



Agenda Item B.4
CONSENT CALENDAR
Meeting Date: October 7, 2008

TO: Mayor and Councilmembers
Redevelopment Agency Chair and Agency Members

FROM: Dan Singer, City Manager and Redevelopment Agency Executive Director

CONTACT: Vyto Adomaitis, Redevelopment Agency, Neighborhood Services & Public Safety Director

SUBJECT: Sumida Gardens Assignment and Subordination Documents

RECOMMENDATION:

Authorize the City Manager/Redevelopment Agency Executive Director to execute the Assignment and Subordination Documents related to the Sumida Gardens Project.

BACKGROUND:

On November 19, 2007, the City Council and Redevelopment Agency respectively approved the Development Agreement, Affordable Housing Assistance Agreement, and jointly approved the Rental Restrictive Covenant for the Sumida Gardens Project.

DISCUSSION:

The applicant has requested the City/RDA's consent to an assignment of the Development Agreement, the Affordable Housing Assistance Agreement and the Rental Restrictive Covenant and subordination of the City/RDA's security interest. These assignments and subordination were contemplated by the parties in the respective agreements and the City/RDA agreed to not unreasonably withhold consent to the assignment or subordination.

In the Development Agreement, Sections 8.2 and 8.3 entitled "Mortgagee Rights and Protections," and "Assignments and Transfers of Ownership" outline the City's concurrence with Sumida Gardens to subordinate its stake in the property should Sumida Gardens seek to attain outside financing for completion of the project. Similarly, in the Affordable Housing Assistance Agreement, Section 6.3 entitled "Security Financing; Rights of Institutional Lenders and Other Lenders," outlines the RDA's concurrence with regards to subordination.

Legal Counsel has reviewed these documents and found them consistent with the Development Agreement (DA), Affordable Housing Assistance Agreement (AHAA), and Rental Restrictive Covenant (RRC). They are appropriate and in order for processing.

ALTERNATIVES:

The City Council and Redevelopment Agency could decide not to authorize the execution of these documents at this time. However, failure to do so would go against conditions agreed upon in the existing DA, AHAA, and RRC with Sumida Gardens.

FISCAL IMPACTS:

There are no fiscal impacts with the execution of these documents as they are mechanisms to comply with stipulations already agreed to in the respective DA, AHAA, RRC agreements which were approved by the City Council/RDA Board on November 19, 2007.

LEGAL REVIEW:

The attached documents have undergone legal review by the City Attorney's Office, as well as the City's contract law firm, Burke Williams & Sorenson, LLP.

Submitted By:

Reviewed By:

Approved By:

Vyto Adomaitis
RDA, NS & Public Safety
Director

Michelle Greene
Administrative Services
Director

Daniel Singer
City Manager
RDA Executive Director

ATTACHMENTS:

1. Subordination Agreement
2. Consent to Collateral Assignment of Development Agreement
3. Consent to Collateral Assignment of Affordable Housing Assistance Agreement
4. Consent to Collateral Assignment of Rental Restrictive Covenant

ATTACHMENT 1

Subordination Agreement

**Recording Requested By
And When Recorded Mail To:**

City National Bank
555 South Flower St., 25th Fl., RE 054
Los Angeles, CA 90071

Attn: Janet Fluent
Loan No. XX0590-21028

A.P.N.: 071-330-12

**SUBORDINATION AGREEMENT
(Prior Encumbrance)**

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

This Subordination Agreement ("Agreement") is made as of the ____ day of _____, 2008 by and between Sumida Gardens L.P., a California limited partnership ("Owner"), owner of the land hereinafter described and The Redevelopment Agency for the City of Goleta, a public body, corporate and public and organized and existing under the laws of the State of California ("Beneficiary"), present owner and holder of the deed of trust given to secure the obligations referred to therein, dated August 8, 2008 ("Instrument"), to First American Title Insurance Company, a California corporation, as trustee, covering that certain real property ("Property") located in the County of Santa Barbara, more particularly described as:

See Exhibit "A" attached hereto and made a part hereof.

Said Instrument was recorded in the Office of the County Recorder of Santa Barbara County as Instrument No. 2008-0048809 on August 18, 2008.

1. RECITALS.

1.1 Owner has executed, or is about to execute, a deed of trust ("Trust Deed") securing the obligation referred to therein dated _____, 2008, in favor of **City National Bank**, a national banking association ("CNB"), which Trust Deed is to be recorded concurrently herewith;

1.2 It is a condition precedent to obtaining the extension of credit secured by such Trust Deed that the Trust Deed shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Instrument;

1.3 CNB is willing to make the extension of credit secured by such Trust Deed, provided that the Trust Deed is a lien or charge upon the Property prior and superior to the lien or charge of the Instrument, and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the Instrument to the lien or charge of the Trust Deed; and

1.4 It is to the mutual benefit of the parties hereto that CNB make the extension of credit secured by such Trust Deed; and Beneficiary is willing that the Trust Deed shall, when recorded, constitute a lien or charge upon the Property which is unconditionally prior and superior to the lien or charge of the Instrument.

2. AGREEMENT.

THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce CNB to make the extension of credit secured by such Trust Deed, it is hereby declared, understood and agreed as follows:

2.1 That the Trust Deed, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Instrument and for all purposes, the Trust Deed shall be deemed recorded prior to the Instrument and CNB shall be deemed not to have notice of the Instrument within the meaning of California Civil Code 1217;

2.2 That any estate in the Property acquired by Beneficiary shall be fully subject to the Trust Deed;

2.3 That CNB would not make the extension of credit secured by such Trust Deed without this Agreement; and

2.4 That this Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Instrument to the lien or charge of the Trust Deed, and shall supersede and cancel, but only insofar as would affect the priority between the Trust Deed and the Instrument, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Instrument which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to other mortgage or mortgages.

