whichever is less.

In the event any lender, who has secured interest in the Property, requires additional insurance and/or insurance with greater coverages than that required by this STATEMENT OF INSURANCE REQUIREMENTS, Borrower agrees to provide to the Agency and the City of El Cajon and their respective elected and appointed officers, officials, directors, employees and agents as additional insureds, except for any policy of workers' compensation insurance on such policies providing greater and additional coverages.

Borrower, by execution of this STATEMENT OF INSURANCE REQUIREMENTS, agrees to provide the required insurance during the term of the loan and to require all successors in interest to agree to provide such coverages for the benefit of the Agency. Agency acknowledges that performance of the covenants contained herein are a material inducement to making the loan to Borrower.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California.

**BORROWER:**

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

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

## EXHIBIT "D"

### UNSECURED ENVIRONMENTAL INDEMNITY AGREEMENT

**THIS UNSECURED ENVIRONMENTAL INDEMNITY AGREEMENT** ("Indemnity Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011 by (Indemnitor), to and for the benefit of the El Cajon Redevelopment Agency and the City of El Cajon, its successors and assigns (collectively, "Lender"), and, to the extent not otherwise referenced, the Indemnified Parties (as hereinafter defined).

#### WITNESSETH:

- A. Lender has agreed to make a loan (the "Loan") to Indemnitor, which Loan is secured by, among other things, that certain Deed of Trust of even date herewith executed by Indemnitor as trustor in favor of Lender, as beneficiary (the "Deed of Trust"), which Deed of Trust encumbers the real property described on Attachment "A" attached hereto (the "Property").
- B. It is a condition of Lender's making the Loan that this Indemnity Agreement be executed and delivered by Indemnitor and Lender is making the Loan in reliance upon this Indemnity Agreement.
- C. This Indemnity Agreement is unsecured and is separate from the security and other collateral being delivered by Indemnitor in connection with the making of the Loan.

**NOW, THEREFORE**, in consideration of the foregoing and of the Lender making the Loan, and other valuable consideration, the receipt of which is hereby acknowledged, Indemnitor agrees as follows:

1. Indemnity.

(a) Subject to Sections 2, 3 and 4 below, Indemnitor hereby agrees to defend, protect, indemnify and hold harmless Lender, Lender's affiliates, directors, officers, shareholders, agents and employees, and Lender's participants, successors and assigns specified in Section 4 hereof (hereinafter, collectively, the "Indemnified Parties"), from and against, and shall reimburse the Indemnified Parties for, any and all actual out-of-pocket costs (including, without limitation, attorneys' fees, expenses and court costs), expense or loss arising from any claim, liability, damage, injunctive relief, injury to person, property or natural resources, fine, penalty, action, and cause of action (collectively, "Costs and Liabilities"), incurred by or asserted against any Indemnified Party and arising directly or indirectly, in whole or in part, out of the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence of any Hazardous Materials at, on, within, under, about or from the Property, or in or adjacent to any part of the Property, or in the soil, groundwater or soil vapor on or under the Property, or elsewhere in connection with the transportation of Hazardous Materials to or from the Property in violation of any Hazardous Materials Laws, whether or not known to Indemnitor or Indemnified Parties, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence or, except as expressly provided to the contrary in Sections 2 and 4 hereof, regardless of when such release, discharge, deposit or presence occurred or is discovered. Without limiting the generality of the foregoing indemnity, such Costs and Liabilities shall include, without limitation, all actual out-of-pocket costs incurred by Indemnified Parties in connection with (i) determining whether the Property is in compliance or the amount of money required to remediate any environmental contamination, and causing the Property to be or become in compliance, with all applicable Hazardous Materials Laws, (ii) any removal or remediation of any kind and disposal of any Hazardous Materials present at, on, under or within the Property or released from the Property to the extent required by applicable Hazardous Materials Laws in effect at the time of such removal, remediation or disposal, and (iii) repair of any damage to the Property or any other property caused by any removal, remediation or disposal.

(b) Upon demand by any Indemnified Party, Indemnitor shall defend any investigation, action or proceeding in connection with any claim or liability, or alleged claim or liability, that would, if determined adversely to such Indemnified Party, be covered by the foregoing indemnification provisions, such defense to be at Indemnitor's sole cost and expense and by counsel reasonably approved by such Indemnified Party, which counsel may, without limiting the rights of an Indemnified Party pursuant to the next succeeding sentence of this Section 1 (b), also represent Indemnitor in such investigation, action or proceeding. If an Indemnified Party determines reasonably and in good faith that its defense by Indemnitor is being conducted in a manner, which is prejudicial to its interests, such Indemnified Party may elect to conduct its own defense through counsel of its own choosing and at the expense of Indemnitor.

(c) As used herein, the term "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the California Solid Waste Management, Resource Recovery and Recycling Act (California Government Code Section 66700 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), Section 25117 or Section 25316 of the California Health & Safety Code; and any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.). The term "Hazardous Materials Laws" means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law or guideline relating to Hazardous Materials now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party).

2. Time Limits on Claims. Notwithstanding the foregoing provisions:

(a) No claim shall be made hereunder by any Indemnified Party unless and until any one of the following events shall have occurred: (i) repayment in full of the Loan (as evidenced by the release and reconveyance of the Deed of Trust); or (ii) vesting of title to the Property in Lender or any Indemnified Party through judicial or non-judicial foreclosure or acceptance of a deed in lieu thereof.

(b) Indemnitor shall not have any obligation under this Indemnity Agreement to an Indemnified Party with respect to any Costs and Liabilities that, prior to the first to occur of the events described in Section 2 (a) (i) or (ii) above: (i) were actually known to Lender; (ii) were liquidated in amount, or were otherwise readily determinable in amount without undue delay; and (iii) would have been lawfully and properly includable as part of the secured indebtedness under the Deed of Trust in an action for a deficiency judgment following a judicial foreclosure sale of the Property.

(c) If any Indemnified Party or any affiliate of any Indemnified Party has acquired ownership of the Property through foreclosure or deed in lieu of foreclosure, the obligations of Indemnitor hereunder shall apply, without limitation, to all Costs and Liabilities that arise out of or are attributable to, whether directly or indirectly, ownership of the Property or any part thereof by any Indemnified Party or any such affiliate, or to the position of such Indemnified Party or such affiliate as an owner in the chain of title to the Property or any part thereof.

(d) If the Loan has been repaid in full, whether by voluntary payment or by foreclosure or deed in lieu of foreclosure, the obligations of Indemnitor hereunder shall continue to apply, without limitation, to all Costs and Liabilities that arise out of or are attributable to, whether directly or indirectly, any claim or allegation against an Indemnified Party relating to any act or omission of such Indemnified Party in respect of the Loan or the Property, or in connection with any exercise of such Indemnified Party's rights under any of the Loan Documents.

3. Acts of Indemnified Parties.

(a) Notwithstanding anything to the contrary herein, Indemnitor shall not be liable hereunder to an Indemnified Party to the extent of that portion of any Costs and Liabilities which Indemnitor establishes is attributable to an affirmative act of such Indemnified Party at the Property which causes (i) the release, discharge, deposit of presence, or alleged or suspected release, discharge, deposit or presence of a Hazardous Material at the Property, or (ii) material aggravation of a then existing Hazardous Material condition or occurrence at the Property, if and only if, in either such case referred to in (i) or (ii) above, such

act was in violation of any Hazardous Materials Laws or was carried out without reasonable care under the circumstances.

(b) In addition, Indemnitor shall not be liable hereunder for that portion of any Costs and Liabilities which Indemnitor establishes is attributable to the introduction and initial release, discharge or deposit, or alleged or suspected introduction, initial release, discharge or deposit of a Hazardous Material at the Property by any party, other than Indemnitor or an affiliate of Indemnitor, at any time after Indemnitor's ownership interest in the Property terminates. Notwithstanding the foregoing, but subject to Sections 2 and 3 (a) above and Section 4 below, the liability of Indemnitor hereunder shall otherwise remain in full force and effect after Lender or such affiliate of Lender so acquires title to the Property, including, without limitation with respect to any Hazardous Materials which are discovered at the Property after the date Lender or such affiliate of Lender acquires title but which were actually introduced to the Property prior to the date of such acquisition.

4. Indemnified Parties.

This Indemnity Agreement and Indemnitor's obligations hereunder shall inure to the benefit of and be enforceable only by (a) Lender, Lender's directors, officers, shareholders, agents and employees, (b) any person or entities to which any Lender participates, assigns or sells all or any portion of its interest in the loan, or which otherwise succeeds to the interest of Lender under the Deed of Trust, whether by purchase or otherwise, and any affiliate of Lender which acquires title to the Property at a foreclosure sale or by deed in lieu of foreclosure.

5. Unsecured Obligations.

The obligations of Indemnitor hereunder are unsecured. This Indemnity Agreement is not intended to be, or shall it be, secured by the Deed of Trust or any other instrument or agreement executed by Indemnitor or any other entity or person in favor of the Lender or any Indemnified Party relating to the Loan (except for any guaranty) (such documents together with the Deed of Trust being referred to collectively herein as the "Loan Documents"). The obligations of Indemnitor under this Indemnity Agreement are independent of any indemnification or other obligations of the Indemnitor under the Loan Documents with respect to any Hazardous Materials. The rights and remedies of the Indemnified Parties under this Indemnity Agreement shall be in addition to any other rights and remedies of such Indemnified Parties under the Loan Documents. In no event shall any provision of this Indemnity Agreement be deemed to be waiver of or to be in lieu of any right or claim, including without limitation any right of contribution or other right of recovery, that any person entitled to enforce this Indemnity Agreement might otherwise have against Indemnitor under any Hazardous Materials Laws. Any sums payable hereunder shall not be deemed to be based upon any diminution in or other impairment of the value of any collateral held by Lender to secure the Loan.

6. Interest or Unpaid Amounts.

Any amount claimed hereunder by an Indemnified Party not paid by Indemnitor within thirty (30) days after written demand made by such Indemnified Party and accompanied by a reasonable summary of the amounts claimed, shall bear interest at the rate of ten percent (10%) per annum.

7. Limitations on Liability. The liability of Indemnitor under this Indemnity Agreement shall in no way be limited or impaired by (a) any amendment or modification of the provisions of any of the Loan Documents; (b) except as set forth in Sections 2, 3 and 4, any participation in or sale or assignment of the Loan Documents or any sale or transfer of all or part of the Property; or (c) the release of Indemnitor or any person or entity from performance or observance of any of the agreements, covenants, terms, or conditions contained in any of the Loan Documents by operation of law; and, in any such case, whether with or without notice to Indemnitor and with or without consideration. Except as provided in Sections 2, 3 and 4, Indemnitor's obligations hereunder shall in no way be impaired, reduced or released by reason of (i) an Indemnified Party's omission or delay in exercising any right described herein or (ii) any act of omission of an Indemnified Party in connection with any notice, demand, warning, or claim regarding violations of codes, laws or ordinances governing the Property.

