

DATE SUBMITTED January 29, 2020
 SUBMITTED BY L Gutierrez
 DATE ACTION REQUIRED February 5, 2020

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()



**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: **DISCUSSION/ACTION: IMPERIAL GARDENS APARTMENTS – SUBORDINATION AGREEMENT.**

1. APPROVAL OF SUBORDINATION AGREEMENT FOR IMPERIAL GARDENS APARTMENTS.

DEPARTMENT INVOLVED: **ADMINISTRATIVE SERVICES**

BACKGROUND/SUMMARY:

The Redevelopment Agency approved an Owner Participation Agreement with Imperial Gardens Apartments (Chelsea Investment Corporation) to provide a loan in the amount of \$100,000 to assist in the construction of an 81 unit affordable housing development. The City of Imperial also entered into a promissory note agreement with the City of Imperial Redevelopment Agency in the maximum amount of \$2,606,430 (H.O.M.E. Funds). The payment terms of the loan(s) state an annual payment be made to the city and the amount of the payment is dependent upon the Distributable Cash Flow. The city is a junior lienholder. The senior loan, which was allocated from tax exempt bond proceeds from the California Debt Limit Allocation Committee, has a mandatory remarketing date of April 1, 2020. Chelsea Investment Corporation is working with Fannie Mae to refinance the senior loan in order to pay off the outstanding bonds that are maturing. The refinancing will allow for earlier loan payments to the city as it frees up senior items in the cash flow waterfall. The refinancing is ready to close with the exception of these items.

FISCAL IMPACT:

F.O. INITIALS 

N/A

STAFF RECOMMENDATION:

Staff recommends approval of the agreement.



MANAGER'S RECOMMENDATION:

MANAGER'S OFFICE INITIALS _____

MOTION:

SECONDED:

APPROVED () REJECTED ()

AYES:

DISAPPROVED () DEFERRED ()

NAYES:

ABSENT:

REFERRED TO:

Prepared by, and after recording
return to:

Gerson Law Firm APC
9255 Towne Centre Drive, Suite 300
San Diego, CA 92121

----- [Space Above This Line For Recording Data] -----

**SUBORDINATION AGREEMENT
(Affordable)**

This SUBORDINATION AGREEMENT (this “Agreement”) dated as of **February __, 2020**, is executed by and among (i) **ORIX REAL ESTATE CAPITAL, LLC**, a **Delaware limited liability company** (“Senior Lender”), (ii) **CITY OF IMPERIAL**, a **political subdivision of the State of California** (“Subordinate Lender”), and (iii) **IGA, L.P.**, a **California limited partnership** (“Borrower”).

RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), Senior Lender has agreed to make a loan to Borrower in the original principal amount of **TWO MILLION SIX HUNDRED TWENTY ONE THOUSAND AND 00/100 DOLLARS (\$2,621,000.00)** (the “**Senior Loan**”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Security Instrument**”), encumbering the property described in the Senior Security Instrument as the “**Mortgaged Property**.”

C. Borrower has requested Senior Lender to permit that certain subordinate loan in the amount of **TWO MILLION SIX HUNDRED SIX THOUSAND FOUR HUNDRED THIRTY AND 00/100 DOLLARS (\$2,606,430.00)** (the “**Subordinate Loan**”) from Subordinate Lender to Borrower and secured by, among other things, a mortgage lien against the Mortgaged Property evidenced by that certain **Deed of Trust with Assignment of Rents**, dated September 1, 2003, executed by Borrower in favor of Subordinate Lender, and recorded in the Official Records of the Imperial County, California on **October 3, 2003**, as **Instrument No. 2003-030334 in Book 2243, Page 1407** (“**Subordinate Mortgage**”), which Subordinate Mortgage is to remain in place and to allow the Subordinate Loan to continue to be secured by a mortgage lien against the Mortgaged Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

“**Borrower**” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

“**Business Day**” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Control**” (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

“**Default Notice**” means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

“**Person**” means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“Senior Lender” means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

“Senior Loan Default” means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

“Senior Loan Documents” means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Agreement” means the Loan and Security Agreement of even date herewith by and between Borrower and Subordinate Lender.

“Subordinate Loan Default” means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Regulatory Agreement, the Subordinate Loan Agreement and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

“Subordinate Loan Regulatory Agreement” means that certain **The City of Imperial Home Investment Partnerships Program (HOME) Regulatory Agreement Loan Number 02-HOME-0592** dated as of **September 1, 2003**, by and among Borrower and Subordinate Lender, recorded **October 3, 2003** in Official Records of Imperial County, California as **Document No. 2003-030335 in Book 2243, Page 1421**.

“Subordinate Mortgage” means the mortgage, deed of trust or deed to secure debt encumbering the Mortgaged Property as security for the Subordinate Loan, which Subordinate Lender has caused to be recorded among the applicable land records on October 3, 2003.

“Subordinate Note” means the promissory note issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

3. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to maintain the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

4. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents.

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, the Subordinate Loan Agreement and the Subordinate Loan Documents.

(b) Subordinate Note.

From and after the date of this Agreement, the Subordinate Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note (and any schedules) dated as of even date herewith in the original principal amount of **TWO MILLION SIX HUNDRED TWENTY ONE THOUSAND AND 00/100 DOLLARS (\$2,621,000.00)**, executed by **IGA, L.P., a California limited partnership** and payable to the order of **ORIX REAL ESTATE CAPITAL, LLC, a Delaware limited liability company ("Senior Lender")**, to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and **CITY OF IMPERIAL, a political subdivision of the State of California (the "Subordination Agreement")**. The Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily Note, as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by Subordinate Lender under the Subordination Agreement.