3. Beneficiary declares, agrees and acknowledges that:

3.1 Beneficiary consents to and approves (i) the Trust Deed and all provisions of the extension of credit secured by such Trust Deed, and (ii) all agreements, including, but not limited to, any loan or escrow agreements for the disbursements pursuant to the extension of credit secured by such Trust Deed;

3.2 CNB, in making disbursements pursuant to any such extension of credit secured by such Trust Deed, is under no obligation or duty to, nor has CNB represented that will, see to the application of such proceeds by the persons to whom CNB disburses such proceeds and any application or use of such proceeds for the purposes other than those provided in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

3.3 Beneficiary intentionally and unconditionally waives, relinquishes and subordinates the lien or charge of the Instrument upon the Property in favor of the lien or charge of the Deed of Trust upon the Property and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made pursuant to such extension of credit secured by such Trust Deed and, as part and parcel thereof, specific monetary and other obligations are being and will be entered

into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

3.4 An endorsement has been placed upon the Note secured by the Instrument that the lien or charge of the Instrument has, by this Agreement, been subordinated to the lien or charge of the Trust Deed.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY BUT WHICH WILL BE USED IN CONNECTION WITH THE DEVELOPMENT OF THE PROPERTY.

Beneficiary

Redevelopment Agency for the City of Goleta, a public body, corporate and public

By: _____

Its: _____

Owner

SUMIDA GARDENS L.P.,
a California limited partnership

By: Michael Towbes Construction & Development, Inc.,
a California corporation

Its: General Partner

By: _____
Michael Towbes, President

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (SEAL)

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____ (SEAL)

Exhibit "A"

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

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

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

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

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

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

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

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

SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-65586 OF OFFICIAL RECORDS.

APN 071-330-12

ATTACHMENT 2

Consent to Collateral Assignment of Development Agreement

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

City National Bank
555 South Flower St., 25th Fl.
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Janet Fluent

Loan No. XX6454-21028

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

**COLLATERAL ASSIGNMENT OF
DEVELOPMENT AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made as of this ___ day of _____, 2008, by **Sumida Gardens L.P.**, a California limited partnership ("Assignor"), in favor of **City National Bank**, a national banking association ("Assignee"), with reference to the following facts which are incorporated herein by this reference.

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith (the "Loan Agreement"), Assignee is making a loan to Assignor in the principal amount of \$30,500,000.00 (the "Loan"), which is evidenced by the Note described in Section 1.2 of the Loan Agreement. The Note is to be secured by, among other things, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Construction Deed of Trust"), covering Assignor's interest in that certain real and personal property (the "Property") located in Santa Barbara County, California, as more particularly described in Exhibit "A" attached hereto and made a part hereof, and such other collateral as may be required by Assignee, as provided therein.

WHEREAS, pursuant to Section 5.15 of the Loan Agreement, Assignor is required to give this Assignment to Assignee.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Assignor hereby creates in favor of, and assigns and transfers to Assignee, its successors and assigns, a security interest in and to all of Assignor's rights under the Development Agreement by and between Sumida Family Limited Partnership, a California limited partnership ("Original Owner"), and City of Goleta, a municipal corporation ("City"), dated as of November 19, 2007, and assigned to Assignor pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008, by and between Original Owner and Assignor, as it may from time to time be supplemented, modified, amended, restated or extended (the "Development Agreement").

2. With respect to this Assignment, Assignor hereby represents, warrants and covenants to Assignee as follows:

2.1 This Assignment is made as additional security for the obligations of Assignor incurred and to be incurred under the Loan Documents and, until the occurrence of an Event of Default by Assignor thereunder or under any other document or instrument evidencing, securing or pertaining to the Loan and so long as such Event of Default is continuing, Assignor shall have the right to enjoy and exercise all rights, remedies, benefits and privileges under the Development Agreement.

2.2 Assignor is the absolute owner of the rights under the Development Agreement, and with the consent of the City given on the Consent attached hereto, Assignor has full rights to transfer to Assignee such rights, interests, power and authority as are granted and confirmed hereunder.

2.3 Assignor is not in default under the Development Agreement and no event has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by Assignor under the Development Agreement; Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and conditions hereof, or which would limit Assignee in such operation; and Assignor has satisfied all requirements of the Development Agreement to have been satisfied as of the date of this Assignment, including without limitation, the Conditions to Approval attached as Exhibit C to the Development Agreement and the requirements of the Mitigation Monitoring Program (as defined in the Development Agreement).

2.4 To protect the security granted under this Assignment, Assignor further covenants and agrees:

(a) To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Development Agreement which is to be performed by the Assignor thereunder; to give prompt notice to Assignee of any notice of default on the part of Assignor with respect to the Development Agreement received from City, together with an accurate and complete copy of such notice, and at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Development Agreement to be performed by City.

(b) Should Assignor fail to make any payment or to do any act as herein provided, then Assignee may, but without obligation to do so and without notice to or demand on

Assignor, and without releasing Assignor from any obligation hereof, make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Development Agreement, and in exercising any such powers, pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

3. Assignor hereby irrevocably constitutes, designates and appoints Assignee as Assignor's true and lawful attorney-in-fact, upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, with full power of substitution and authority to undertake and exercise any rights, benefits, privileges or remedies of Assignor under the Development Agreement or as may be provided or permitted by law in regard to the rights, remedies, privileges and benefits of Assignor thereunder.

4. Upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, Assignee may, in addition to other rights and remedies provided for herein or otherwise available to it at law or in equity or under the Loan Documents, exercise all of the rights and remedies of a secured party under the California Uniform Commercial Code.

5. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Development Agreement. No failure or delay in exercising any of said rights, remedies or powers of Assignee shall constitute a waiver thereof or a waiver of any default of Assignor. Except to the extent arising from Assignee's own gross negligence or willful misconduct in the performance of obligations under the Development Agreement following Assignee's exercise of its rights and remedies pursuant to Section 4 above, Assignor shall and does hereby agree to indemnify Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Development Agreement or under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Development Agreement. Should Assignee incur any such liability, loss or damage under the Development Agreement or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

6. Copies to Assignee.

a. Assignor will provide prompt written notice to Assignee of any default which Assignor at any time alleges has been committed by the City under the Development Agreement.

b. Assignor will promptly provide a copy of all documents, reviews and/or reports delivered by or to Assignor pursuant to Section 7.2 of the Development Agreement.

7. Upon the satisfaction and discharge of all of the obligations of Assignor under the Loan Documents and the obligations of Assignor and all other parties signatory thereto under any other document or instrument evidencing, securing or pertaining to the Loan, this Assignment shall be void and of no further force or effect.

8. This Assignment inures to the benefit of the named Assignee and its successors and assigns and binds Assignor and Assignor's successors and assigns. In this Assignment, whenever the context so requires, the neuter gender includes the masculine or feminine and the singular number includes the plural and vice versa.

9. All notices and demands expressly provided hereunder to be given by Assignee to Assignor and all notices, demands and other communications of any kind or nature whatsoever which Assignor may be required or may desire to give to or serve on Assignee shall be given as set forth in the Loan Agreement.

10. Assignor will execute, upon request of Assignee, any and all instruments requested by Assignee to effectuate the transactions set forth herein.

11. Assignor hereby additionally covenants and agrees:

(a) Assignee shall not be required to seek the appointment of a receiver or to institute any proceedings of any kind, possessory or otherwise, to secure or enjoy the full benefits of this Assignment.

(b) This Assignment shall in no way prevent Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Loan (and any extensions thereof) and other security instruments securing the Loan.

(c) Assignor shall not make or execute any other assignment of the Development Agreement during the term of this Assignment, without the prior written consent of Assignor to be given in its sole and absolute discretion.

(d) Assignee's omission or failure to give any notice of or under this Assignment to Assignor or any buyer, tenant or occupant of the Properties or any part thereof, shall not constitute or be deemed a waiver of any of Assignee's rights hereunder.

(e) Assignor shall not amend the Development Agreement without the prior written consent of Assignee

12. In the event any provisions of this Assignment, or the application thereof to Assignor or any other persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment or the application of such provision or provisions to Assignor or such other persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and each and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

13. In the event of any litigation between the parties hereto to enforce any provision of this Assignment or any right of either party hereto, Assignor agrees to pay to Assignee all costs and expenses, including reasonable attorneys' fees, incurred therein by Assignee.

14. Assignor has delivered to Assignee a true, correct and complete copy of the Development Agreement.

15. This Assignment may be executed in any number of counterparts which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

SUMIDA GARDENS L.P.,
a California limited partnership

By: Michael Towbes Construction &
Development, Inc.,
a California corporation, its General Partner

By: _____
Name: Michael Towbes
Its: President

“ASSIGNEE”

City National Bank, a national banking association

By: _____
Name: Lindsay Dunn
Title: Vice President

EXHIBIT A

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

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

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

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

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SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-65586 OF OFFICIAL RECORDS.

APN 071-330-12

**CONSENT TO COLLATERAL ASSIGNMENT OF
DEVELOPMENT AGREEMENT**

The undersigned ("City"), as a party to the Development Agreement dated as of November 19, 2007, between the City and Sumida Family Limited Partnership, a California limited partnership ("Original Owner"), as assigned by Original Owner to Sumida Gardens L.P., a California limited partnership ("Borrower") pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008 ("Development Agreement"), hereby consents to the foregoing Collateral Assignment of Development Agreement in favor of City National Bank, a national banking association ("CNB").

1. The City hereby acknowledges that:

(a) CNB is making a loan (the "Loan") to Borrower in the original principal amount of \$30,500,000.00. The Loan is evidenced by a certain promissory note (the "Note") of even date herewith made payable to CNB. The Note is to be secured by, among other things a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, covering Borrower's interest in that certain real and personal property located in Santa Barbara County, California (the "Property"), as more particularly described in the Construction Deed of Trust.

(b) It was a condition precedent to obtaining the Loan that the City approve the assignment of Borrower's rights and benefits under the Development Agreement to CNB.

2. The City declares, agrees, acknowledges and represents that:

(a) The City consents to the assignment of Borrower's rights and benefits under the Development Agreement to CNB. The City agrees that CNB's making of the Loan to Borrower will not result in a breach of any of the terms or conditions of, or constitute a default under, any provision of the Development Agreement or any other agreement to which Borrower and/or City is a party.

(b) CNB is under no obligation to the City to insure the application of proceeds under the Loan.

(c) The Development Agreement is unmodified and in full force and effect and until the Construction Deed of Trust has been reconveyed, the City will not amend the Development Agreement without the prior written consent of CNB. The Development Agreement constitutes the entire agreement between Borrower and the City with respect to the Property.

