

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.

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

AYES: ABUSHABAN, BUXBAUM, CHADWICK, GRIFFIN, GRIFFITHS,
RANU, TURNER-EMERSON
NOES: NONE
ABSENT: NONE



Debra Turner-Emerson, Chairperson

ATTEST:



Jennifer Ficacci, Oversight Board Acting Secretary

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement") is made as of this 14TH 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, whichever 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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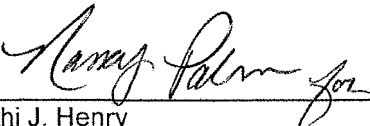
Section 2.9 – Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one counterpart.

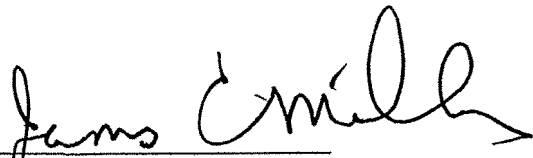
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

AGENCY:

BORROWER:

EL CAJON REDEVELOPMENT AGENCY,

By: 
Kathi J. Henry
Executive Director

By: 
James C. Miller

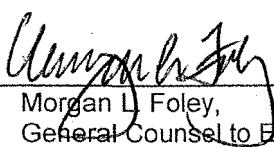
Its: OWNER

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. McMillen, Notary Public (insert name and title of the officer) personally appeared James S. 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. McMillen
Signature of Notary



EXHIBIT "A"
TO
AFFORDABLE HOUSING AGREEMENT

GREENOVATION PROJECT BUDGET				
	Description/Payee	TOTAL COST		
		Estimate	Eligible Cost	Ineligible Cost
PROPERTY ADDRESS:				
ACQUISITION				
	Site and/or Land Cost	Seller: John Smith	\$179,000.00	\$179,000.00
	Appraisal	Corps 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
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 ch. #list	\$5,000.00	\$5,000.00
	Heating, Ventilation & AC	See checkis	\$5,000.00	\$5,000.00
	Renewable Energy	See checkis	\$0.00	\$0.00
	Building Performance	See checklist	\$7,500.00	\$7,500.00
	Finishes	See checklist	\$6,000.00	\$6,000.00
	Flooring	See checklist	\$6,500.00	\$6,500.00
	Appliances & Lighting(1)	See checklist	\$3,500.00	\$1,500.00
	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
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	\$4,216.88	\$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			\$35,825.63	\$35,359.38
TOTAL PROJECT BUDGET			\$295,025.63	\$292,859.38
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)				
			(\$12,869.38)	
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,**

INDEMNITOR:

By: _____
Kathi J. Henry, Executive Director

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, in 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 appraisal before sale of any portion of the Security, (b) all rights of valuation, appraisal, 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 ____th 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. Section 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 notice³ 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