(c) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(d) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

(e) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. Deliveries.

Borrower shall, if requested by Senior Lender, submit the following items to Senior Lender the later of (a) ten (10) Business Days after the date on which any proceeds of the Subordinate Loan are disbursed to Borrower, and (b) the effective date of the Senior Loan Documents:

(1) Title Policy Endorsement.

An endorsement to the policy of title insurance insuring the lien of the Senior Security Instrument which insures that (A) there are no liens or other encumbrances affecting the Mortgaged Property, other than "Permitted Encumbrances" (as defined in the Senior Security Instrument), the Subordinate Mortgage, and other Subordinate Loan Documents filed or recorded against the Mortgaged Property, (B) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Security Instrument, and (C) this Agreement has been recorded among the applicable land records.

(2) Certification.

A certification from Borrower and Subordinate Lender to Senior Lender that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, Senior Lender prior to the date of this Agreement.

(3) Subordinate Loan Documents.

A complete set of the fully executed Subordinate Loan Documents, certified by Borrower to be true, correct and complete.

(4) Senior Loan Documents.

An executed copy of each of the Senior Loan Documents, certified by Borrower to be true, correct and complete.

6. Terms of Subordination.

(a) Agreement to Subordinate.

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given Senior Lender at least sixty (60) days prior written notice; during such sixty (60) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

(c) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan

Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Loan Agreement and the Subordinate Mortgage.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings,

documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(d) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the

refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and
- (3) deemed given on the earlier to occur of:
 - (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the

application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

ORIX REAL ESTATE CAPITAL, LLC,
a Delaware limited liability company

By: _____
Leila C. Sugay
Loan Processing and Closing Manager

Address: ORIX Real Estate Capital, LLC
1717 Main Street, Suite 900
Dallas, Texas 75201

With a copy to:
Fannie Mae
Attention: Multifamily Operations -
Asset Management
Drawer AM
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

SIGNATURES CONTINUE ON FOLLOWING PAGE

SIGNATURES CONTINUED FROM PREVIOUS PAGE

SUBORDINATE LENDER:

CITY OF IMPERIAL, a political subdivision of the State of California

By: _____

Name: _____

Title: _____

Address: _____

SIGNATURES CONTINUE ON FOLLOWING PAGE

SIGNATURES CONTINUED FROM PREVIOUS PAGE

BORROWER:

IGA, L.P.,
a California limited partnership

By: Pacific Southwest Community Development Corporation,
a California nonprofit public benefit corporation
Managing General Partner

By: _____
Name: _____
Its: _____

By: CIC 2001, LLC,
a California limited liability company
Co-General Partner

By: Chelsea Investment Corporation,
a California corporation
Manager

By: _____
Name: _____
Its: _____

Address: IGA, L.P.
6639 Paseo del Lago
Carlsbad, CA 92011

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
County of _____

On _____, before me, _____, a notary public, personally appeared **LEILA C. SUGAY** 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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____
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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

COPY

~Original
loan~

Promissory Note
(HOME Loan)

Principal Sum: Two Million Six Hundred Six Thousand Four Hundred and Thirty Dollars
(\$2,606,430),
Imperial, California

For value received, the IGA, L.P., a California Limited Partnership (the "**Maker**"), having an address of c/o Chelsea Investment Corporation, 215 South Highway 101, Suite 200, Solana Beach, California, 92075 promises to pay the CITY OF IMPERIAL, or order ("**Holder**"), the initial principal sum of Two Million Six Hundred Six Thousand Four Hundred and Thirty Dollars (\$2,606,430), with simple interest at the rate of one percent (1 %) per annum.

1. This Note is made pursuant to that certain HOME Investment Partnerships Program Loan Agreement (the "**Loan Agreement**") between Maker and Holder, dated as of September 1, 2003. This is a promissory note for the repayment to Holder of funds loaned (the "**Loan**") to Maker to assist Maker with the costs to develop and construct an 81-unit apartment complex on certain property located on 2375 Myrtle Road in the City of Imperial, as described in the Loan Agreement (the "**Project**"). The Loan has been provided by the City through the State's HOME Investment Partnership Program ("**HOME Program**") administered by the State of California, Department of Housing and Community Development. Pursuant to the Loan Agreement, Maker shall develop and construct the apartment complex on the Project and provide not less than thirty-eight (38) HOME Assisted Units (the "**Units**"), which shall be rented to qualified very-low and low income senior persons (the "**Project**"), all as described in the Loan Agreement, and pursuant to the terms and conditions set forth in that certain Regulatory Agreement, which was executed by the parties and recorded against the Project pursuant to the Loan Agreement. All capitalized terms not defined in this Note shall have the meaning set forth in the Loan Agreement.

2. Payment of this Note is secured by a Deed of Trust with Assignment of Rents (Short Form), including addendum (the "**Deed of Trust**") from Maker to Holder, which Deed of Trust has been recorded against the Project.

3. So long as Maker is not in default hereunder or under the Deed of Trust, and the Project is operated in compliance with the terms and conditions of the Regulatory Agreement, Maker shall make annual payments to Holder in an amount equal to fifty percent (50%) of the Residual Receipts (as defined in Section 4) from the Project. Payments shall be due and payable to Holder annually within ninety (90) days following the end of each calendar year with respect to the preceding year. Each annual payment shall be accompanied by

a copy of the certified annual cash flow statement evidencing the amount of the Residual Receipts from the Project that year. The entire amount of outstanding principal, together with all accrued and unpaid interest, shall be due and payable in full on the date fifty-five (55) years from the date of this Note. All payments made hereunder shall be credited first to any accrued but unpaid interest, then to current interest due and owing, and lastly, to principal.