8. Recourse Obligations. Notwithstanding anything to the contrary in the Loan Documents, Indemnitor shall be personally liable on a recourse basis for the obligations of Indemnitor set forth herein.

9. Successors and Assigns. This Indemnity Agreement shall be continuing, irrevocable and binding upon each of the persons and entities comprising Indemnitor and their respective heirs, successors, and assigns.

10. Inconsistencies. In the event of any inconsistencies or conflicts between the terms of this Indemnity Agreement and the terms of the other Loan Documents (including any exculpatory language contained herein), the terms of this Indemnity Agreement shall control.

11. Separate Causes of Action. A separate right of action hereunder shall arise each time an Indemnified Party acquires knowledge of any matter described herein. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action.

12. Severability. If any provision of this Agreement shall be determined to be unenforceable in any circumstances by a court of competent jurisdiction, then the balance of this Agreement nevertheless shall be enforceable, and the subject provision shall be enforceable in all other circumstances.

13. Attorneys' Fees. In any action or proceeding brought by the Indemnified parties to enforce any rights under this Indemnity Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action.

14. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and will be effectively served upon personal delivery or, if mailed, no later than 48 hours after deposit in first class or certified United States mail, postage prepaid, sent to Lender at:

**El Cajon Redevelopment Agency**  
**Attention: Melissa Ayres, Director of Community Development**  
**200 Civic Center Way**  
**El Cajon, CA 92020**

and sent to Indemnitor at: **Borrower Name**  
**Attn:**  
**Address**  
**City, CA ZIP**

which addresses may be changed by written notice.

15. Governing Law.

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

**IN WITNESS WHEREOF**, this Indemnity Agreement is executed as of the date and year above written.

**LENDER/INDEMNITY:**

**EL CAJON REDEVELOPMENT AGENCY,**

By: \_\_\_\_\_  
Kathi J. Henry, Executive Director

**INDEMNITOR:**

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

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

**INDEMNITEE:**

**CITY OF EL CAJON, a public agency**

By: \_\_\_\_\_  
Kathi J. Henry, City Manager

**APPROVED FOR FORM BY:**

By: \_\_\_\_\_  
Morgan L. Foley,  
General Counsel to El Cajon Redevelopment Agency

RECORDING REQUESTED BY  
FREE RECORDING REQUESTED PURSUANT  
TO GOVERNMENT CODE SECTION 6103

WHEN RECORDED PLEASE MAIL TO:

El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020  
Attention: Executive Director

Space above this line for Recorder's use

APN:

**EXHIBIT "E"**  
**MEMORANDUM OF AFFORDABLE**  
**HOUSING AGREEMENT**

THIS MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT ("Memorandum") dated for identification purposes as of \_\_\_\_\_, 2011, is entered into by and between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic, ("Agency"), and, \_\_\_\_\_ ("Borrower").

1. Agency and Borrower have executed an Affordable Housing Agreement dated for identification purposes as of \_\_\_\_\_, 2011, covering, among other property, certain real property under the Greenovation Program located in the City of El Cajon, County of San Diego, State of California, more fully described in Attachment "A" attached hereto and incorporated herein by this reference. All of the terms, conditions, provisions, and covenants of the Affordable Housing Agreement are incorporated in this Memorandum by reference as though written out at length herein, and the Affordable Housing Agreement and this Memorandum shall be deemed to constitute a single instrument or document. Pursuant to the Affordable Housing Agreement, the dwelling units on the real property described in Attachment "A" are to be available to low and moderate income home buyers qualifying pursuant to the Affordable Housing Agreement.

2. This Memorandum is prepared for recordation purposes only, and in no way modifies the terms, conditions, provisions, and covenants of the Affordable Housing Agreement. In the event of any inconsistency between the terms, conditions, provisions, and covenants of this Memorandum and the Affordable Housing Agreement, the terms, conditions, provisions, and covenants of the Affordable Housing Agreement shall prevail.

The parties have executed this Memorandum on the dates specified immediately adjacent to their respective signatures.

(BORROWER NAME)

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

By: \_\_\_\_\_  
(Borrower name)

APPROVED AND ACCEPTED:  
EL CAJON REDEVELOPMENT AGENCY  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Kathi J. Henry, Executive Director

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

**ATTACHMENT "A"**  
**TO EXHIBIT "E"**

LEGAL DESCRIPTION

APN: \_\_\_\_\_

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,  
AND IS DESCRIBED AS FOLLOWS:



FREE RECORDING REQUESTED PURSUANT  
TO GOVERNMENT CODE SECTION 27383  
WHEN RECORDED PLEASE MAIL TO:  
El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020-3996  
Attn: Executive Director

(SPACE ABOVE FOR RECORDER'S USE ONLY)

APN: \_\_\_\_\_

EXHIBIT "F"  
**DEED OF TRUST & ASSIGNMENT OF RENTS**  
(San Diego County)

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between (the "Trustor"), whose address is \_\_\_\_\_, California, and \_\_\_\_\_ (the "Trustee"), whose address is \_\_\_\_\_, California \_\_\_\_\_, and the **El Cajon Redevelopment Agency, a public body corporate and politic** (the "Beneficiary"), whose address is 200 Civic Center Way, El Cajon, California 92020.

FOR GOOD AND VALUABLE CONSIDERATION, including the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys, and assigns to Trustee, **IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the property located in the County of San Diego, State of California, that is described in Attachment "A", attached hereto and by this reference incorporated herein (the "Property").

TOGETHER WITH all rents, issues, profits, royalties, income, and other benefits derived from the Property (collectively, the "rents"), provided that so long as Trustor is not in default hereunder, it shall be permitted to substantially rehabilitate, market, and sell the Affordable Units (as defined in the Agreement), in accordance with the requirements of that certain Affordable Housing Agreement entered into between Trustor and Beneficiary as of \_\_\_\_\_, 20\_\_ (the "Agreement"), which Agreement is on file with the Beneficiary as a public record and is incorporated by reference herein;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way, and rights used in connection therewith or as a means of access thereto, including, without limiting the generality of the foregoing, all tenements, hereditaments, and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements now or hereafter erected thereon up the Property (including, in each instance, improvements, restorations, replacements, repairs, additions, accessions, or substitutions thereto or therefore); but exclusive of all fixtures, attachments, appliances, furnishings, equipment and machinery (whether fixed or movable);

TOGETHER WITH all leasehold estate, right, title, and interest of Trustor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title, and interest of Trustor thereunder, including, without limitations, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all right, title, and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH all right, title, and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, opened or proposed adjoining the Property, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds for any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

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

FOR THE PURPOSE OF SECURING:

(a) Payment of the "Note Amount" according to the "Promissory Note" or "Note" as set forth in the "Agreement" as defined herein;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period and upon five (5) business days notice to the Trustor, with interest thereon as provided herein;

(c) Payment of such additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assignees, by Beneficiary, when evidenced by a promissory note or notes or other documents reciting that they are secured by this Deed of Trust; and

(d) Performance of every obligation, covenant, or agreement of Trustor contained herein or the Agreement (and any amendments thereto), including without limitation, any obligation of Trustor to pay Beneficiary any amounts pursuant to Sections 1.1 of the Agreement.

ARTICLE 1  
DEFINITIONS

1. "Agreement" means that certain Affordable Housing Agreement entered into by the Trustor and the Beneficiary hereof, dated \_\_\_\_\_, 2011; said Agreement (a copy of which is on file with the Beneficiary at the address stated above, and including all of its attachments) is incorporated herein by reference.

2. "Borrower", "Improvements" and "Affordable Units" are defined in the Agreement.

3. "Expiration Date" means the date six (6) months from the date of recording hereof, upon repayment, in full, of the Note Amount and complete satisfaction of the Promissory Note and this Deed of Trust, whichever is earlier.

4. "Mortgage" means any permanent or long-term loan, or any other financing device (including without limitations deeds of trust), which loan is secured by a security financing interest in the Trustor's interest in the Improvements.

5. "Program" means the Greenovation Program.

6. "Property" means the site together with all additions, improvements, restorations and replacements thereof.

7. "Security" is defined in the granting clauses hereof.

8. "Standards" means those standards of construction and operation characteristics of single family residential housing of size, character, and quality similar to the Project.

9. "Substantial Rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

10. "Trustor" means \_\_\_\_\_ and each of its transferees and successors in interest. Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferees or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation

of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee.

Unless the context clearly otherwise requires, any capitalized term used herein and not defined herein shall have the meaning given to it under the Agreement (any amendments thereto).

## ARTICLE II CERTIFICATE OF COMPLETION UPON PAYMENT; GRANTING OF EASEMENTS

Section 2.1 *Maintenance and Modification of the Property by Trustor.* The Trustor agrees that at all times prior to the Expiration Date, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Property or cause the Property to be maintained, preserved, kept in a condition, and used in a manner consistent with substantially similar to other multifamily housing projects similar in size, character and quality to the Property and consisting only of those uses allowed by the Agreement. The Trustor will from time to time make or cause to be made all repairs, replacements, and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Property.

Section 2.2 *Granting of Easements.* Trustor may grant easements, licenses, rights-of-way, or other similar rights or privileges in the nature of easements with respect to any property or rights included in the Security with the prior written approval of the Beneficiary, which approval shall not be unreasonably withheld.

## ARTICLE III TAXES AND INSURANCE; ADVANCES

Section 3.1. *Taxes, Other Governmental Charges, and Utility Charges.* Trustor shall pay, or cause to be paid, prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are, or may become, a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings. With respect to special assessments or other similar governmental charges, Trustor shall pay such amount in whole or in installments over a period of years.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay any such item within seven (7) business days of the earlier of the receipt or mailing of such notice. Any amount so advanced therefore by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor hereby agrees to pay all such amounts.

### Section 3.2 *Provisions Respecting Insurance.*

Insurance. Prior to commencing construction of the improvements on the Property, the Trust shall take out and maintain throughout that period commencing with the approval of the Agreement by the Beneficiary and ending on the date of repayment of the loan pursuant to the Agreement and Promissory Note, a comprehensive or commercial general liability policy in the amount of Two Million Dollars (\$2,000,000.00) aggregate limit and One Million Dollars (\$1,000,000.00) per occurrence limit policy, as shall protect the City of El Cajon and Agency from claims for such damages.

The Trustor shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage verified by an endorsement to the policy of insurance as stated in the certificate. This countersigned certificate and the policy endorsement shall name the City and the Beneficiary and their respective officers, agents, and employees as additional insureds under the policy. The certificate by the insurance carrier and policy endorsement shall contain a statement of obligation on the part of the carrier to notify City and the Beneficiary of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the

Trustor shall be primary insurance and not contribution with any insurance maintained by the Beneficiary or City, and the policy shall contain such an endorsement. The insurance policy or the certificate of insurance shall contain a waiver of subrogation for the benefit of the City and the Beneficiary. The required certificate shall be furnished by the Trustor prior to the commencement of construction of the improvements. The Trustor shall also furnish or cause to be furnished to the Beneficiary evidence satisfactory to the Beneficiary that Trustor and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The required certificate shall be furnished by the Trustor at the time set forth therefore in the Schedule of Performance.