(d) To the City's actual knowledge, (i) no party is in default under any of the provisions of the Development Agreement, (ii) the City knows of no event that has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by either party under the Development Agreement and (iii) Borrower has satisfied all requirements of the Development Agreement to have been satisfied as of the date of this Consent, including without limitation, the Conditions to Approval attached as Exhibit C to the

Development Agreement and the requirements of the Mitigation Monitoring Program (as defined in the Development Agreement).

(e) Until the Construction Deed of Trust has been reconveyed, the City will provide written notice to CNB of any default by Borrower under the Development Agreement, and CNB shall be given the opportunity to cure said default under the provisions set forth in Section 8.2.1 of the Development Agreement.

(f) CNB shall not be required to obtain the consent of the City to commence or complete foreclosure proceedings on the Property, and a transfer of title to the Property resulting from a foreclosure sale under the Construction Deed of Trust or by a deed-in-lieu of foreclosure shall not constitute a violation of Section 8.3 of the Development Agreement or any other provision thereof. CNB shall promptly provide the City with notice of (i) any written notice of default given by CNB to Borrower under the Construction Deed of Trust, and (ii) any notice of default commencing foreclosure proceedings under the Construction Deed of Trust.

(g) The City affirms that CNB shall be entitled to the rights of a Mortgagee pursuant to Section 8.2 and all other relevant provisions of the Development Agreement, subject to the provisions of Section 8.2.

(h) This Consent may be relied upon by CNB and its successors and assigns, including, without limitation, anyone acquiring title to the Property resulting from a foreclosure sale under the Deed of Trust or by a deed-in-lieu of foreclosure, and the successors and assigns of any such party.

(i) The City hereby agrees that CNB's address for notices given under the Development Agreement are as follows:

City National Bank
555 South Flower Street, 25th Floor
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Ms. Lindsay Dunn, V.P.

With a copy thereof to:

City National Bank
400 N. Roxbury Drive,
Beverly Hills, CA 90210
Attention: General Counsel

Dated: As of _____

CITY:

CITY OF GOLETA, a municipal corporation

By: _____

APPROVED AS TO FORM:

By: _____
_____ Attorney

ATTEST:

By: _____
_____, Clerk of the City

STATE OF CALIFORNIA
COUNTY OF

ss.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

SS.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

STATE OF CALIFORNIA
COUNTY OF

SS.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

ATTACHMENT 3

Consent to Collateral Assignment of Affordable Housing Assistance Agreement

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

City National Bank
555 South Flower St., 25th Fl.
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Janet Fluent

Loan No. XX6454-21028

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

**COLLATERAL ASSIGNMENT OF
AFFORDABLE HOUSING ASSISTANCE AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF AFFORDABLE HOUSING ASSISTANCE AGREEMENT (this "Assignment") is made as of this ___ day of _____, 2008, by **Sumida Gardens L.P.**, a California limited partnership ("Assignor"), in favor of **City National Bank**, a national banking association ("Assignee"), with reference to the following facts which are incorporated herein by this reference.

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith (the "Loan Agreement"), Assignee is making a loan to Assignor in the principal amount of \$30,500,000.00 (the "Loan"), which is evidenced by the Note described in Section 1.2 of the Loan Agreement. The Note is to be secured by, among other things, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Construction Deed of Trust"), covering Assignor's interest in that certain real and personal property (the "Property") located in Santa Barbara County, California, as more particularly described in Exhibit "A" attached hereto and made a part hereof, and such other collateral as may be required by Assignee, as provided therein.

WHEREAS, pursuant to Section 5.10 of the Loan Agreement, Assignor is required to give this Assignment to Assignee.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Assignor hereby creates in favor of, and assigns and transfers to Assignee, its successors and assigns, a security interest in and to all of Assignor's rights under the Affordable Housing Assistance Agreement by and between Sumida Family Limited Partnership, a California limited partnership ("Original Owner"), and Redevelopment Agency for the City of Goleta, a public body, corporate and politic (the "Agency"), dated as of November 19, 2007, and assigned to Assignor pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008, by and between Original Owner and Assignor, as it may from time to time be supplemented, modified, amended, restated or extended (the "AHAA Agreement").

2. With respect to this Assignment, Assignor hereby represents, warrants and covenants to Assignee as follows:

2.1 This Assignment is made as additional security for the obligations of Assignor incurred and to be incurred under the Loan Documents and, until the occurrence of an Event of Default by Assignor thereunder or under any other document or instrument evidencing, securing or pertaining to the Loan and so long as such Event of Default is continuing, Assignor shall have the right to enjoy and exercise all rights, remedies, benefits and privileges under the AHAA.

2.2 Assignor is the absolute owner of the rights under the AHAA, and with the consent of the Agency given on the Consent attached hereto, Assignor has full rights to transfer to Assignee such rights, interests, power and authority as are granted and confirmed hereunder.

2.3 Assignor is not in default under the AHAA and no event has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by Assignor under the AHAA, and Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and conditions hereof, or which would limit Assignee in such operation.

2.4 To protect the security granted under this Assignment, Assignor further covenants and agrees:

(a) To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the AHAA which is to be performed by the Assignor thereunder; to give prompt notice to Assignee of any notice of default on the part of Assignor with respect to the AHAA received from Agency, together with an accurate and complete copy of such notice, and at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the AHAA to be performed by Agency.

(b) Should Assignor fail to make any payment or to do any act as herein provided, then Assignee may, but without obligation to do so and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also perform and discharge each and every obligation, covenant and agreement of Assignor contained

in the AHAA, and in exercising any such powers, pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

2.5 Assignor has received the approval of the "Project Plans" (as defined in the AFAA) required by Sections 1.1.3 and 1.2.1(b) of the AHAA.