4. Borrower agrees to repay the Loan based upon an annual audit of the Project in which Residual Receipts are determined as defined below:

a. The Borrower, or Borrower's management agent, shall promptly deposit all operating income in a segregated account controlled by Borrower established exclusively for the Project with an F.D.I.C. or other comparable federally insured financial institution.

b. Withdrawals from the account shall be made only in accordance with the provisions of this Agreement, and the approved budget, and shall be disbursed, applied, or reserved and set aside for payment when due for all cost related to the Project including, but not limited to, the following: (1) salaries, wages, and any other compensation due and payable to the employees or agents of the Borrower or management agent employed on site in connection with the maintenance, administration or operation of the Project, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees; (2) all charges incurred in the operation of the Project in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance; (3) payments of required interest, principal, impounds, fees and charges, if any, on loans other than the Loan which are secured by liens on the Project and which have been approved by the City; (4) all other expenses incurred to cover operating costs, including the fee of the managing agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Project or as otherwise approved in advance by the City; (5) deposits to operating and replacement reserve accounts required under the HOME Regulatory Agreement or under other financing documents; (6) payments to the partners of the Borrower under items First through Fourth of Section 10.1A of the Third Amended and Restated Agreement of Limited Partnership of Borrower.

c. The balance of Operating Income remaining after the payments described in section 4.b above shall be deemed Residual Receipts, fifty percent (50%) of which shall be paid to the City first toward unpaid accrued interest and then to principal on the Loan.

5. Subject to the exceptions described below, neither Maker nor any officer, employee or partner of Maker shall be personally liable for the payment of the indebtedness evidenced by this Note, the Deed of Trust, or any other

loan documents, and any judgment or decree in any action brought to enforce the obligation of Maker to pay the indebtedness will be enforceable against Maker and the officers, employees or partners of Maker, if any, only to the extent of Maker's interest in the Project and any other collateral pledged, encumbered, or otherwise covered by the loan documents. Any judgment or decree will not be subject to execution, or be alien, on the assets of the Maker and the partners in Maker, if any, other than Maker's interest in the Project and any other collateral pledged, encumbered, or otherwise covered by the loan documents.

Regardless of the limitation of liability above, Maker will be fully liable for losses resulting to the Holder from the following:

a. Failure to pay taxes, assessments, and any other charges that could result in liens against the any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the loan documents;

b. Failure to pay and discharge any mechanics' liens, materialmen's liens, or other liens against any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the loan documents;

c. Fraud or intentional misrepresentation with respect to any representation, warranties, or certifications made in the loan documents, or otherwise made by Maker in connection with the loan evidenced by this Note;

d. Retention by Maker of any rental income or other income arising with respect to any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the loan documents subsequent to the date of any notice of default from Holder to Maker, or which, under the terms of the loan documents, should otherwise have been paid to Holder;

e. Retention by Maker of any insurance proceeds, condemnation awards, or other similar funds or payments attributable to the Project or any other collateral pledged, encumbered, or otherwise covered by the loan documents that, by its terms, should have been paid to Holder or used in a manner contrary to the use made by Maker;

f. Any failure to maintain, repair, or restore any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the loan documents in accordance with the terms;

g. The removal, demolition, damage, or destruction of any portion of the Project or any other collateral pledged, encumbered, or otherwise covered by the Loan documents that is neither consented to in writing by Holder nor fully compensated for by insurance proceeds or condemnation awards;

h. The consequences of the failure of the Loan documents to constitute a lien or security interest, as applicable, on the Project or any other collateral pledged, encumbered, or otherwise covered, subordinate only to deed(s) of trust securing the loans under the HOME Program, and the loan(s) as described or referenced in Section 1.8 of the Loan Agreement, and subject only to those exceptions, if any, permitted by any of the loan documents or otherwise approved in writing by Holder; or

i. All legal costs and expenses reasonably incurred by Holder after the giving to Maker of notice of the occurrence of an Event of Default, other than those customarily incurred by a Holder in realizing on its lien in an uncontested foreclosure sale after an undisputed default.

Nothing in this section will affect or limit the rights of Holder to enforce any of Holder's rights or remedies with respect to any portion of the Project described in the Deed of Trust or any other collateral pledged, encumbered, or otherwise covered by the loan documents.

6. Notwithstanding anything to the contrary provided herein, in the event that the Project is in default under the terms of the HOME Standard Agreement, the Loan Agreement or the Regulatory Agreement recorded against the Project, or any financing provisions, if applicable, subject to any applicable notice and cure provisions, such that the affordability restrictions are no longer in effect, or if there shall have been an event of default under this Note or the Deed of Trust securing this Note, subject to any applicable notice and cure provisions, then the entire unpaid principal of this Note and all accrued interest thereon shall be immediately due and payable.

7. Payment shall be made in lawful money of the United States to the City of Imperial, 420 South Imperial Avenue, Imperial, CA 92251, Attn: City Manager. The place of payment may be changed from time to time as the Holder may from time to time designate in writing.

8. Holder may permit and will not unreasonably withhold its consent to the assumption of this loan by any affiliate or subsidiary of Maker or any qualified non-profit housing corporation that meets underwriting and credit worthiness criteria established by Holder. Said consent would be conditioned upon the Maker maintaining the Project in accordance with standards established in all other loan documents referenced above and that there be no uncured deficiency or default under any related loan document.