Section 3.3 *Advances.* In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust, or shall fail to keep the Property in good repair and operating condition, the Beneficiary may (but shall be under no obligation to) take out the required policies of insurance and pay the premium on the same, or make such repairs or replacements as are necessary and provide for payment thereof; and, provided that the Beneficiary provides five (5) business days' notice to the Trustor all amounts so advanced therefore by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured thereby, which amounts the Trustor agrees to pay on demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution.

#### ARTICLE IV DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 *Damage and Destruction.* If, prior to the Expiration Date, the Property or any portion thereof is destroyed (in whole or in part), or is damaged by fire or other casualty, the Trustor shall (a) cause any insurance proceeds arising from insurance referred to in Section 3.2 hereof and any other coverage acquired by the Trustor to be used to promptly rebuild and replace the Property; and (b) repair and replace the Property as necessary to bring the Property into conformity with the Standards, provided that such covenants shall be subordinated to the provisions of all senior obligations to which this Deed of Trust is subordinate.

Section 4.2 *Condemnation.* Subject to the provisions of senior obligations to which this Deed of Trust is subordinate, if title to or any interest in or the temporary use of the Property or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any persons, firm or corporation acting under governmental authority, including any proceeding or purchase in lieu thereof, the proceeds as a result of such taking shall be paid as provided by the law of the State of California to all persons or entities as their interests appear of record.

#### ARTICLE V REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE TRUSTOR

Section 5.1. *Defense of Title.* The Trustor covenants that it is lawfully seized and possessed of title in fee simple interest to the Property, that it has good right to sell, convey, or otherwise transfer or encumber the same, and that the Trustor, for itself and its successors and assigns, warrants and will forever defend the right and title to the foregoing described and conveyed property unto the Beneficiary, its successors and assigns, against the claims of all persons whomsoever, excepting only encumbrances approved by the Beneficiary.

Section 5.2 *Inspection of Property.* The Trustor covenants and agrees that at any and all reasonable times and upon reasonable notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Property.

#### ARTICLE VI AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES

Section 6.1 *Other Agreements Affecting Property.* The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding on it under the Agreement or any other agreement of any nature whatsoever now or hereafter involving or affecting the Property or any part thereof.

Section 6.2 *Acceleration of Maturity.* If Trustor shall sell, lease, exchange or otherwise convey the Property; or if default is made in the payment of any principal payable under the secured Note or in the performance of the covenants or agreements hereof, or any of them, Beneficiary shall have the right at its option to

declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in the Note evidencing the same, immediately due and payable.

Section 6.3 *Further Assurance; After Acquired Property.* At any time, and from time to time, upon request by the Beneficiary, the Trustor shall make, execute and deliver, or cause to be made, executed and delivered, to the Beneficiary and, where appropriate, cause to be recorded and/or filed, and from time to time thereafter to be re-recorded and/or refiled, at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements respecting personal property, instruments of further assurance, certificates, and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, (a) the obligations of the Trustor under this Deed of Trust; and (b) the lien of this Deed of Trust as a lien prior to all liens except those obligations which shall be senior obligations pursuant to the provisions of this Deed of Trust. Upon any failure of the Trustor to perform any act, obligation or promise of the Trustor under any such deeds of trust, security agreements, instruments, certificates, and documents, Beneficiary shall be entitled to cure any such default, or perform any such obligation on the part of Trustor, for and in the name of the Trustor, and the Trustor hereby irrevocably appoints the Beneficiary the agent and attorney-in-fact of the Trustor to do so. The Trustor shall reimburse any costs and expenses incurred by Beneficiary, in curing or performing any such defaults or obligations and, if not reimbursed, said costs and expenses shall become a lien on the Property.. The lien hereof shall automatically attach, without further act, to all after-acquired property deemed to be part of the Security as defined herein.

Section 6.4 *Agreement to Pay Attorney's Fees and Expenses.* In the event of an Event of Default hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefore, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall bear interest from the date such expenses are incurred at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution.

Section 6.5 *Subrogation; Payment of Claims.* Provided that the Beneficiary gives notice of at least five (5) business days to the Trustor, the Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid by the Beneficiary pursuant to the provisions hereof. If permitted in the Mortgage, the Beneficiary shall have the right to pay and discharge the obligations secured by the Mortgage.

Section 6.6 *Transfer.* No sale, transfer, lease, pledge, encumbrance, creation of a security interest in or other hypothecation of the Security shall relieve or release the Trustor from primary liability under this Deed of Trust or the Note.

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

Section 7.1 *Events of Default Defined.* The occurrence of any failure of the Trustor to perform any act, obligation or promise of the Trustor made under this Deed of Trust, and the continuation of said failure for a period of sixty (60) business days after written notice specifying such failure and requesting that it be remedied shall have been given to Trustor from the Beneficiary, shall be an Event of Default under this Deed of Trust.

Section 7.2 *The Beneficiary's Right to Enter and Take Possession.* If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to increase the income therefrom or protect the Security hereof and, with or without taking possession of the Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon the taking possession of the Property, the collection of such rents, issues and profits, and the application thereof, as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Property or the collection, receipt, and

application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Trustor requests that a copy of any Notice of Default and a copy of any Notice of Sale hereunder be mailed to him at his address herein given;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Property is located; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to the Property, including any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

**Section 7.3 Foreclosure by Power of Sale.** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify Trustees and shall deposit with Trustee this Deed of Trust, which is secured hereby, and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property, at the time and place of sale fixed by it in said Notice of Sale having been given as required by law, either as a whole or in separate lots or parcels or items as Trustee shall deem expedient 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 the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale, and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) all other sums then secured hereby; and (ii) the remainder, if any, to the person or persons legally entitled thereto.

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

**Section 7.4 Receiver.** If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice of Trustor or anyone claiming under Security, and without regard to the then value of the Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocable consents to such appointment and waives further notice of any application therefore. Any such receiver or receivers shall have all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Property, unless such receivership is sooner terminated.

**Section 7.5 Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of an other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

**Section 7.6 No Waiver.**

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor

hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, powers or remedies consequent on any breach or default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security or the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein; (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements of this Deed of Trust; (v) consents to the filing of any map, plat or replat affecting the Security; (vi) consents to the granting of any easement or other right affecting the Security; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of the Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, the Beneficiary, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Security (or a part thereof) or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreement hereof, as fully and to the same extent as it might with the Trustor and without in any way releasing or discharging any liabilities, obligations or undertakings of the Trustor.

Section 7.7 *Suits to Protect the Security.* The Beneficiary shall have power (upon ninety (90) days notice to the Trustor) to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security (and the rights of the Beneficiary as secured by this Deed of Trust) by any acts which may be unlawful or any violation of this Deed of Trust; (b) preserve or protect its interest (as described in this Deed of Trust) in the Security and in the rents, issues, profits and revenues arising therefore; and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the security thereunder or be prejudicial to the interests of the Beneficiary.

Section 7.8 *Trustee May File Proofs of Claim.* In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Trustor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

## ARTICLE VIII MISCELLANEOUS

Section 8.1 *Amendments.* This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 8.2 *Trustor Waiver of Rights.* Trustor waives to the extent permitted by law, (a) the benefit of all laws not existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Security, (b) all rights of valuation, appraisalment, state of execution, and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties.

Section 8.3 *Reconveyance by Trustee.* Upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

Section 8.4 *Notices.* Whenever Beneficiary, Trustor or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each such notice, demand, request, or

other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipts requested, or by telecopier or facsimile transmission, addressed to the address set forth in the first paragraph of this Deed of Trust. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

Section 8.5 *Acceptance of Trustee*. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

Section 8.6 *Captions*. The captions or heading at the beginning of each Section hereof are for the convenience of the parties are not a part of this Deed of Trust.

Section 8.7 *Invalidity of Certain Provisions*. Every provision of this Deed of Trust is intended to be severable. In the event any term of provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

Section 8.8 *No Merger*. If title to the Property shall become vested in the Beneficiary, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary under this Deed of Trust. In addition, upon foreclosure under this Deed of Trust pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Security shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice of termination to such tenant or subtenant.

Section 8.9 *Governing Law*. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.10 *Gender and Number*. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust Agreement as of the date first written above.

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

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



**ATTACHMENT "A"**  
**TO EXHIBIT "F"**  
**REAL PROPERTY DESCRIPTION**

LEGAL DESCRIPTION

APN: \_\_\_\_\_

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO,  
AND IS DESCRIBED AS FOLLOWS:

WHEN RECORDED PLEASE MAIL TO:  
CITY OF EL CAJON  
DEPT OF REDEVELOPMENT & HSG  
200 EAST MAIN STREET  
EL CAJON, CA 92020-3996

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: \_\_\_\_\_

EXHIBIT "G"  
**NOTICE OF AFFORDABILITY RESTRICTIONS  
ON TRANSFER OF PROPERTY**

In accordance with Health and Safety Code Section 33334.3(f)(3)(B), notice is hereby given that certain real property located at, **El Cajon, California**, in the City of El Cajon, County of San Diego, State of California, and known as Assessor's Parcel Number, and more particularly described in Attachment "A" attached hereto and incorporated herein by reference, is subject to certain affordability covenants and restrictions identified in that certain AFFORDABLE HOUSING AGREEMENT ("**AGREEMENT**") dated as of \_\_\_\_\_, made by and between the El Cajon Redevelopment Agency, a municipal corporation ("**AGENCY**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**OWNER**"), and incorporated herein by this reference. The affordability covenants and restrictions will expire forty-five (45) years from the date of the recordation of the Project Unit Deed of Trust with the San Diego County Recorder's Office.

**IN WITNESS WHEREOF**, the Agency and Owner have duly executed this Notice of Affordability Restrictions on Transfer of Property as of the date indicated below.

**El Cajon Redevelopment Agency,  
a municipal corporation**

\_\_\_\_\_  
Executive Director or designee  
Kathi J. Henry, Executive Director

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

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

ATTACHMENT "A"  
to EXHIBIT "G"

REAL PROPERTY DESCRIPTION

APN: \_\_\_\_\_

LEGAL DESCRIPTION OF THE PROPERTY

**FIRST AMENDMENT TO  
AFFORDABLE HOUSING AGREEMENT  
BETWEEN EL CAJON HOUSING AUTHORITY  
AND JAMES C. MILLER AND MARCIA M. MILLER  
dba BAY KITCHEN AND BATH REMODELERS**

THIS FIRST AMENDMENT is made and entered into effective this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2013, by and between James C. Miller and Marcia M. Miller, dba Bay Kitchen and Bath Remodelers (the "Borrower"), and the El Cajon Housing Authority Agency, a public body corporate and politic (the "Authority"), which has succeeded in the housing interests of the El Cajon Redevelopment Agency (the "Agency").