2.6 Assignor has received the "Project Approvals" (as defined in the AHAA) required by Section 1.1.2 of the AHAA.

2.7 The "Effective Date," as described in, among other provisions, Section 8.22 of the AHAA is _____.

2.8 The date of the "commencement of construction," as described in, among other provisions, Sections 1.2.1(c) and 1.2.1(d) of the AHAA, is _____.

2.9 The date by which Owner is required to complete construction of the "Project" (as defined in the AHAA) pursuant to Section 1.2.1(d) of the AHAA is _____.

2.10 As of the date of this Assignment, the amount that the Agency has disbursed to Assignor pursuant to the AHAA is \$_____, and the amount remaining to be disbursed by the Agency to Assignor pursuant to the AHAA is \$_____.

3. Assignor hereby irrevocably constitutes, designates and appoints Assignee as Assignor's true and lawful attorney-in-fact, upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, with full power of substitution and authority to undertake and exercise any rights, benefits, privileges or remedies of Assignor under the AHAA or as may be provided or permitted by law in regard to the rights, remedies, privileges and benefits of Assignor thereunder.

4. Upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, Assignee may, in addition to other rights and remedies provided for herein or otherwise available to it at law or in equity or under the Loan Documents, exercise all of the rights and remedies of a secured party under the California Uniform Commercial Code.

5. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the AHAA. No failure or delay in exercising any of said rights, remedies or powers of Assignee shall constitute a waiver thereof or a waiver of any default of Assignor. Except to the extent arising from Assignee's own gross negligence or willful misconduct in the performance of obligations under the AHAA following Assignee's exercise of its rights and remedies pursuant to Section 4 above, Assignor shall and does hereby agree to indemnify Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under the AHAA or under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge

any of the terms, covenants or agreements contained in the AHAA. Should Assignee incur any such liability, loss or damage under the AHAA or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

6. Copies to Assignee.

a. Assignor hereby agrees to promptly provide Assignee with a copy of any certificate of completion or other determination of completion provided to Assignor pursuant to Section 1.2.2 of the AHAA.

b. Assignor agrees to promptly provide written notice to Assignee of any default which Assignor at any time alleges has been committed by the Agency under the AHAA.

c. Assignor agrees to promptly provide a copy of all progress reports and/or other notices or written communications delivered by or to Assignor pursuant to Section 1.2.3 of the AHAA.

7. Upon the satisfaction and discharge of all of the obligations of Assignor under the Loan Documents and the obligations of Assignor and all other parties signatory thereto under any other document or instrument evidencing, securing or pertaining to the Loan, this Assignment shall be void and of no further force or effect.

8. This Assignment inures to the benefit of the named Assignee and its successors and assigns and binds Assignor and Assignor's successors and assigns. In this Assignment, whenever the context so requires, the neuter gender includes the masculine or feminine and the singular number includes the plural and vice versa.

9. All notices and demands expressly provided hereunder to be given by Assignee to Assignor and all notices, demands and other communications of any kind or nature whatsoever which Assignor may be required or may desire to give to or serve on Assignee shall be given as set forth in the Loan Agreement.

10. Assignor will execute, upon request of Assignee, any and all instruments requested by Assignee to effectuate the transactions set forth herein.

11. Assignor hereby additionally covenants and agrees:

(a) Assignee shall not be required to seek the appointment of a receiver or to institute any proceedings of any kind, possessory or otherwise, to secure or enjoy the full benefits of this Assignment.

(b) This Assignment shall in no way prevent Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Loan (and any extensions thereof) and other security instruments securing the Loan.

(c) Assignor shall not make or execute any other assignment of the AHAA during the term of this Assignment, without the prior written consent of Assignor to be given in its sole and absolute discretion.

(d) Assignee's omission or failure to give any notice of or under this Assignment to Assignor or any buyer, tenant or occupant of the Properties or any part thereof, shall not constitute or be deemed a waiver of any of Assignee's rights hereunder.

(e) Assignor shall not amend, or request any amendment of, the AHAA, any "Schedule of Performance (as defined in Section 1.2.4 of the AHAA), or any other document required under the AHAA without the prior written consent of Assignee.

12. In the event any provisions of this Assignment, or the application thereof to Assignor or any other persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment or the application of such provision or provisions to Assignor or such other persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and each and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

13. In the event of any litigation between the parties hereto to enforce any provision of this Assignment or any right of either party hereto, Assignor agrees to pay to Assignee all costs and expenses, including reasonable attorneys' fees, incurred therein by Assignee.

14. Assignor has delivered to Assignee a true, correct and complete copy of the AHAA.

15. This Assignment may be executed in any number of counterparts which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

"ASSIGNOR"

SUMIDA GARDENS L.P.,
a California limited partnership

By: Michael Towbes Construction &
Development, Inc.,
a California corporation, its General Partner

By: _____
Name: Michael Towbes
Its: President

“ASSIGNEE”

City National Bank, a national banking association

By: _____

Name: Lindsay Dunn

Title: Vice President

EXHIBIT A

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

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

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

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

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

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

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

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

SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-65586 OF OFFICIAL RECORDS.

APN 071-330-12

**CONSENT TO COLLATERAL ASSIGNMENT OF
AFFORDABLE HOUSING ASSISTANCE AGREEMENT**

The undersigned ("Agency"), as a party to the Affordable Housing Assistance Agreement dated as of November 19, 2007, between the Agency and Sumida Family Limited Partnership, a California limited partnership ("Original Owner"), as assigned by Original Owner to Sumida Gardens L.P., a California limited partnership hereby ("Borrower") pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008 ("AHAA"), consents to the foregoing Collateral Assignment of Affordable Housing Assistance Agreement in favor of City National Bank, a national banking association ("CNB").