9. Maker hereby covenants and agrees that it shall maintain, or cause to be maintained, the Project in full compliance with the provisions set forth therefore in the Regulatory Agreement, the Loan Agreement and the Imperial City Code, and shall keep the entire Project reasonably free from any accumulation of debris or waste materials prior to and after construction.

If, at any time, Maker fails to maintain the Project in accordance with this Section 9, and has either failed to commence to cure such condition or to diligently prosecute to completion the condition or the condition is not corrected after expiration of thirty (30) days from the date of written notice from Holder to Maker, Holder may perform the necessary corrective maintenance, and Maker shall pay such costs as are reasonably incurred for such maintenance. The Holder shall have the right to place a lien on the Project should Maker not reimburse Holder for such costs within sixty (60) days following Holder's written demand to Maker for reimbursement of such costs. Maker, on behalf of itself its heirs, successors and assigns, hereby grants to Holder and its officers, employees and agents, an irrevocable license to enter upon the Project to perform such maintenance during normal business hours after receipt of written notice from Holder as hereinabove described and Maker's failure to cure or remedy such failure within thirty (30) days of such notice. Any such entry shall be made only after reasonable notice to Maker, and Holder shall indemnify and hold Maker harmless from any claims or liabilities pertaining to any such entry by Holder. .

Failure by Maker to maintain the Project in the condition provided in this Section 9 may constitute, a default under this Note and the related Deed of Trust.

The foregoing covenants shall remain in effect for the Project for a period of thirty (55) years from the date hereof, or until all amounts due Holder hereunder are paid in full, whichever is later.

10. The occurrence of any of the following shall constitute an event of default under this Note: (i) Maker fails to pay any amount due hereunder within fifteen (15) days of its due date, or (ii) Any default by Maker under this Note, the Deed of Trust, the Regulatory Agreement or the Loan Agreement after the expiration of applicable notice and cure periods.

Upon the occurrence of any event of default, or at any time thereafter, at the option of the Holder hereof and without notice, the entire unpaid principal and interest owing on this Note shall become immediately due and payable. This option may be exercised at any time following any such event, and the acceptance of one or more installments thereafter shall not constitute a waiver of Holder's option. Holder's failure to exercise such option shall not constitute a waiver of such option with respect to any subsequent event. Holder's failure in the exercise of any other right or remedy hereunder or under any agreement which secures the indebtedness or is related thereto shall not affect any right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof.

11. At all times when Maker is in default hereunder by reason of Maker's failure to pay principal due under this Note or any amounts due under

any loan documents securing this Note, the interest rate on the sums as to which Maker is in default (including principal, if Holder has elected to declare it immediately due and payable), shall be the lower of the highest rate then allowed by law or two percent (2%) over the prime interest rate announced by Wells Fargo Bank, N.A., as of the date of the default.

12. Maker and any endorsers hereof and all others who may become liable for all or any part of this obligation, severally waive presentment for payment, demand and protest and notice of protest, and of dishonor and nonpayment of this Note, and expressly consent to any extension of the time of payment hereof or of any installment hereof, to the release of any party liable for this obligation, and any such extension or release may be made without notice to any of said parties and without any way affecting or discharging this liability.

13. Maker agrees to pay immediately upon demand all costs and expenses of Holder including reasonable attorneys' fees, (i) if after default this Note be placed in the hands of an attorney or attorneys for collection, (ii) if after a default hereunder or under the Deed of Trust, the Regulatory Agreement, the Loan Agreement or under any loan document referred to herein Holder finds it necessary or desirable to secure the services or advice of one or more attorneys with regard to collection of this Note against Maker, any guarantor or any other party liable therefor or to the protection of its rights under this Note, the Deed of Trust, the Regulatory Agreement, the Loan Agreement or other loan document, or (iii) if Holder seeks to have the Project abandoned by or reclaimed from any estate in bankruptcy, or attempts to have any stay or injunction prohibiting the enforcement or collection of the Note or prohibiting the enforcement of the Deed of Trust, the Regulatory Agreement, the Loan Agreement or any other agreement evidencing or securing this Note lifted by any bankruptcy or other court.

14. If Holder shall be made a party to or shall reasonably intervene in any action or proceeding, whether in court or before any governmental agency, affecting the Project or the title thereto or the interest of the Holder under the Deed of Trust, including, without limitation, any form of condemnation or eminent domain proceeding, Holder shall be reimbursed by maker immediately upon demand for all costs, charges and attorneys' fees incurred by Holder in any such case, and the same shall be secured by the Deed of Trust as a further charge and lien upon the Owner's Parcel.

15. Any notices provided for in this Note shall be given by mailing such notice by certified mail, return receipt requested at the address stated in this Note or at such address as either party may designate by written notice.

16. This Note shall be binding upon Maker, its successors, and assigns.


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

18. If any provision of this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

MAKER:

IGA, L.P., a California limited partnership

By: Pacific Southwest Community Development Corporation, a California nonprofit public benefit corporation, its Managing General Partner

By: 
Name: Michael T. Walsh
Title: Chairman of the Board

By: CIC 2001, LLC, a California limited liability company, its Co-General Partner

By: 
Name: James J. Schmid
Title: Managing Member

City of Imperial

HOME INVESTMENT PARTNERSHIPS ("HOME") PROGRAM

LOAN AGREEMENT

(Imperial Senior Apartments)

This HOME Loan Agreement (the "Agreement") is made as of September 1, 2003, by and among the City of Imperial (the "City"), and IGA, L.P., a California limited partnership ("Borrower").