**RECITALS**

1. Developer and Agency entered into that certain Affordable Housing Agreement dated March 14, 2011 (as amended from time to time, the "AHA"), for the purpose of participating in the Agency's Greenovation Program (the "Program") by establishing procedures for a loan of the Agency's low- and moderate-income housing funds (the "Program Loan") to Borrower in order to fund the acquisition, substantial rehabilitation, and ultimate sale of clean, safe and affordable single-family homes to persons and families of low-and moderate-incomes.

2. On February 1, 2012, the Agency was dissolved by operation of law as required by Assembly Bill 1X 26 ("AB 1X 26") and the California Supreme Court decision in *California Redevelopment Agency v. Matosantos*, upholding AB 1X 26.

3. Prior to the dissolution of the Agency the City Council for the City of El Cajon (the "City Council") established the El Cajon Housing Authority (the "Authority") in order to transfer the affordable housing functions of the Agency, to the Authority.

4. Prior to the dissolution of the Agency, and as allowed by AB 1X 26, the City Council designated the Authority as the successor to the housing assets and functions of the Agency, including an assignment, on January 24, 2012, of all rights and obligations under the AHA. The AHA was further approved by the California Department of Finance ("DOF") on August 23, 2012, in Exhibit C of the El Cajon Housing Successor Agency Asset Report Form.

5. As a result of the dissolution of the Agency the Authority has limited resources available in order to assist in the development of clean, safe and affordable housing under the Program, and has determined that in order to achieve such goals, the Program should be modified to allow such opportunities to include multi-family housing and also to provide a means to convey any multi-family housing to the Authority at a cost not to exceed the amount of the loan from the Authority to the Borrower.

6. This First Amendment to Affordable Housing Agreement (the "First Amendment") is necessary to modify the AHA by allowing the Borrower to use a Program Loan to acquire and rehabilitate multi-family affordable units, to reduce the amount of rehabilitation required under the Program, and to require that any multi-family housing units, as defined, must first be offered to the Authority at a cost not to exceed the amount of the outstanding Program Loan from the Authority to the Borrower.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Wherever, in the AHA and any exhibits thereto, reference is made to "El Cajon Redevelopment Agency," or "Agency," the AHA shall be amended by substituting "El Cajon Housing Authority," and "Authority," respectively.

Section 2. Recital C is hereby amended to read as follows:

C. The Program Loan shall be used by the Borrower for such activities as:

Acquisition, rehabilitation and resale of single-family and multi-family residential properties located in the City of El Cajon boundaries that must be sold (in the case of single-family properties) to eligible first time homebuyers, and (in the case of multi-family projects) to the Authority. Each unit that is acquired, rehabilitated and resold under the Program (the "Project Unit") will be encumbered with a Promissory Note, Deed of Trust and other security documents (the "Project Unit Loan"). The purchase of said real property shall be owner-occupied, vacant, foreclosed or substandard units (in the case of single-family properties), or vacant, foreclosed, substandard, or occupied by a portion of Low-Income households (in the case of multi-family properties), and either (1) offered for sale as owner-occupied units, under the Authority's California First-Time Homebuyer Program, or (2) sold to the Authority at a price not to exceed the amount of the Program Loan (the "Affordable Units"). A portion of the Program Loan made be advanced to Borrower for earnest money deposits, not to exceed \$5,000, which will be incorporated into a Project Unit Loan or must be repaid to the Authority should acquisition of property not occur. It is the intent of Borrower to repay all outstanding Project Unit Loans at the completion of the rehabilitation and at the sale of the units. As such, Authority funds will remain within the financial structure of the Project thereby requiring all such housing units to be affordable to and occupied by low- and moderate-income persons or families as defined in Section 50093 of California Health and Safety Code.

Section 3. Recital E is hereby amended to read as follows:

E. The acquisition, rehabilitation and resale of owner-occupied, vacant, foreclosed or sub-standard single-family homes to eligible buyers who utilize the California Dream First-Time Homebuyer Program (the "Eligible Buyer"), or vacant, foreclosed, substandard, or occupied by a portion of Lower-Income Households, as defined in Section 50079.5 of California Health and Safety Code (in the case of a multi-family property) to the Authority, shall be known as the "Project". All of the single-family units sold shall be as affordable homes to low-and moderate-income families as further set forth by this Agreement for a period of not less than forty-five (45) years from the date of recordation of a Project Unit Deed of Trust. Multi-family units shall be affordable for a period of not less than fifty-five (55) years from the date of recordation of a Project Unit Deed of Trust.

Section 4. Section 1.11 is hereby amended to read as follows:

(a) Project Unit Loan. The loan amount of each Project Unit shall be subject to approval by the Agency Executive Director or designee after a review of each Greenovation Project Budget. The loan amount will include funds advanced to Borrower for earnest money deposits not to exceed \$5,000 which will be incorporated into a Project Unit Loan or must be repaid to the Authority should acquisition of property not occur. The Agency states that none of the funds loaned pursuant to this Agreement shall constitute Federal Funds within the meaning of Section 42 of the Internal Revenue Code.

Section 5. Section 1.5 is hereby amended to read as follows:

Section 1.5 – Term of Agreement. Subject to provisions of Section 1.13 "Termination" of this Agreement, the term of this Agreement shall be for a period of three (3) years from the date of execution of this Agreement as first shown above. Such term may be extended upon written agreement of both parties to this Agreement. Such extension is contingent upon the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, authorization, reduction in funds and/or change in regulations.

Section 6. Subdivisions (e) and (f) of Section 1.6 are hereby amended to read as follows:

(e) Borrower agrees that because Agency funds will assist in the construction or rehabilitation of the Project, Borrower warrants that the residential units constructed or rehabilitated with these funds shall be "affordable" to low-and moderate-income households. "Affordable" has a meaning as set forth in §

50052.5(b) and 50053 of the California Health and Safety Code in effect as of the date of the approval of this Affordable Housing Agreement by the Authority. The Borrower, before entering into an agreement for purchase and sale of any unit, shall obtain verification from the Authority, in writing, that said proposed sale is to an Eligible Buyer, who meets the affordability requirements of this section and Recital E.

(f) The Borrower shall, in accordance with the Greenovation RFP approved July 13, 2010:

(1) Create and update an Inventory list of vacant for-sale single-family homes and multi-family properties and conduct a thorough visual and physical inspection of potential properties;

(2) Determine the rehabilitation needs, include documented code violations and Green or sustainable improvements (the "Improvements") for each Project Unit;

(3) Determine the after-rehabilitation value (the after-rehabilitation sales price to a low- and moderate-income household buyer);

(4) Recommend properties that should be acquired by the Borrower through submission of a Greenovation Project Budget sheet for each Project Unit that identifies: all funding sources, including Authority funding, potential rebates, private financing, and other grant funding; anticipated acquisition cost that does not exceed the fair market value or (in the case of single-family homes) \$250,000, and (in the case of multi-family homes) \$500,000, in any event, whichever is less; rehabilitation costs; and costs of sale (Exhibit "A");

(5) Prepare a list of Qualified Contractors for a Bid List, solicit a minimum of three (3) rehabilitation bids from local contractors on the Bid List, and cooperate with the City Staff if the Authority must coordinate bids due to conflicts of interest, and ensure that improvements are consistent with the Property Guidelines;

(6) Use City of El Cajon contractors, suppliers, vendors, and other sub-consultants whenever possible;

(7) Request acquisition/construction draws from the Authority in accordance with the percentage of work completed, the Greenovation Project Budget (Exhibit "A"), as may be amended, and supporting documentation approved by the Authority;

(8) Coordinate permits, inspections and completion with the City Building and Fire Safety Division; and

(9) List and market the single-family Project Unit properties for sale to low- and moderate-income households who utilize the California Dream First-Time Homebuyer Program, or convey the property to the Authority at a price not to exceed the amount of the Project Unit Loan, with the Authority being given a credit for the amount of the Project Unit Loan, which shall thereafter be discharged, null and void.

Section 7. Seciton 2.2 is hereby amended to read as follows:

Section 2.2 – Notice. Any Notice under this Agreement shall be deemed given upon actual personal delivery to the notified Party or upon the expiration of two (2) days from the insertion of the notice, properly addressed and certified mail, return receipt requested, postage prepaid, in a U. S. Mail depository within California, or upon the expiration of seven (7) days from the insertion of the notice<sup>3</sup> in a U. S. Mail depository outside of California. Notices shall be sent to the addresses for the Parties as set forth below or as changed by either Party from time to time by written notice to the other Party.

Agency: El Cajon Housing Authority  
200 Civic Center Way  
El Cajon CA 92020  
Attn: Executive Director

And to: Jennifer L. Ficacci, Housing Manager  
City of El Cajon  
200 Civic Center Way  
El Cajon CA 92020

Borrower: Bay Kitchen and Bath Remodelers  
5480 Baltimore Drive #201  
La Mesa CA 921942  
Attn: James C. Miller and Marcia M. Miller

Section 7. Except as otherwise modified by this First Amendment each and every term and condition of the Agreement not in conflict herewith shall remain in full force and effect.

[Signatures on Following Page]



IN WITNESS WHEREOF the parties hereto have executed this First Amendment to Affordable Housing Agreement effective the date and year first written above.

EL CAJON HOUSING AUTHORITY, a public body, corporate and politic, successor in interest to the El Cajon Redevelopment Agency

Date \_\_\_\_\_

\_\_\_\_\_  
Douglas Williford, Executive Director

ATTEST:

\_\_\_\_\_  
Kathie J. Rutledge, Secretary

Bay Kitchen and Bath Remodelers

Date \_\_\_\_\_

\_\_\_\_\_  
James C. Miller, Owner

\_\_\_\_\_  
Marcia M. Miller, Owner

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Morgan L. Foley, General Counsel

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Jennifer L. Ficacci  
City of El Cajon Housing Manager

**AGENDA REPORT  
SUCCESSOR AGENCY OVERSIGHT BOARD  
February 20, 2013, Meeting**

**SUBJECT: SECOND AMENDMENT TO GROUND LEASE - DOMENICO DONATO  
(MANGIA BENE)**

**RECOMMENDED ACTION:** That the Oversight Board:

Adopt the next RESOLUTION in order approving a Second Amendment to Ground Lease between Domenico Donato for an assignment to a new Tenant, eliminating reference to use of 450 square feet of outdoor dining in the public right-of-way, and amending the "Restricted Premises" area to approximately 510 square feet.

**BACKGROUND:** On November 22, 2002, the former El Cajon Redevelopment Agency ("Agency") entered into a Ground Lease ("Lease") with Domenico Donato ("Tenant") for the purpose of constructing outdoor dining on a portion of Agency property known as Prescott Promenade for Mangia Bene Restaurant. The terms of the Lease included a 30-year term, 942 square feet at \$.84 per square foot, for total rent of \$791.28 per year.

The Lease was subsequently amended on January 22, 2003, to define certain terms, including the "Premises," and the Lease area was increased by 205 square feet of sidewalk in Prescott Promenade ("Restricted Premises"), which increased the rent by \$1.00, for total rent of \$792.28 per year.