1. The Agency hereby acknowledges that:

(a) CNB is making a loan (the "Loan") to Borrower in the original principal amount of \$30,500,000.00. The Loan is evidenced by a certain promissory note (the "Note") of even date herewith made payable to CNB. The Note is to be secured by, among other things a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, covering Borrower's interest in that certain real and personal property located in Santa Barbara County, California (the "Property"), as more particularly described in the Construction Deed of Trust.

(b) It was a condition precedent to obtaining the Loan that the Agency approve the assignment of Borrower's rights and benefits under the AHAA to CNB.

2. The Agency declares, agrees, acknowledges and represents that:

(a) The Agency consents to the assignment of Borrower's rights and benefits under the AHAA to CNB. The Agency agrees that CNB's making of the Loan to Borrower will not result in a breach of any of the terms or conditions of, or constitute a default under, any provision of the AHAA or any other agreement to which Borrower and/or Agency is a party.

(b) CNB is under no obligation to the Agency to insure the application of proceeds under the Loan.

(c) The AHAA is unmodified and in full force and effect and until the Construction Deed of Trust has been reconveyed, the Agency will not amend the AHAA without the prior written consent of CNB. The AHAA constitutes the entire agreement between Borrower and the Agency with respect to the Property.

(d) To the Agency's actual knowledge, (i) no party is in default under any of the provisions of the AHAA and (ii) the Agency knows of no event that has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by either party under the AHAA.

(e) Until the Construction Deed of Trust has been reconveyed, the Agency will provide written notice to CNB of any default by Borrower under the AHAA, and CNB shall be

given the opportunity to cure said default under the provisions set forth in Section 6.3.3 of the AHAA.

(f) CNB shall not be required to obtain the consent of the Agency to commence or complete foreclosure proceedings on the Property, and a transfer of title to the Property resulting from a foreclosure sale under the Construction Deed of Trust or by a deed-in-lieu of foreclosure shall not constitute a violation of Section 6.1 of the AHAA or any other provision thereof. CNB shall promptly provide the Agency with notice of (i) any written notice of default given by CNB to Borrower under the Construction Deed of Trust, and (ii) any notice of default commencing foreclosure proceedings under the Construction Deed of Trust.

(g) The Agency affirms that CNB shall be entitled to the rights of an Institutional Lender pursuant to Section 6.3 and all other relevant provisions of the AHAA, subject to the provisions of Section 6.4 that apply to Lenders.

(h) The Agency affirms that the statements of Borrower set forth in Paragraphs 2.5 through 2.10, inclusive, of the attached Collateral Assignment of Affordable Housing Assistance Agreement executed by Borrower are true and correct.

(i) This Consent may be relied upon by CNB and its successors and assigns, including, without limitation, anyone acquiring title to the Property resulting from a foreclosure sale under the Deed of Trust or by a deed-in-lieu of foreclosure, and the successors and assigns of any such party.

(j) The Agency hereby agrees that CNB's address for notices given under the AHAA are as follows:

City National Bank
555 South Flower Street, 25th Floor
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Ms. Lindsay Dunn, V.P.

With a copy thereof to:

City National Bank
400 N. Roxbury Drive,
Beverly Hills, CA 90210
Attention: General Counsel

Dated: As of _____

AGENCY:

**REDEVELOPMENT AGENCY FOR THE CITY OF
GOLETA, a public body, corporate and politic**

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

_____, Attorney

ATTEST:

By: _____

_____, Clerk of the Agency

STATE OF CALIFORNIA
COUNTY OF

SS.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

SS.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

SS.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

ATTACHMENT 4

Consent to Collateral Assignment of Rental Restrictive Covenant

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

City National Bank
555 South Flower St., 25th Fl.
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Janet Fluent

Loan No. XX6454-21028

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

**COLLATERAL ASSIGNMENT OF
RENTAL RESTRICTIVE COVENANT**

THIS COLLATERAL ASSIGNMENT OF RENTAL RESTRICTIVE COVENANT (this "Assignment") is made as of this ___ day of _____, 2008, by **Sumida Gardens L.P.**, a California limited partnership ("Assignor"), in favor of **City National Bank**, a national banking association ("Assignee"), with reference to the following facts which are incorporated herein by this reference.

WHEREAS, pursuant to that certain Loan Agreement dated of even date herewith (the "Loan Agreement"), Assignee is making a loan to Assignor in the principal amount of \$30,500,000.00 (the "Loan"), which is evidenced by the Note described in Section 1.2 of the Loan Agreement. The Note is to be secured by, among other things, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Construction Deed of Trust"), covering Assignor's interest in that certain real and personal property (the "Property") located in Santa Barbara County, California, as more particularly described in Exhibit "A" attached hereto and made a part hereof, and such other collateral as may be required by Assignee, as provided therein.

WHEREAS, pursuant to Section 5.37 of the Loan Agreement, Assignor is required to give this Assignment to Assignee.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees as follows:

1. Assignor hereby creates in favor of, and assigns and transfers to Assignee, its successors and assigns, a security interest in and to all of Assignor's rights under the Rental Restrictive Covenant by and among Sumida Family Limited Partnership, a California limited partnership ("Original Owner"), Redevelopment Agency for the City of Goleta, a public body corporate and politic ("Agency"), and City of Goleta, a municipal corporation ("City"), dated as of November 19, 2007, and assigned to Assignor pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008, by and between Original Owner and Assignor, as it may from time to time be supplemented, modified, amended, restated or extended (the "Rental Restrictive Covenant").