RECITALS

A. The Borrower has acquired certain real property located at 2875 Myrtle Road in Imperial, California (the "Site") for purposes of construction of an 81-unit apartment complex (collectively, the "Project") to be operated as affordable housing units for low income households whose income is 60 percent or less of the area median income ("Area Median Income") as determined by the Department of Housing and Urban Development (HUD) ("Low-Income Households"), and very-low income households whose income is 50 percent or less of Area Median Income ("Very Low-Income Households"). Low-Income Households and Very Low-Income Households are referred to collectively as "Qualifying Tenants."

B. The Borrower has applied to the City for a loan (the "Loan") to assist the Borrower with the construction of the Project and the Borrower and the City acknowledge and agree that the commitment of loan funds by the City in the amount of \$2,606,430, shall be solely and exclusively from and contingent upon receipt of grant funds, through the State's HOME Investment Partnership Program (the "HOME Program"), by the City pursuant to that certain Standard Agreement Number 02-HOME-0592, dated 1/17/2003 (the "Standard Agreement") between the City and the State of California, by and through the Department of Housing and Community Project ("HCD").

C. As a condition of the Loan, the Borrower will execute a Regulatory Agreement which will regulate 38 of the residential units in the Project (the "HOME Assisted Units"), to insure that the HOME Assisted Units are occupied by and affordable to Qualifying Tenants.

D. Pursuant to this Agreement, the City shall loan Two Million Six Hundred Six Thousand Four Hundred and Thirty Dollars (\$2,606,430) (the "HOME Funds") to the Borrower.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, the Borrower and City hereby agree as follows:

AGREEMENTS

ARTICLE I

LOAN TERMS

Section 1.1. Loan Agreement.

The City agrees to loan and the Borrower agrees to borrow an amount not to exceed \$2,606,430 (the "Loan"), subject to the conditions and terms of this Agreement. The Loan shall be evidenced by and repayable in accordance with a promissory note (the "Note") bearing simple interest at the rate of one percent (1%) per annum and with a term of fifty-five (55) years, executed by Borrower in substantially the form attached hereto and incorporated herein as Exhibit B. The Note shall be secured by a deed of trust, including an Addendum thereto (the "Deed of Trust") to be recorded against the Site, which Deed of Trust shall be executed by Borrower, in recordable form, in substantially the form attached hereto and incorporated herein as Exhibit C.

Section 1.2. Term of Agreement.

The term of this Agreement shall commence upon the date of the recordation of the Regulatory Agreement (as provided for in Section 1.6) and remain in full force and effect and shall apply to the Project through and including the date which is fifty-five (55) years following the date of recordation of the Regulatory Agreement, unless terminated earlier pursuant to the terms of this Agreement.

Section 1.3. Compliance with HOME Program Requirements.

The Borrower agrees that at all times its acts regarding the HOME Assisted Units and the use of HOME Funds provided herein shall be in conformity with all provisions of the HOME Program including the statutes, rules and regulations and such policies and procedures of HUD pertaining to the HOME Program at Borrower's sole expense (collectively, the "HOME Program Regulations"). The Borrower acknowledges that it is familiar with such applicable provisions of the HOME Program Regulations and has been professionally advised to the extent necessary for the purpose of enabling the Borrower to fully comply with such provisions.

Section 1.4. Use of HOME Funds.

(a) The Borrower shall use the HOME Funds for the reimbursement of eligible costs under the HOME Program Regulations incurred for the construction of the Project. Costs for development and construction shall only be for work approved by the City at the time of project set-up under the HOME Program or later approved in writing by the City if a modification of the scope of work is

necessary. Any expenditure of HOME Funds that is not authorized by this Agreement or is found to be ineligible under the HOME Program Regulations, as determined by the HOME Program, shall be disallowed, and funds must be returned by Borrower to the City within thirty (30) days of discovery by the City and/or the Borrower unless the HOME Program approves in writing an alternative plan for the City to address the concern.

(b) The Borrower agrees that it will not use the HOME Funds, either directly or indirectly, as a contribution in order to obtain any other federal funds under any other federal program without prior written approval of the City.

(c) In accordance with the HOME Program Regulations, specifically the Standard Agreement, the Borrower shall provide security to assure completion of the Project by furnishing the City and any construction lenders with Performance and Payment Bonds.

Section 1.5. Scope of Project.

The Borrower agrees to complete the development and construction of the Project in accordance with the scope of work approved by the City and pursuant to the Standard Agreement. The scope of work shall be completed in accordance with the time frame established in the notice to proceed that will be issued for the Project.

Section 1.6. Regulatory Agreement.

Prior to and as a condition precedent to disbursement of the HOME funds, the Borrower shall execute, in recordable form, and deliver to the City, a Regulatory Agreement, in substantially the form attached hereto and incorporated herein as Exhibit A, which shall regulate the HOME Assisted Units to insure that those units are occupied by and affordable to Qualifying Tenants. The Regulatory Agreement shall be recorded against the Site.

Section 1.7. Fees.

Up to \$80,488 of the \$2,686,918 HOME Funds received by the City from the HOME program is allowed to be spent at the City's discretion on Activity Delivery Costs and Administrative Subcontractor fees and shall not be considered a part of the Loan from the City to the Borrower.

Section 1.8. Disbursement of Funds.