The Tenant now desires to sell his interest in the restaurant and assign the Lease to another operator, and staff has received a request from Burner Nicolosi's, Inc., dba Nicolosi's Italian Restaurant, for Successor Agency consent to the assignment of the Lease as modified by a second amendment.

Article 10 of the Lease includes provisions for assignment so long as the assignee is "financially qualified and has sufficient experience in the operation and management of restaurants." Nicolosi's has been in business in the San Diego area since 1952 and is currently operating one very successful restaurant at their Navajo Road location.

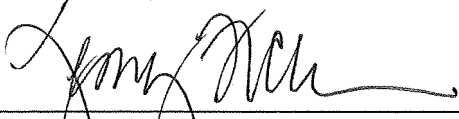
Proposed amendments to the Lease would include an assignment to the new operator, removal of the reference to use 450 square feet of outdoor dining in the public right-of-way, and amendment of the "Restricted Premises" square footage to approximately 510 square feet. The outdoor dining area is located within the public right-of-way and is under a separate agreement with the Public Works Department. Rent would remain at the minimum of \$792.28 per year for the remainder of the 30-year term.

**FISCAL IMPACT:** None. This activity would amend the existing Ground Lease, which is an enforceable obligation and tied to a former Redevelopment Agency property. No change in the Lease rent is contemplated by the proposed Amendment.

**ATTACHMENTS:**

1. Proposed Resolution
2. Ground Lease
3. First Amendment to Ground Lease
4. Request from Nicolosi's Italian Restaurant
5. Proposed Second Amendment to Ground Lease

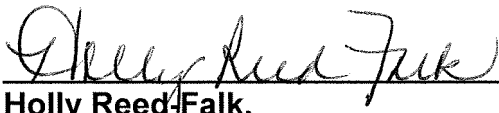
**Prepared by:**



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**Jenny Ficacci,  
Housing Manager**

**Reviewed by:**



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**Holly Reed-Falk,  
Financial Operations Manager**

**Approved by:**



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**Douglas Williford  
Executive Director/City Manager**

RESOLUTION NO. OB-05-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE  
SUCCESSOR AGENCY OF THE FORMER EL CAJON  
REDEVELOPMENT AGENCY APPROVING THE SECOND  
AMENDMENT TO GROUND LEASE - DOMINIC DONATO.

WHEREAS, Section 34181 (e) of the California Health and Safety Code provides that the Oversight Board shall direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for its approval. It further states that the Oversight Board may approve any amendments to or early termination of those agreements if it finds that the amendments or early termination would be in the best interest of the taxing entities; and

WHEREAS, the Oversight Board (the "Oversight Board") of the Successor Agency of the former El Cajon Redevelopment Agency (the "Successor Agency") held a meeting on February 20, 2013, at which time it considered an amendment under that certain Ground Lease with the tenant, Domenico Donato (the "Tenant"), dated November 22, 2002, and first amended on January 22, 2003, (the "Ground Lease"); and

WHEREAS, the Tenant now desires to sell the interest in his business and assign the Ground Lease to another operator as authorized under Article 10 of the Ground Lease, so long as the assignee is "financially qualified and has sufficient experience in the operation and management of restaurants"; and

WHEREAS, Burner Nicolosi's, Inc., dba Nicolosi's Italian Restaurant has operated a successful restaurant in the San Diego Area since 1952, and has submitted a request for the Successor Agency to consent to the transfer of the Ground Lease as modified by a second amendment; and

WHEREAS, minor revisions to the Ground Lease are necessary to remove 450 square feet of public right-of way that is under a separate City of El Cajon Public Works agreement, and correction of the "Restricted Premises" from 205 to 510 square feet;

WHEREAS, proposed amendment would be in the best interests of the Successor Agency, the City of El Cajon, and all taxing entities by encouraging economic development activities to continue without interruption.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference; and
  - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
  - 3. The proposed new amendment would be in the best interest of the taxing entities because it will result in economic development activities continuing without interruption in the City of El Cajon.
- B. The Oversight Board hereby APPROVES the proposed amendment to assign the Ground Lease with additional minor changes as presented in **Exhibit "A"**, with such changes as may be approved by the Executive Director.
- C. The Executive Director of the Successor Agency is hereby authorized to execute such documents as are reasonably necessary and proper to completely and fully compromise the aforementioned outstanding claim with the Tenant.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a special meeting held this 20<sup>th</sup> day of February, 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

---

Debra Turner-Emerson, Chairperson

ATTEST:

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Jennifer Ficacci, Acting Oversight Board Secretary

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## GROUND LEASE

This lease is entered into on the 22<sup>nd</sup> day of November, 2002, between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic, ("Landlord"), and Domenico Donato (the "Tenant").

A. Landlord is the owner of that certain public right-of-way in the City of El Cajon, County of San Diego, State of California, known as the "Prescott Promenade," including that portion of the Prescott Promenade (APN 488-211-08) owned by the Agency, described in Exhibit "A," which is attached hereto and made a part hereof by this reference (the "Premises").

B. Tenant desires to lease the Premises for the purpose of constructing an outside dining area to be used in conjunction with Tenant's commercial operations at 215-233 East Main Street, El Cajon, California (the "Restaurant"), in accordance with the agreement of the parties as set forth in this lease.

## ARTICLE 1

### LEASE OF PREMISES AND TERM OF LEASE

#### Agreement to Lease

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the right-of-way, exclusive of any right of access to or from the Prescott Promenade, El Cajon, and further exclusive of any improvements now and subsequently located on the Premises, notwithstanding that any improvements may, or shall be, construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in Landlord or in Tenant.

#### Status of Title

Section 1.02. Title to the leasehold estate created by this lease is subject to all exceptions, easements, rights, rights-of-way, and other matters of record, except that Tenant shall have the right to occupy the Premises exclusive of any public right-of-way owned by the Landlord.

Tenant recognizes that Landlord's interest in the Premises is subject to the rights of the owner of the underlying property. The parties agree that in the event Tenant should become possessed of the underlying fee ownership of the Premises while possessing a leasehold interest in Landlord's right-of-way interest in the Premises, there shall not occur



a merger of the interests so as to deprive Landlord of its established right of way interest.

Section 1.03. The term of this lease shall be for a period of thirty (30) years effective upon the issuance of the Certificate of Occupancy and continuing thereafter for thirty (30) years unless terminated earlier as provided in this lease.

no record  
4/16/03

## **ARTICLE 2**

### **RENT**

#### **Annual Rent**

Section 2.01. Tenant agrees to pay to Landlord annual rent (the "Rent") for each year during the term of this lease in the following amounts: \$791.28 per year. The Rent is calculated as follows: Patio space on Prescott Promenade – 492 sq. ft.; sidewalk area – 450 sq. ft.; for a total leased area of 942 sq. ft @ \$.84 per square foot. Should the actual square footage prove greater than 942 sq. ft., Tenant agrees to adjust rent to pay for the actual square footage of the Premises, except that in no circumstances is rent to be less than \$791.28 per year.

#### **Time and Place for Payment of Rent**

Section 2.02. All Rent provided for in Section 2.01 of this lease shall be paid by Tenant on an annual basis on the first day of each calendar year. All Rent required under this lease shall be paid to Landlord at El Cajon Redevelopment Agency, 200 East Main Street, El Cajon, California 92020, Attention: Executive Director, or any other place or places that Landlord may designate by written notice to Tenant.

#### **No Partnership or Joint Venture**

Section 2.03. Nothing in this lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

## **ARTICLE 3**

### **USE OF PREMISES**

#### **Permitted Use**

Section 3.01. Tenant shall use the Premises solely for the purpose of constructing, maintaining, and operating an outside dining facility to be used in conjunction with the Restaurant (the "Improvements"). Tenant shall not change the use of the Premises without first obtaining the written consent of Landlord. Tenant shall use its best

efforts to use and permit use of the Premises for purposes permitted by this Section 3.01, which, in Tenant's reasonable opinion, will attract patrons to the Restaurant in the downtown El Cajon area.

### **Compliance With Laws**

Section 3.02. Tenant shall, at Tenant's own cost and expense, obtain all permits necessary for the construction of the Restaurant and the Improvements on the Premises, and shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, both federal and state and county or municipal, including those requiring capital improvements to the Premises or Improvements relating to the use and occupancy of the Premises and the Restaurant (and specifically not limited to any particular use or occupancy by Tenant), whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Tenant shall maintain all licenses, permits, or other governmental authorizations throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

### **Prohibited Uses**

Section 3.03. Tenant shall not use or permit the Premises or any portion of the Premises to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any valid law, ordinance, or regulation of any federal, state, county, or local governmental agency, body, or entity. Tenant shall comply with all storm water discharge requirements implemented by the City of El Cajon, and shall comply with Order No. 2001-01 of the California Regional Water Quality Control Board, San Diego Region, creating waste discharge requirements. Furthermore, Tenant shall not maintain, commit, or permit the maintenance or commission of any nuisance as now or hereafter defined by any statutory or decisional law applicable to the Premises or any part of the Premises.

## **ARTICLE 4**

### **TAXES AND UTILITIES**

#### **Tenant to Pay Taxes**

Section 4.01. Tenant shall pay during the term of this lease, without abatement, deduction or offset, any and all real and personal property taxes, general and special assessments, business improvement district assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation, and further including any possessory interest taxes charged to Tenant as a result of its

leasehold interest in public right-of-way) of any description levied or assessed during the term of this lease by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, personal property located on or in the Premises or Improvements, and the leasehold estate created by this lease.

### **Payment Before Delinquency**

Section 4.04. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Tenant under this lease shall be paid by Tenant at least ten (10) days before such tax, assessment, or installment of tax or assessment becomes delinquent. On the written request of Landlord, Tenant shall deliver to Landlord the official and original receipt evidencing the payment of any taxes, assessments, and other charges required under this Article.

### **Tax-Hold Harmless Clause**

Section 4.05. Tenant shall indemnify and hold Landlord and Landlord's elected and appointed officers, directors, officials, agents, and employees, and Landlord's property, including the Premises, and any Improvements now or subsequently located on the Premises, free and harmless from any liability, loss or damages resulting from any taxes, assessments, or other charges required by this article to be paid by Tenant and from all interest, penalties, and other sums imposed thereon, and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

### **Utilities**

Section 4.06. Tenant shall pay or cause to be paid, and hold Landlord and Landlord's property including the Premises free and harmless from all charges for the furnishing of gas, water, electricity, telephone service and other public utilities to the Premises during the lease's term and for the removal of garbage and rubbish from the Premises during the term of this lease.

### **Payment by Landlord**

Section 4.07. Should Tenant fail to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Tenant, Landlord may, without notice to or demand on Tenant, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of Tenant. In that event, Tenant shall promptly on written demand of Landlord reimburse Landlord for the full amount paid by Landlord in paying, discharging, or adjusting that tax, assessment, or other charge together with interest thereon at the then-maximum legal rate from the date of payment by Landlord until the date of repayment by Tenant. If this Article does not specify the time within which Tenant must pay any charge required by this Article, Tenant shall pay that charge before it becomes delinquent.