2. With respect to this Assignment, Assignor hereby represents, warrants and covenants to Assignee as follows:

2.1 This Assignment is made as additional security for the obligations of Assignor incurred and to be incurred under the Loan Documents and, until the occurrence of an Event of Default by Assignor thereunder or under any other document or instrument evidencing, securing or pertaining to the Loan and so long as such Event of Default is continuing, Assignor shall have the right to enjoy and exercise all rights, remedies, benefits and privileges under the Rental Restrictive Covenant.

2.2 Assignor is the absolute owner of the rights under the Rental Restrictive Covenant, and with the consent of the City and Agency given on the Consent attached hereto, Assignor has full rights to transfer to Assignee such rights, interests, power and authority as are granted and confirmed hereunder.

2.3 Assignor is not in default under the Rental Restrictive Covenant and no event has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by Assignor under the Rental Restrictive Covenant, and Assignor has not performed any act or executed any instrument which might prevent Assignee from operating under any of the terms and conditions hereof, or which would limit Assignee in such operation.

2.4 To protect the security granted under this Assignment, Assignor further covenants and agrees:

(a) To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Rental Restrictive Covenant which is to be performed by the Assignor thereunder; to give prompt notice to Assignee of any notice of default on the part of Assignor with respect to the Rental Restrictive Covenant received from City or Agency, together with an accurate and complete copy of such notice, and at the sole cost and expense of Assignor, to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Rental Restrictive Covenant to be performed by City or Agency.

(b) Should Assignor fail to make any payment or to do any act as herein provided, then Assignee may, but without obligation to do so and without notice to or demand on Assignor, and without releasing Assignor from any obligation hereof, make or do the same in such manner and to such extent as Assignee may deem necessary to protect the security hereof,

including specifically, without limiting its general powers, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Rental Restrictive Covenant, and in exercising any such powers, pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

3. Assignor hereby irrevocably constitutes, designates and appoints Assignee as Assignor's true and lawful attorney-in-fact, upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, with full power of substitution and authority to undertake and exercise any rights, benefits, privileges or remedies of Assignor under the Rental Restrictive Covenant or as may be provided or permitted by law in regard to the rights, remedies, privileges and benefits of Assignor thereunder.

4. Upon or at any time after the occurrence of an Event of Default and for so long as the Event of Default is continuing, Assignee may, in addition to other rights and remedies provided for herein or otherwise available to it at law or in equity or under the Loan Documents, exercise all of the rights and remedies of a secured party under the California Uniform Commercial Code.

5. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Rental Restrictive Covenant. No failure or delay in exercising any of said rights, remedies or powers of Assignee shall constitute a waiver thereof or a waiver of any default of Assignor. Except to the extent arising from Assignee's own gross negligence or willful misconduct in the performance of obligations under the Rental Restrictive Covenant following Assignee's exercise of its rights and remedies pursuant to Section 4 above, Assignor shall and does hereby agree to indemnify Assignee against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Rental Restrictive Covenant or under or by reason of this Assignment, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Rental Restrictive Covenant. Should Assignee incur any such liability, loss or damage under the Rental Restrictive Covenant or under or by reason of this Assignment, or in the defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Assignor shall reimburse Assignee therefor immediately upon demand, and upon the failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

6. Assignor will provide prompt written notice to Assignee of any default which Assignor at any time alleges has been committed by the City or Agency under the Rental Restrictive Covenant.

7. Upon the satisfaction and discharge of all of the obligations of Assignor under the Loan Documents and the obligations of Assignor and all other parties signatory thereto under any other document or instrument evidencing, securing or pertaining to the Loan, this Assignment shall be void and of no further force or effect.

8. This Assignment inures to the benefit of the named Assignee and its successors and assigns and binds Assignor and Assignor's successors and assigns. In this Assignment, whenever

the context so requires, the neuter gender includes the masculine or feminine and the singular number includes the plural and vice versa.

9. All notices and demands expressly provided hereunder to be given by Assignee to Assignor and all notices, demands and other communications of any kind or nature whatsoever which Assignor may be required or may desire to give to or serve on Assignee shall be given as set forth in the Loan Agreement.

10. Assignor will execute, upon request of Assignee, any and all instruments requested by Assignee to effectuate the transactions set forth herein.

11. Assignor hereby additionally covenants and agrees:

(a) Assignee shall not be required to seek the appointment of a receiver or to institute any proceedings of any kind, possessory or otherwise, to secure or enjoy the full benefits of this Assignment.

(b) This Assignment shall in no way prevent Assignee from pursuing any remedy which it now or hereafter may have because of any present or future breach of the terms or conditions of the Loan (and any extensions thereof) and other security instruments securing the Loan.

(c) Assignor shall not make or execute any other assignment of the Rental Restrictive Covenant during the term of this Assignment, without the prior written consent of Assignor to be given in its sole and absolute discretion.

(d) Assignee's omission or failure to give any notice of or under this Assignment to Assignor or any buyer, tenant or occupant of the Properties or any part thereof, shall not constitute or be deemed a waiver of any of Assignee's rights hereunder.

(e) Assignor shall not amend the Rental Restrictive Covenant without the prior written consent of Assignee

12. In the event any provisions of this Assignment, or the application thereof to Assignor or any other persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Assignment or the application of such provision or provisions to Assignor or such other persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and each and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

13. In the event of any litigation between the parties hereto to enforce any provision of this Assignment or any right of either party hereto, Assignor agrees to pay to Assignee all costs and expenses, including reasonable attorneys' fees, incurred therein by Assignee.