(a) During the term of this Agreement, the City shall disburse the HOME Funds to assist the Borrower in paying for acquisition and Project and construction costs of the development ("Disbursements"). The Borrower shall submit to the City an invoice with back-up documentation of the expenditures that verifies the

cost has been contracted for or incurred by the Borrower. The City shall make Disbursements of HOME Funds only to the extent that: (a) HOME Funds are available from the HOME Program; (b) the uses of the HOME Funds are eligible in accordance with the HOME Program Regulations; and (c) the Borrower has executed and delivered to the City the Note, Deed of Trust and Regulatory Agreement pertaining to the Loan. After the City has approved the invoices, the City shall disburse the funds into the Borrower's project account at U.S. Bank. The funds will be disbursed to the Borrower according to the conditions set forth in the Loan Agreement between the Borrower and U.S. Bank. If for any reason the HOME Funds are not available from the HOME Program, or any of the Borrower's uses of HOME Funds are deemed ineligible uses under the HOME Program Regulations, then the City shall not have an obligation to make Disbursements of HOME Funds requested by the Borrower. The aggregate of the Disbursements of the HOME Funds provided to the Borrower under this Agreement shall not exceed the amount of the Loan.

Section 1.9. Subordination.

The City agrees that their Deed of Trust and Regulatory Agreement will be subordinate to deeds of trust securing the loans for permanent financing for the Project listed in Exhibit D.

ARTICLE 2

GENERAL REQUIREMENTS

Section 2.1. Rental Agreement.

(a) Leases of HOME Assisted Units must comply with Section 92.258 of the HOME Regulations, as summarized below:

(1) Tenant leases must be for not less than one year unless by mutual agreement between tenant and owner.

(2) Any termination of tenancy or refusal to renew a lease must be preceded by thirty (30) days' written notice specifying the grounds for the action by the owner.

(8) Leases shall be in writing and may not contain the following prohibitive clauses:

- Agreement by the tenant to be sued
- Statement that owner can confiscate tenant property
- Statement excusing owner from legal responsibility

- Statement that owner does not have to give notice when instituting a lawsuit
- Agreement by the tenant to waive rights to a jury trial
- Agreement by the tenant to waive rights to appeal a court decision
- Agreement by the tenant to pay attorneys' fees if the tenant wins a court case.
- Agreement by the tenant to waive rights to civil court proceeding to defend eviction.

Section 2.2. Project Management.

The Borrower must maintain the Project in compliance with HUD's Housing Quality Standards and local code requirements, as such may be amended from time to time, for the duration of this Agreement.

Section 2.3. Occupancy Procedures.

The Borrower shall adopt written tenant selection policies and criteria for the HOME Assisted Units that:

- (a) Are consistent with the purpose of providing housing for Low-Income and Very Low-Income Households;
- (b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease; and
- (c) Provide for:
 - (1) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - (2) The prompt written notification to any rejected applicant of the grounds for any rejection.

Section 2.4. Security Deposits.

Any security deposits collected by the Borrower or Borrower's agent shall be kept separate and apart from all other funds of the Project in a trust account with a depository insured by the Federal Deposit Insurance Corporation, or other comparable federal deposit insurance program, and shall be held and disbursed in accordance with California law. The balance of such amount shall at all times equal or exceed the aggregate of all outstanding obligations under said account, plus accrued interest thereon.

Section 2.5. Hazard and Liability Insurance.

The Borrower shall at all times cause the Project to be insured against loss by fire, flood (as required pursuant to 24 CFR 92.858), and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as are reasonably acceptable to the City. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the City. Property insurance policies shall name the City as an additional insured, as approved by the City.

Section 2.6. Hold Harmless.

The Borrower and its successors-in-interest agree to indemnify, defend, and hold harmless the City and its agents, employees, volunteers and officers from any and all claims, losses, liabilities or causes of action (including reasonable attorney's fees) arising from or in connection with the Borrower's management, maintenance or operation of the Project; provided, however, the Borrower's obligations to indemnify and hold harmless shall not apply in the event of the City's gross negligence or willful misconduct.

Section 2.7. Annual Report.

The Borrower shall file with the City an annual report, as required by 24 CFR 92, no later than 120 days following the end of each calendar year. The report shall contain a certification by the Borrower as to such information as the City may then require including, but not limited to, the following:

(a) The substantial physical defects in the Project, including a description of any major repair or maintenance work undertaken or needed in the previous and current fiscal years. Such statement shall describe what steps the Borrower has taken in order to maintain the Project in a safe and sanitary condition in accordance with applicable housing and building codes.

(b) The occupancy of the Project including:

(1) the verified income of each current household; and

(2) the current rent charged each household and whether these rents include utilities.

(c) A summary of the information received from the recertification of tenants' incomes.

(d) Other information reasonably required by the City, HCD or HUD, including the fiscal condition of the Borrower showing a financial statement for the previous fiscal year that includes a balance sheet and a profit and loss statement

indicating any surplus or deficit in operating accounts; a detailed, itemized listing of income and expenses; the amount of any fiscal reserves and the total amount of Residual Receipts (as defined in the Note) received. Such financial statement shall be prepared in accordance with the requirements of the City and HUD. The City may require that the financial statement be audited at the Borrower's expense by an independent certified public accountant acceptable to the City or other person designated by the City.

Section 2.8. City Review and Inspections.

(a) Upon not less than 48 hours' notice to the Borrower, the City and/or HCD may at any time during the term of this Agreement, enter and inspect the physical premises and inspect all accounting records pertaining to the development or operation of the Project. Upon request by the City or HCD, the Borrower shall notify occupants of upcoming inspections of their units in accordance with State Law.

(b) The City may request any other information that it reasonably deems necessary to monitor compliance with requirements set forth in this Agreement. Such information shall be promptly provided by the Borrower.

Section 2.9. Restrictions on Sale, Encumbrance, and Other Acts.