## **ARTICLE 5**

### **CONSTRUCTION BY TENANT**

#### **Duty to Construct**

Section 5.01. Tenant shall, at Tenant's sole cost and expense, construct or cause to be constructed on the Premises the Improvements, including outside dining facilities and a trash enclosure, to be used solely in conjunction with the Restaurant in the manner and according to the terms and conditions specified in this Article.

#### **Requirement of Landlord's Written Approval**

Section 5.02. No structure or other improvement of any kind shall be constructed on the Premises unless and until Landlord has approved the plans, specifications, and proposed location of that structure or improvement in writing. Furthermore, no structure or other improvement shall be constructed on the Premises that do not comply with plans, specifications, and locations approved in writing by Landlord. Tenant's plans for improvements on the Premises shall also require the approval of the El Cajon Community Development Corporation Design Committee.

#### **All Work on Written Contract**

Section 5.03. All work required in the construction of the outside dining facility and trash enclosure, including any site preparation work, landscape work, and utility installation work, as well as actual construction work on the outside dining facility, shall be performed only by competent contractors licensed under the laws of the State of California and shall be performed in accordance with written contracts with those contractors. Each such contract shall provide that the final payment under the contract due to the contractor shall be in an amount equaling at least ten percent (10%) of the full amount payable under the contract and shall not be paid to contractor until whichever of the following last occurs:

(a) The expiration of thirty-five (35) days from the date of recording by Tenant as owner of a Notice of Completion of the outside dining facilities, Tenant agreeing to record that Notice of Completion promptly within the time specified by law for the recording of that notice; or

(b) The settlement and discharge of all liens of record claimed by persons who supplied either labor or materials for the construction of the outside dining facilities.

#### **Compliance With Law and Standards**

Section 5.04. The outside dining facilities shall be constructed, all work on the

Premises shall be performed, and all buildings or other improvements on the Premises shall be erected in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises; provided, however, that any structure or other improvement erected on the Premises, including the outside dining facilities, shall be deemed to have been constructed in full compliance with all such valid laws, ordinances, regulations and orders when a valid Certificate of Occupancy entitling Tenant to occupy and use the Improvements has been duly issued by the City of El Cajon. All work performed on the Premises under this lease, or authorized by this lease, shall be done in a good workmanlike manner and only with new materials of good quality and high standard.

### **Mechanics' Liens**

Section 5.05. At all times during the term of this lease, Tenant shall keep the Premises and all Improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. Should Tenant fail to pay and discharge or cause the Premises to be released from any such lien or claim of lien within twenty (20) days after service on Tenant of a written request from Landlord to do so, Landlord may pay, adjust, compromise, and discharge any such lien or claim or lien on any terms and in any manner that Landlord may deem appropriate. In that event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord, reimburse Landlord for the full amount paid by Landlord in paying, adjusting, compromising, and discharging that lien or claim of lien, including any attorneys' fees or other costs expended by Landlord, together with interest at the then-maximum legal rate from the date of payment by Landlord to the date of repayment by Tenant.

### **Ownership of Improvements**

Section 5.06. Title to all Improvements, including the outside dining facilities to be constructed on the Premises by Tenant, shall be owned by Tenant until expiration of the term or earlier termination of this lease. All Improvements, including the outside dining facilities, on the Premises at the expiration of the term or earlier termination of this lease shall, without compensation to Tenant, then automatically, and without any act of Tenant or any third party become Landlord's property. Tenant shall surrender the Improvements to Landlord at the expiration of the term or earlier termination of this lease, free and clear of all liens and encumbrances, other than those, if any, permitted under this lease or otherwise created or consented to by Landlord. Tenant agrees to execute, acknowledge, and deliver to Landlord any instrument requested by Landlord as necessary in Landlord's opinion to perform Landlord's right, title and interest to the Improvements and the Premises.

[Remainder of Page Intentionally Blank]

## **ARTICLE 6**

### **ENCUMBRANCE OF LEASEHOLD ESTATE**

#### **No Right of Tenant to Encumber**

Section 6.01. Tenant may not, at any time, encumber to any institutional lender regulated by state or federal authority, by deed of trust or mortgage or other security instrument, any of Tenant's interest under this lease and the leasehold estate hereby created in Tenant for any purpose or purposes whatsoever. In the event that Tenant requests permission to encumber the Premises, Tenant shall request, in writing, from Landlord, the consent of Landlord to the encumbrance of the Premises. The consent of Landlord may be at its sole discretion. Any leasehold encumbrance permitted by Landlord shall be under those terms and conditions, which Landlord reasonably believes necessary to protect its interest in the Premises. Any such leasehold encumbrance shall require that the Landlord must approve the financial stability of the Tenant, and any prospective subtenants. Further, the Landlord shall be entitled to cure any default under any such leasehold encumbrance as a term and condition of any encumbrance agreement.

#### **Tenant's Right to Encumber Restaurant**

Section 6.02. Nothing herein contained shall restrict or prohibit Tenant or its sublessee in its right to encumber the Restaurant only. It shall not be required that Tenant or sublessee seek the consent of Landlord for any financing which only encumbers the Restaurant and the real property upon which it is located.

## **ARTICLE 7**

### **REPAIRS AND RESTORATION**

#### **Maintenance by Tenant**

Section 7.01. At all times during the term of this lease Tenant shall, at Tenant's own cost and expense, keep and maintain the Premises, all Improvements, and all appurtenances now or hereafter on the Premises in a first-class condition, in good order and repair, and in a safe and clean condition.

#### **Requirements of Governmental Agencies**

Section 7.02. At all times during the term of this lease Tenant, at Tenant's own cost and expense, shall do all of the following:

- (a) Make all alterations, additions or repairs to the Premises or the Improvements on the Premises required by any valid law, ordinance, statute, order, or regulation now or

hereafter made or issued by any federal, state, county, local, or other governmental agency or entity;

(b) Observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the Improvements on the Premises by any federal, state, local or other governmental agency or entity; and

(c) Indemnify and hold Landlord, and its elected and appointed officers, directors, officials, agents, and employees, and the property of Landlord, including the Premises, free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with and perform the requirements of this Section.

### **Tenant's Duty to Restore Premises**

Section 7.03. If at any time during the term of this lease, any Improvements now or hereafter on the Premises are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, this lease shall continue in full force and effect and Tenant, at Tenant's own cost and expense, shall repair and restore the damaged Improvements. Any restoration by Tenant shall comply with the original plans for the Improvements described in Article 5, except as may be modified by Tenant to comply with any local building regulations, or except as may be otherwise modified by Tenant and approved in writing by Landlord. The work of repair and restoration shall be commenced by Tenant within sixty (60) days after the damage or destruction occurs and shall be completed with due diligence not later than one hundred twenty (120) days after the work is commenced. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for original construction work on the Premises set forth in Article 5 of this lease. Tenant's obligation for restoration described in this Section shall exist whether or not funds are available from insurance proceeds.

### **Application of Insurance Proceeds**

Section 7.04. Any and all fire or other insurance proceeds that become payable at any time during the term of this lease because of damage to or destruction of any Improvements on the Premises shall be paid to Tenant and applied by Tenant toward the cost of repairing and restoring the damaged or destroyed Improvements in the manner required by Section 7.03 of this lease.

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## ARTICLE 8

### INDEMNITY AND INSURANCE

#### Indemnity Agreement

Section 8.01. Tenant shall indemnify and hold Landlord, and Landlord's elected and appointed officers, officials, directors, agents, and employees, and Landlord's property, including the Premises and Improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

(a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while that person or property is in or on the Premises or in any way connected with the Premises or with any of the Improvements or personal property on the Premises;

(b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(d) Tenant's failure to perform any provision of this lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

#### Liability Insurance

Section 8.02. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this lease a broad form comprehensive coverage policy of public liability insurance issued by an insurance company licensed and admitted by the State of California insuring Tenant and Landlord against loss or liability caused by or connected with Tenant's occupation and use of the Premises under this lease in amounts and under the terms of El Cajon City Council Policy No. D-3, a copy of which is attached as Exhibit "B" hereto and incorporated herein by this reference.



## **Fire and Casualty Insurance**

Section 8.03. Tenant shall, at Tenant's own cost and expense, at all times during the term of this lease, keep all Improvements on the Premises insured for their full replacement value by insurance companies authorized to do business in the State of California against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the county where the Premises are located. If at any time a leasehold encumbrance is in existence, the policy shall also contain a standard lender endorsement.

## **Deposit of Insurance With Landlord**

Section 8.04. Tenant shall, within ten (10) days after the execution of this lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Landlord a true and correct copy of each insurance policy required by this Article of this lease or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.

## **Notice of Cancellation of Insurance**

Section 8.05. Each insurance policy required under this Article shall contain a provision that it cannot be canceled for any reason unless at least ten (10) days' prior written notice of the cancellation is given to Landlord in the manner required by this lease for service of notices on Landlord by Tenant.

## **ARTICLE 9**

### **CONDEMNATION**

#### **Total Condemnation**

Section 9.01. If, during the term of this lease, fee title to all of the Premises or to all of the Improvements, or the entire leasehold estate of Tenant is taken under the power of eminent domain by any public or quasi-public agency or entity (a "Total Taking"), this lease shall terminate as of 12:01 a.m. on whichever of the following occurs first: (1) the date legal title becomes vested in the agency or entity exercising the power of eminent domain, or (2) the date actual physical possession is taken by the agency or entity exercising the power of eminent domain. Thereafter, both Landlord and Tenant shall be released from all obligations under this lease, except those specified in Section 9.05.

#### **Partial Taking--Restaurant**

Section 9.02. If at any time during the term of this lease, a taking of the adjacent

Restaurant occurs, although the Premises are not taken, Tenant shall have the right to terminate this lease without penalty subject to the terms of Section 9.04 herein.

### **Condemnation Award**

Section 9.03. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages awarded or payable because of the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of Landlord, free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant;

(b) All compensation or damages awarded or payable because of any Improvements constructed or located on the portion of the Premises taken by eminent domain when this lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall belong to and be the sole property of Tenant; and

(c) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of Landlord.

## **ARTICLE 10**

### **ASSIGNMENT AND SUBLEASING**

#### **No Assignment Without Landlord's Consent**

Section 10.01. Tenant may assign this lease or any interest in this lease, subject to the prior written consent of Landlord, which shall not be unreasonably withheld or delayed, provided that the proposed assignee is financially qualified and has sufficient experience in the operation and management of restaurants, to perform all of the agreements, undertakings, and covenants of this lease and all other agreements entered into by Tenant which relate to the management, operation, maintenance, construction, and restoration of the Improvements and the Premises. Landlord shall have thirty (30) days after receipt of information regarding a proposed assignee to notify Tenant of whether it consents or does not consent to the proposed assignment. Absent any notification of Landlord during the 30-day period, Landlord shall be conclusively deemed to have consented to the assignment. Consent by Landlord to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment made contrary to the terms of this Section shall be null and void unless otherwise permitted by this Article.