14. Assignor has delivered to Assignee a true, correct and complete copy of the Rental Restrictive Covenant.

15. This Assignment may be executed in any number of counterparts which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

“ASSIGNOR”

SUMIDA GARDENS L.P.,
a California limited partnership

By: Michael Towbes Construction &
Development, Inc.,
a California corporation, its General Partner

By: _____
Name: Michael Towbes
Its: President

“ASSIGNEE”

City National Bank, a national banking association

By: _____
Name: Lindsay Dunn
Title: Vice President

EXHIBIT A

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

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

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

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

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

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

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

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

SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-65586 OF OFFICIAL RECORDS.

APN 071-330-12

**CONSENT TO COLLATERAL ASSIGNMENT OF
RENTAL RESTRICTIVE COVENANT**

The undersigned (“City” and “Agency”), as a party to the Rental Restrictive Covenant dated as of November 19, 2007, between the City, Agency and Sumida Family Limited Partnership, a California limited partnership (“Original Owner”), as assigned by Original Owner to Sumida Gardens L.P., a California limited partnership (“Borrower”) pursuant to the Assignment and Assumption Agreement dated as of January 22, 2008 (“Rental Restrictive Covenant”, hereby consent to the foregoing Collateral Assignment of Rental Restrictive Covenant in favor of City National Bank, a national banking association (“CNB”).

1. The City and Agency hereby acknowledge that:

(a) CNB is making a loan (the “Loan”) to Borrower in the original principal amount of \$30,500,000.00. The Loan is evidenced by a certain promissory note (the “Note”) of even date herewith made payable to CNB. The Note is to be secured by, among other things a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, covering Borrower’s interest in that certain real and personal property located in Santa Barbara County, California (the “Property”), as more particularly described in the Construction Deed of Trust.

(b) It was a condition precedent to obtaining the Loan that the City and Agency approve the assignment of Borrower’s rights and benefits under the Rental Restrictive Covenant to CNB.

2. The City and Agency declare, agree, acknowledge and represent that:

(a) The City and Agency consent to the assignment of Borrower’s rights and benefits under the Rental Restrictive Covenant to CNB. The City and Agency agree that CNB’s making of the Loan to Borrower will not result in a breach of any of the terms or conditions of, or constitute a default under, any provision of the Rental Restrictive Covenant or any other agreement to which Borrower and/or City and/or Agency is a party.

(b) CNB is under no obligation to the City or Agency to insure the application of proceeds under the Loan.

(c) The Rental Restrictive Covenant is unmodified and in full force and effect and until the Construction Deed of Trust has been reconveyed, neither the City nor the Agency will amend the Rental Restrictive Covenant without the prior written consent of CNB. The Rental Restrictive Covenant constitutes the entire agreement between Borrower, the Agency and the City with respect to the matters covered thereby.

(d) To the City’s and Agency’s actual knowledge, (i) no party is in default under any of the provisions of the Rental Restrictive Covenant and (ii) the City and Agency know of no event that has occurred or is continuing which with the passage of time or the giving of notice, or both, would constitute a default by either party under the Rental Restrictive Covenant.

(e) Until the Construction Deed of Trust has been reconveyed, the City and Agency will provide written notice to CNB of any default by Borrower under the Rental Restrictive Covenant, and CNB shall be given a reasonable opportunity to cure said default.

(f) CNB shall not be required to obtain the consent of the City to commence or complete foreclosure proceedings on the Property, and a transfer of title to the Property resulting from a foreclosure sale under the Construction Deed of Trust or by a deed-in-lieu of foreclosure shall not constitute a violation of Article VI of the Rental Restrictive Covenant or any other provision thereof. CNB shall promptly provide the City and Agency with notice of (i) any written notice of default given by CNB to Borrower under the Construction Deed of Trust, and (ii) any notice of default commencing foreclosure proceedings under the Construction Deed of Trust.

(g) The City and Agency affirm that CNB shall be entitled to the rights of an Institutional Lender pursuant to Article VI and all other relevant provisions of the Rental Restrictive Covenant.

(h) This Consent may be relied upon by CNB and its successors and assigns, including, without limitation, anyone acquiring title to the Property resulting from a foreclosure sale under the Deed of Trust or by a deed-in-lieu of foreclosure, and the successors and assigns of any such party.

(i) The City and Agency hereby agree that CNB's address for notices given under the Rental Restrictive Covenant are as follows:

City National Bank
555 South Flower Street, 25th Floor
Real Estate Group # 054
Los Angeles, CA 90071
Attn: Ms. Lindsay Dunn, V.P.

With a copy thereof to:

City National Bank
400 N. Roxbury Drive,
Beverly Hills, CA 90210
Attention: General Counsel

Dated: As of _____

CITY:

CITY OF GOLETA, a municipal corporation

By: _____

APPROVED AS TO FORM:

By: _____
_____ Attorney

ATTEST:

By: _____
_____, Clerk of the City

**REDEVELOPMENT AGENCY FOR THE CITY OF
GOLETA, a public body, corporate and politic**

By: _____
Its: _____

APPROVED AS TO FORM:

By: _____
_____ Attorney

ATTEST:

By: _____
_____, Clerk of the Agency

STATE OF CALIFORNIA
COUNTY OF

ss.

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

ss.

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

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Signature _____
(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

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(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

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(Seal)

Notary Public

**STATE OF CALIFORNIA
COUNTY OF**

SS.

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

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Signature _____
(Seal)

Notary Public