(a) Except for a transfer to an affiliate or subsidiary of Borrower, the Borrower shall not make any sale, encumbrance, hypothecation, assignment, pledge, conveyance, or transfer in any form of the Project or of any of its interest therein, except with the prior written approval of the City, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, no approval is required from the City for (a) transfers of general partner interests in the Borrower to MMA Financial, LLC or any affiliate thereof in accordance with the terms of the partnership agreement of the Borrower; (b) any pledge by the investor limited partner of the Borrower of its limited partner interest in the Borrower to Fleet National Bank, or any transfer or further assignment of such limited partner interest to Fleet or its nominee, successor, transferee or assignee, all as permitted under the terms of Section 8.1(C) of the partnership agreement of the Borrower; or (c) any transfer by the investor limited partner of the Borrower of its limited partner interest in the Borrower as described or permitted in Section 8.1(D) and 8.3 of the partnership agreement of the Borrower, and in the Initial Transfer Agreement (as defined in such partnership agreement).

(b) The Borrower shall not permit the use of the Project for any purpose other than that permitted by this Agreement without the prior written approval of the City.

(c) The City may approve a sale, transfer or conveyance provided that all of the following conditions are met:

- (1) the existing Borrower is in compliance with this Agreement or the sale, transfer or conveyance will result in the cure of any existing violations of this Agreement;
 - (2) the successor-in-interest to the Borrower agrees to assume all obligations of the existing Borrower pursuant to this Agreement and the HOME Program;
 - (3) the successor-in-interest demonstrates to the City's satisfaction that it can own and operate the Project in full compliance with all HOME Program requirements; and
 - (4) any terms of the sale, transfer or conveyance shall not threaten the City's security or the successor's ability to comply with all HOME Program requirements.
- (d) The City shall grant its approval for a sale, transfer or conveyance subject to such terms and conditions as may be necessary to ensure compliance with HOME Program requirements.

Section 2.10. Assignment of City Rights.

The City retains the right at its sole discretion to assign all or part of its rights under this Agreement for the purpose of ensuring compliance and enforcement of the Borrower's duties and obligations hereunder. In addition, the City may designate an agent to act on its behalf in monitoring compliance and enforcing the provisions hereof.

ARTICLE 3

DEFAULTS AND REMEDIES

Section 3.1. Event of Default.

Any material breach by the Borrower of any representation, warranty or covenant hereunder, which is not cured within thirty (30) days after notice thereof given by the City to Borrower and Borrower's limited partner or, where cure is not possible within thirty days, whose cure is not commenced within thirty days and diligently prosecuted to completion shall constitute an Event of Default.

Section 3.2. City's Remedies.

Upon the happening of an Event of Default, the City may pursue any remedy allowed at law or in equity, including but not limited to, accelerating payment under the Note or applying to any State court for specific performance of this Agreement and the Regulatory Agreement.

ARTICLE 4

HOME PROGRAM REQUIREMENTS

Section 4.1. HOME Laws & Regulations.

The Borrower shall comply with all applicable laws and regulations governing the HOME Program and the use of the HOME Funds, as set forth in 24 CFR Part 92 et seq., including (but not limited to) the requirements set forth in the Regulatory Agreement. In the event of any conflict between this Agreement and applicable laws and regulations governing the HOME Program and the use of the Loan proceeds, the applicable HOME Program Regulations shall govern. The Borrower agrees to enter into any modification of this Agreement and/or the Regulatory Agreement reasonably required by the City to attain compliance with the requirements of the HOME Program. The Borrower acknowledges and agrees that it has received and reviewed a copy of the HOME Program Regulations in effect as of the date of execution of this Agreement.

Section 4.2. Specific Requirements.

The laws and regulations governing the HOME Program and the use of the HOME Funds include (but are not limited to) the following:

(a) Environment and Historic Preservation. Section 104(f) of the Housing and Community Residence Act of 1974 and 24 CFR Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4861), and the additional laws and authorities listed at 24 C.F.R. 58.5.

(b) Applicable OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102 (Revised), A-110, A-122, and A-128.

(c) Architectural Barriers. The requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157).

(d) Lead-Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821, et seq.) and implementing regulations at 24 CFR Part 85.

(e) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and similar state laws. If and to the extent that any rehabilitation of the Project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, then the Borrower shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. The Borrower shall be solely responsible for payment of any

relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws.

(f) Disabled Discrimination. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), and federal regulations issued pursuant thereto (24 CFR Part 8), which prohibit discrimination against the disabled in any federally assisted program.

(g) Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project."

(h) Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-20 (Public Law 90-284) and implementing regulations at 24 CFR Part 107.

(i) Executive Order 11063 and regulations at 24 CFR Part 107.

(j) Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 107.

(k) The Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations at 24 CFR Part 146.

(l) Executive Order 12872 and implementing regulations at 24 CFR Part 52, regarding intergovernmental review of federal programs.

(m) Flood Disaster Act of 1973, 42 U.S.C. 4001, et seq.

(n) Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.

(o) Any other Department of Housing and Urban Development regulations currently in effect or as may be amended or added in the future pertaining to the HOME Program.

(p) The Fair Housing Act (42 U.S.C. 3601-3620)(Pub. L. 90-284) as it ensures fair housing practices and prohibits housing discrimination based on race, color, religion, sex, national origin, handicap, or familial status.

(q) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto at 24 CFR Section 470.601 as it relates to prohibiting discriminatory actions in activities funded by Community Development Funds.

(r) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity) and implementing regulations issued at 41 CFR Chapter 60 and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended and implementing regulations at 24 CFR part 135 as they relate to equal employment opportunities.