### **Tenant's Right to Sublease**

Section 10.02. Tenant shall have the right to sublease all or any portion of the Premises from time to time, and at all times during the term of this lease, without Landlord's consent; provided, however, that the following conditions are met:

- (a) The term of any sublease shall not extend beyond the term of this lease;
- (b) Any and all subleases shall be expressly made subject to all of the terms, covenants, and conditions of this lease; and
- (c) Any subtenant shall be required to attorn to Landlord in the event of Tenant's default under this lease.

### **Transfers to or by Corporation**

Section 10.03. Notwithstanding Section 10.01 of this lease, Tenant may, without the prior consent of Landlord, transfer and assign all of Tenant's interest under this lease and the leasehold estate created under this lease to a corporation now or hereafter organized in which Tenant owns at least ninety percent (90%) of all outstanding shares of stock. If Tenant is a corporation, or if Tenant's interest in this lease is assigned to a corporation under the sentence above, any transfer or assignment of any stock or interest in the corporation totaling in the aggregate more than twenty percent (20%) of all stock or interest in the corporation shall be considered an assignment of this lease requiring the prior written consent of Landlord and subject to the standards set forth in Section 10.01; provided, however, that any transfer of shares to a shareholder's spouse, children, or grandchildren caused by the shareholder's death shall be excepted from this requirement.

## **ARTICLE 11**

### **DEFAULT AND REMEDIES**

#### **Continuation of Lease in Effect**

Section 11.01. Should Tenant breach this lease and abandon the Premises before the natural expiration of the lease's term, Landlord may continue this lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all Landlord's rights and remedies under this lease, including the right to recover the rent specified in this lease as it becomes due under this lease.

#### **Termination and Unlawful Detainer**

Section 11.02. In the event of a tenant default under this lease, Landlord may terminate this lease by written notice and may also bring an action in addition to or in lieu of

any other rights or remedies of Landlord to reenter and regain possession of the Premises by the laws of unlawful detainer of the State of California then in effect.

### **Breach and Default by Tenant**

Section 11.03. All covenants and agreements contained in this lease are declared to be conditions of this lease and to the term hereby leased to Tenant. Should Tenant fail to perform any covenant, condition, or agreement contained in this lease and the default is not cured within thirty (30) days after written notice of the default is served on Tenant by Landlord (except for the failure to pay rent which shall require three (3) days' notice), then Tenant shall be in default under this lease. In addition to Tenant's failure to perform any covenant, condition, or agreement contained in this lease within the cure period permitted by this Section, the following shall constitute a default by Tenant under this lease:

(a) The appointment of a receiver to take possession of the Premises or the Improvements, or of Tenant's interest in, to, and under this lease, the leasehold estate, or of Tenant's operations of the Premises for any reason, including, without limitation, assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings, when not released within sixty (60) days;

(b) An assignment by Tenant for the benefit of creditors; or the voluntary filing by Tenant or the involuntary filing against Tenant of a petition, other court action, or suit under any law for the purpose of (1) adjudicating Tenant a bankrupt, (2) extending time for payment, (3) satisfaction of Tenant's liabilities, or (4) reorganization, dissolution, or arrangement on account of, or to prevent, bankruptcy or insolvency; provided, however, that in the case of an involuntary proceeding, if all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed within ninety (90) days after the filing or other initial event, then Tenant shall not be in default under this Section; and

(c) The subjection of any right or interest of Tenant to or under this lease to attachment, execution, or other levy, or to seizure under legal process when the claim against Tenant is not released within 90 days.

### **Cumulative Remedies**

Section 11.04. The remedies given to Landlord in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this lease.

### **Waiver of Breach**

Section 11.05. The waiver by Landlord of any breach by Tenant of any of the

provisions of this lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant of either the same or a different provision of this lease.

### **Surrender of Premises**

Section 11.06. On expiration or earlier termination of this lease, Tenant shall surrender the Premises and all Improvements in or on the Premises to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

## **ARTICLE 12**

### **OTHER PROVISIONS**

#### **Force Majeure**

Section 12.01. Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason or any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay will be excused. However, nothing contained in this Section shall excuse the prompt payment of rent by Tenant as required by this lease or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

#### **Notices to Landlord**

Section 12.02. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Landlord by Tenant shall be in writing and shall be deemed duly served and given when personally delivered to Landlord, to any managing employee of Landlord, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, and sent by express mail that allows for tracking, addressed to Landlord at 200 East Main Street, El Cajon, California 92020. Landlord may change Landlord's address for the purpose of this section by giving written notice of that change to Tenant in the manner provided in Section 12.03.

#### **Notices to Tenant**

Section 12.03. Except as otherwise provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, to any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid,

and sent by express mail that allows for tracking, addressed to Tenant at 215-233 East Main Street, California 92020. Tenant may change Tenant's address for the purpose of this section by giving written notice of that change to Landlord in the manner provided in Section 12.02.

### **Governing Law**

Section 12.04. This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises. Any such action shall be brought in the Superior Court for the County of San Diego, East County Division. Tenant hereby expressly waives any right to remove any such action from San Diego County as otherwise permitted by California Code of Civil Procedure section 394.

### **Binding on Heirs and Successors**

Section 12.05. This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this Section shall be construed as a consent by Landlord to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 10 of this lease.

### **Partial Invalidity**

Section 12.06. If any provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.

### **Sole and Only Agreement**

Section 12.07. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, the construction of the outside dining facilities described in this lease on the Premises, and the lease terms set forth in this lease; and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this lease not expressly set forth in this instrument are null and void.

### **Time of Essence**


Section 12.08. Time is expressly declared to be of the essence of this lease.

## Memorandum of Lease for Recording

Section 12.09. Neither Landlord nor Tenant shall record this lease without the written consent of the other. However, Landlord and Tenant shall, at the request of either at any time during the term of this lease, execute a memorandum or "short form" of this lease for purposes of, and in a form suitable for, recordation. The memorandum or "short form" of this lease shall describe the parties, set forth a description of the leased premises, specify the term of this lease, incorporate this lease by reference, and include any other provisions required by law.

EXECUTED on November 22, 2002, at El Cajon, California.

EL CAJON REDEVELOPMENT AGENCY

By   
Bill Garrett, Executive Director

ATTEST:

  
Marilynn Linn, Secretary

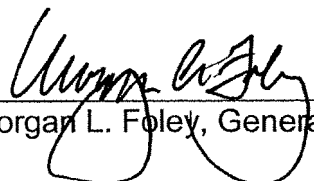
TENANT

By:  11-21-02  
Domenico Donato

APPROVED AS TO CONTENT:

  
David D. Cooksy, Redevelopment Manager

APPROVED AS TO FORM:

  
Morgan L. Foley, General Counsel

COUNCIL DATE: 11-12-02  
ITEM#: Closed Session

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (the "First Amendment"), is made and entered into effective this 22 day of JANUARY, 2003, by and between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic, (the "Landlord") and DOMENICO DONATO (the "Tenant").

RECITALS

1. Landlord and Tenant have entered into that certain Ground Lease, dated November 22, 2002 (the "Lease"), by which Landlord and Tenant established the terms and conditions for lease, by Landlord, to Tenant, of that certain real property located on approximately 942 square feet of land adjacent to property leased or owned by Tenant at 215-233 East Main Street, El Cajon, California, as more particularly described in the Lease (the "Premises").

2. The parties desire to amend the lease to change the area leased by the Tenant, from the Landlord, thereby redefining the term, "Premises", adjusting the rent for the Premises (as redefined), and limiting the use of portions of the Premises.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Section 1.01 to the lease is hereby amended to read as follows:

Section 1.01. For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, "the Premises" includes the right-of-way, exclusive of any right of access to or from the Prescott Promenade, El Cajon, and further exclusive of any improvements now and subsequently located on the Premises, notwithstanding that any improvements may, or shall be, construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the improvements is in Landlord or in Tenant. Notwithstanding the foregoing, the Premises shall include a portion of right-of-way, which shall be restricted in use by the Tenant, and shall remain open to the public, and maintained by the Landlord, and shall be designated as "Restricted Premises" in Exhibit "A" of this Lease. P

Section 2. Section 2.01 to the Lease is hereby amended to read as follows:

Section 2.01. Tenant agrees to pay to Landlord annual rent (the "Rent") for each year during the term of this lease in the following amounts: \$792.28 per year. The Rent is calculated as follows: Patio space on Prescott Promenade – 492 square feet; sidewalk area – 450 square feet; for a total of unrestricted leased area of 942 square feet @ \$.84 per square foot; Restricted Premises – 205 square feet @ \$1.00 per 205 square feet. Should the actual square footage of unrestricted leased area prove greater than 942 square



feet, Tenant agrees to adjust rent to pay for the actual square footage of the Premises, except that in no circumstances is rent to be less than \$792.28 per year. Should the actual square footage of the Restricted Premises prove greater or less than 205 square feet, the annual rent for this leased area shall remain \$1.00.


Section 3. Exhibit "A" to the lease is hereby replaced by a new Exhibit "A", attached hereto as Exhibit 1 to this First Amendment, and made a part of the lease by this reference.

Section 4. Except as otherwise amended by this First Amendment, the lease shall remain in full force and effect.

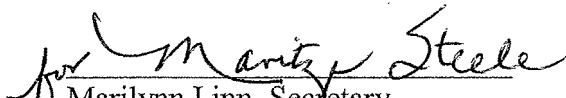
IN WITNESS WHEREOF, Landlord has caused this First Amendment to Ground Lease to be signed and executed on its behalf by its Executive Director, duly attested by its Secretary, and the Tenant has signed and executed this First Amendment to Ground Lease, effective the date first written above.

"LANDLORD"


EL CAJON REDEVELOPMENT  
AGENCY

By   
Bill Garrett, Executive Director

ATTEST:

  
Marilynn Linn, Secretary

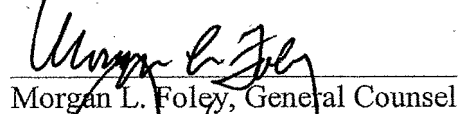
APPROVED AS TO CONTENT:

  
David D. Cooksy,  
Redevelopment Manager

"TENANT"

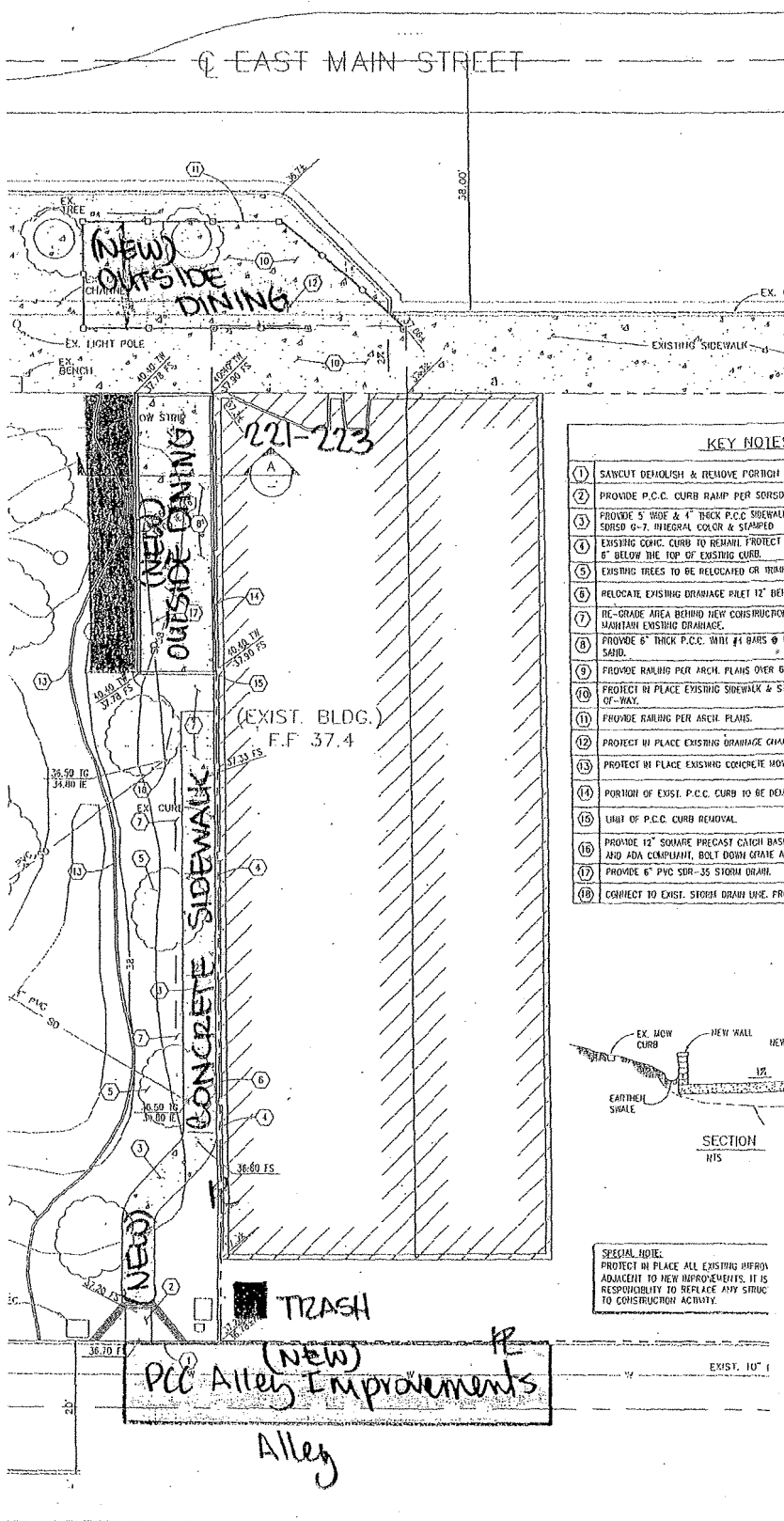
  
Domenico Donato

APPROVED AS TO FORM:

  
Morgan L. Foley, General Counsel

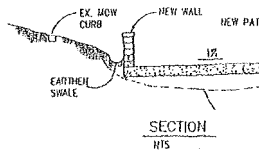
COUNCIL DATE: 11/12/02  
ITEM#: 10.

# EXHIBIT "1"



## KEY NOTES

- (1) SAWCUT DEMOLISH & REMOVE PORTION OF
- (2) PROVIDE P.C.C. CURB RAMP PER SORSO G
- (3) PROVIDE 5' WIDE & 4" THICK P.C.C. SIDEWALK 0 SORSO G-7, INTEGRAL COLOR & STAMPED
- (4) EXISTING CONC. CURB TO REMAIN PROTECT IN 6" BELOW THE TOP OF EXISTING CURB
- (5) EXISTING TREES TO BE RELOCATED OR REMOVED
- (6) RELOCATE EXISTING DRAINAGE RILET 12" BEHIND
- (7) RE-GRADE AREA BEHIND NEW CONSTRUCTION TO MAINTAIN EXISTING DRAINAGE
- (8) PROVIDE 6" THICK P.C.C. WITH #4 BARS @ 18" SAID.
- (9) PROVIDE RAILING PER ARCH. PLANS OVER 6" IN
- (10) PROTECT IN PLACE EXISTING SIDEWALK & STRIP OF WAY
- (11) PROVIDE RAILING PER ARCH. PLANS
- (12) PROTECT IN PLACE EXISTING DRAINAGE CHANNEL
- (13) PROTECT IN PLACE EXISTING CONCRETE HOW DO
- (14) PORTION OF EXIST. P.C.C. CURB TO BE DEMOLISH
- (15) LIMIT OF P.C.C. CURB REMOVAL
- (16) PROVIDE 12" SQUARE PRECAST CATCH BASIN IN AND ADA COMPLIANT, BOLT DOWN GRATE AND T
- (17) PROVIDE 6" PVC SDR-35 STORM DRAIN
- (18) CONNECT TO EXIST. STORM DRAIN LINE, PROTECT



SPECIAL NOTE:  
PROTECT IN PLACE ALL EXISTING INFRASTRUCTURE ADJACENT TO NEW IMPROVEMENTS. IT IS RESPONSIBILITY TO REPLACE ANY STRUCTURE TO CONSTRUCTION ACTIVITY.

*Nicolosi's Italian Restaurant*

7005 Navajo Road  
San Diego, Ca 92119  
619-461-5757 Fax 619-461-4616

Dennis Davies  
Deputy Director of Public Works  
City of El Cajon

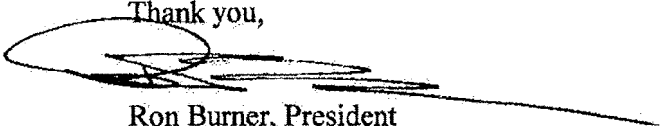
Re: Agreement for use of property 221/223 East Main St.

Dear Dennis,

Burner Nicolosis, Inc. dba Nicolosi's Italian Restaurant would like to continue with the lease as we are the new tenants for the above mentioned property. Please proceed with the amend the current agreement to insert us at the tenant.

Any questions please feel free to call,

Thank you,



Ron Burner, President  
619-249-3407

## SECOND AMENDMENT TO GROUND LEASE

THIS SECOND AMENDMENT is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF EL CAJON solely in its capacity as the successor agency to the EL CAJON REDEVELOPMENT AGENCY (the "Landlord") and DOMENICO DONATO (the "Tenant").

### RECITALS

1. The El Cajon Redevelopment Agency (the "Agency") and the Tenant entered into that certain Ground Lease, dated November 22, 2002 (the "Lease"), by which Agency and Tenant established the terms and conditions for lease, by Agency, to Tenant, of that certain property located on approximately 942 square feet of land adjacent to property leased by Tenant at 215-233 East Main Street, El Cajon, California, as more particularly described in the Lease (the "Premises").

2. On January 22, 2003, Agency and Tenant instituted the First Amendment to Ground Lease (the "First Amendment") to change the area leased by Tenant, from the Agency, thereby redefining the Premises, adjusting the rent for the Premises, and limiting the use of portions of the Premises.

3. On February 1, 2012, the Agency was dissolved by operation of law as required by Assembly Bill 1X 26 ("AB1X 26") and the California Supreme Court decision in *California Redevelopment Agency v. Matosantos*, upholding AB 1X 26; following the dissolution of the Agency the City became the successor agency to the Agency, as set forth in AB 1X 26 (the "Successor Agency"), and thereby is responsible for acting in place of the Agency.

4. The Lease, as amended by the First Amendment provides, among other things, that the Lease may be assigned by Tenant, subject to the consent of the Agency, provided the proposed assignee is financially qualified and meets certain other criteria.

5. On or about \_\_\_\_\_ 2012, Donato entered into an agreement to sell the business for which the Lease use was intended to Nicolosi's Italian Restaurant ("Nicolosi's"), and Nicolosi's has sought the consent from the Landlord for an assignment of the Lease for the operation of a restaurant at the Premises.

6. This Second Amendment is necessary to consent to the assignment of the Lease from Tenant to Nicolosi's, to recognize the City of El Cajon, solely in its capacity as successor agency to the Agency for purposes of the Lease, and to amend provisions in the Lease regarding the use of the Premises and the payment of rent.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Section 2.01 of the Lease is hereby amended to read as follows:

Section 2.01. Tenant agrees to pay to Landlord annual rent (the "Rent") for each year during the term of this lease in the following amounts: \$792.28 per year. The Rent is to be paid for use of the following areas: Patio space on Prescott Promenade – 492 square feet, for a total of unrestricted leased area of 492 square feet; Restricted Premises – 510 square feet. Should the actual square footage of unrestricted leased area prove greater than 492 square feet, Tenant agrees to adjust rent to pay for the actual square footage of the Premises, except that in no circumstances is rent to be less than \$792.28 per year. Should the actual square footage of the Restricted Premises prove greater or less than 510 square feet, the annual rent for this leased area shall remain unchanged.

Section 2. Exhibit "A" to the lease is hereby replaced by a new Exhibit "A," attached hereto as Exhibit "1" to this Second Amendment, and made part of the Lease by this reference.

Section 3. Landlord consents to the assignment to Nicolosi's of the Lease dated November 22, 2002, and amended from time to time, between the Agency and Tenant. Any and all references in the Lease to "Domenico Donato" shall be deleted and replaced with "Nicolosi's Italian Restaurant."

Section 4. Any and all references in the Lease to the "El Cajon Redevelopment Agency" shall be deleted and replaced with "City of El Cajon, solely in its capacity as successor agency to the El Cajon Redevelopment Agency."

Section 5. This Second Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

Section 6. This Second Amendment shall not be effective without the approval of the Oversight Board to the Successor Agency. Upon approval of the Oversight Board, the payment of annual rent to Landlord as set forth in Section 7, below, and the complete execution by each of the parties, this Second Amendment shall be in full force and effect.

Section 7. Rent for 2013 of \$792.28, due on January 1, 2013, must be paid prior to the execution of this Second Amendment.

Section 8. Except as otherwise modified by this Second Amendment, each and every term and condition of the Lease and the First Amendment not in conflict herewith shall remain in full force and effect.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment the date and year first above written.

LANDLORD

City of El Cajon solely as successor agency  
to El Cajon Redevelopment Agency

TENANT

By \_\_\_\_\_  
Douglas Williford, Executive Director

By: \_\_\_\_\_  
Domenico Donato

Attest:

\_\_\_\_\_  
Kathie J. Rutledge, Secretary

Approved as to Form:

\_\_\_\_\_  
Morgan L. Foley, City Attorney