(s) Executive Orders 11625 and 12432 (concerning minority business enterprise) and 12138 (concerning women's business enterprise) to encourage the use of women and minority owned businesses to the maximum extent possible.

(t) Use of debarred, suspended, or ineligible contractors or subrecipients is prohibited directly or indirectly as part of this award as set forth in 24 CFR Part 5.

(u) No member, officer or employee of the Borrower, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the loan, and the Borrower shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of the certification. Notwithstanding the foregoing, the City and HCD have agreed that Emmerson Construction, which is affiliated with the Borrower, may be the general contractor for the Project, CIC Management, Inc., which is affiliated with the Borrower, may be the Property Manager for the Project, Sysiphus Development Systems, LLC, which is affiliated with the Borrower, may be the developer for the Project, and the general partners of the Borrower may receive fees for services as set forth in the Borrower's partnership agreement.

(v) There shall be no religious worship, instruction, or proselytizing as part of, or in connection with, the performance of this agreement.

(w) Davis Bacon. All contracts for new construction or rehabilitation projects with 12 or more HOME-assisted units shall comply with HUD requirements and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1, 3, and 5 governing the payment of wages and the ratio of apprentices and trainees to journeypersons.

Section 4.3. Certification Regarding Lobbying.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federally appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure form to Report Lobbying" in accordance with its instructions.

ARTICLE 5

MISCELLANEOUS PROVISIONS

Section 5.1. Conflict of Interest.

No employee, agent, consultant, officer, elected or appointed official or member of the City has or may obtain a personal or financial interest in or benefit from the Borrower or the Project or in any contract or subcontract or agreement, or the proceeds thereof, relating to the Project either for themselves or for those with whom they have family or business ties, during their tenure or one year thereafter.

Section 5.2. Nondiscrimination.

The Borrower shall not discriminate against any prospective tenant in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Project on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related

conditions (ARC), or any other arbitrary basis. The Borrower shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

Section 5.3. Hold Harmless.

(a) The Borrower hereby agrees to, and shall, hold City, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for Project damage which may arise from the Borrower's operations under this Agreement, whether such operations be by the Borrower or subcontractor, or by any one of more persons directly or indirectly employed by, or acting as agent for, the Borrower or any subcontractor. The Borrower agrees to, and shall, hold the City, its elective and appointive boards, officers, agents and employees harmless from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations.

(b) The Borrower agrees to provide all costs of any necessary legal defense and all attorneys' fees incurred in defending any claim, whether or not actually filed in any court.

Section 5.4. Amendment.

This Agreement may be amended only by a writing signed by authorized representatives of the City and the Borrower; the City Manager, or designee of the City shall be authorized to act on behalf of the City.

Section 5.5. Notice.

Any notice required or authorized under this Agreement shall be effective if, and only if, in writing and if, and only if, mailed, postage prepaid, by registered or certified mail, to the party in question at the address shown below:

City: City of Imperial
420 South Imperial Avenue
Imperial, CA 92251
Attn: Vincent Long, City Manager

Borrower: IGA, L.P.
c/o Chelsea Investment Corporation
215 South Hwy 101, Suite 200
Solana Beach, CA 92075
Attn: Asset Management

Borrower's
Limited Partner: MMA Financial Warehousing, LLC
101 Arch Street
Boston, MA 02110
Attn: Investor Services Department

Section 5.6. No Waiver.

No failure to enforce or delay in enforcing or exercising any right or remedy available under this Agreement shall impair the exercise of such right or remedy or the exercise of a similar right or remedy on a subsequent occasion.

Section 5.7. Severability.

Should any provision of this Agreement be found invalid by a court or other body of competent jurisdiction, said invalidity or ineffectiveness shall not affect the validity of the remaining provisions which shall remain in force to the maximum extent possible.

Section 5.8. Titles and Headings.

The titles and headings in this Agreement are for convenience only and shall not be construed to affect the meaning or construction of any provision of this Agreement.

Section 5.9. Governing Law.

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

Section 5.10. Attorneys' Fees.

The prevailing party shall be entitled to receive the amount of its legal expenses, including reasonable attorneys' fees, expert legal fees and other legal costs and expenses, in the event of any legal action brought under or to enforce the provisions of this Agreement.

Section 5.11. Signs.

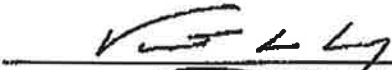
During the construction period, the City and HCD may place or require to be placed signs on the property stating the HOME program is providing financing. The signs shall indicate in a typeface and size commensurate with its fluids that the City and HCD are each a source of financing.

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

CITY:

CITY OF IMPERIAL

Date: 9-29-03

By: 
City Manager

ATTEST:

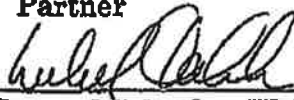
By: 
City Clerk

BORROWER:

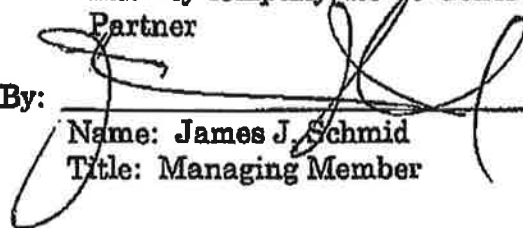
IGA, L.P., a California limited partnership

Date: 9-30-03

By: Pacific Southwest Community
Development Corporation, a
California nonprofit public benefit
corporation, its Managing General
Partner

By: 
Name: Michael T. Walsh
Title: Chairman of the Board

By: CIC 2001, LLC, a California limited
liability company, its Co-General
Partner

By: 
Name: James J. Schmid
Title: Managing Member