

RESOLUTION NO. 2008-044

Adopted by the Redevelopment Agency
of the City of Sacramento

June 17, 2008

**BUDGET INN APARTMENTS: APPROVAL OF OWNER PARTICIPATION AGREEMENT
CONTAINING TERMS AND CONDITIONS FOR AN ACQUISITION/CONSTRUCTION
LOAN AND GRANT OF UP TO \$6,337,000 AND RELATED DOCUMENTS, AND
APPROVAL OF PERMANENT SUPPORTIVE HOUSING RENT SUBSIDY AGREEMENT
WITH MERCY HOUSING CALIFORNIA, A CALIFORNIA NONPROFIT CORPORATION,
OR RELATED ENTITY; RELATED BUDGET AMENDMENT**

BACKGROUND

- A. Mercy Housing California has applied under the Agency's Permanent Supportive Housing Guidelines to assist in the acquisition, rehabilitation, and conversion of the Budget Inn motel, an existing 101 unit motel.
- B. As proposed, the Budget Inn project will provide 74 units of permanent supportive housing for homeless individuals with a disability. This proposal assists and City and County of Sacramento in meeting the development goals established in the City and County of Sacramento Ten-Year Plan to End Chronic Homelessness.
- C. Sacramento Housing and Redevelopment Agency received an Economic Development Initiative Grant to help alleviate homelessness in the City of Sacramento.
- D. Completion of the project will assist in the elimination of blight in the Stockton Boulevard Redevelopment area.
- E. The Loan Committee previously approved two predevelopment loans to fund predevelopment expenses associated with project planning.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT
AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:**

- Section 1. All of the evidence presented having duly considered, the findings, including the environmental findings regarding this action are approved.
- Section 2. It is determined that the action proposed by this resolution is the acquisition, rehabilitation, and conversion of an existing motel facility for the purpose of providing permanent supportive housing for homeless individuals with a disability, and is categorically exempt pursuant to CEQA Guideline Section 15310 and 15301 (a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged. A Notice of Exemption shall be recorded in the office of the County Recorder for the County of Sacramento.

- Section 3. The proposed action requires environmental review under the National Environmental Protection Act (NEPA) pursuant to 24 CFR Section 58.35(a)(3). NEPA review has been completed. Sacramento Housing and Redevelopment Agency has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 is not required.
- Section 4. The Owner Participation Agreement, attached and incorporated in this resolution by this reference as Exhibit A, for financing the Budget Inn project is approved and the Interim Executive Director is authorized to execute and transmit the Agreement to Mercy Housing California.
- Section 5. Subject to the satisfaction of conditions in the Owner Participation Agreement, the Interim Executive Director is authorized to prepare and execute all other documents reasonably required for making the loan and grant to Mercy Housing California to fund the acquisition, rehabilitation, and conversion of the Budget Inn, including the Conditional Grant Agreement, the Deed of Trust, the Regulatory Agreement and the Permanent Supportive Housing Rent Subsidy Agreement .
- Section 6. The Interim Executive Director is authorized to enter into an acquisition/construction loan agreement not to exceed \$5,064,000, a Conditional Grant Agreement not to exceed \$1,273,000 and a Permanent Supportive Housing Rent Subsidy Agreement not to exceed \$3,228,810 over the life of the Agreement for the purpose of guaranteeing rental assistance for up to 49 apartment units for up to sixteen years with Mercy Housing California, a California nonprofit corporation, or related entity.
- Section 7. The Interim Executive Director is authorized to amend the 2008 Agency budget and transfer up to \$4,000,000 from the Bank of America Credit Agreement, up to \$1,345,000 in Stockton Boulevard Housing Development Assistance, up to \$325,000 from Stockton Boulevard Tax Exempt Housing Advance, and up to \$171,000 from Stockton Boulevard Developer Assistance to the Budget Inn project.
- Section 8. The 2010 through 2025 Agency Annual Project budgets shall each include an allocation of City Aggregate Tax Increment Housing funds in an amount up to \$396,864 annually to be used as Permanent Supportive Housing Rent Subsidy. The cumulative 2010 through 2025 Agency Annual Project budgets shall not exceed \$3,228,810.
- Section 9. The Agency is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of the OPA and other agreements related to the project, in accordance with their respective terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions and restructuring of payments, all as approved by Agency Counsel.

Section 10. The Agency is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments and documents are in accordance with the Loan Commitment, with Agency policy, with this resolution, with good legal practices for making of such a loan.

Section 11. After due consideration of the facts presented, the Relocation Plan for the Budget Inn Project, which includes the results of a Needs Assessment Survey, Housing Resources Study and provides specifics on the rights and monetary benefits available to all residents, is approved.

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Exhibit A - Owner Participation Agreement

Exhibit B - Conditional Grant Agreement

Exhibit C - Deed of Trust, the Regulatory Agreement and the Permanent Supportive Housing Rent Subsidy Agreement

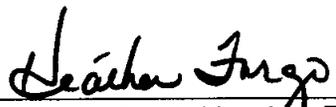
Adopted by the Redevelopment Agency of the City of Sacramento on June 17, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Chair Heather Fargo

Attest:



Shirley Concolino, Secretary

OWNER PARTICIPATION AGREEMENT
Using Funds from Tax Increment Housing Set- Aside Fund

Redevelopment Agency of the County of Sacramento
Stockton Boulevard Redevelopment Project Area
Budget Inn Acquisition, Rehab and Conversion
5321 Stockton Boulevard, Sacramento, CA

OWNER PARTICIPATION AGREEMENT
Tax Increment Housing Set- Aside Fund

Redevelopment Agency of the County of Sacramento

Stockton Boulevard Redevelopment Project Area
Budget Inn Acquisition, Rehab and Conversion
5321 Stockton Boulevard, Sacramento, CA

THE REDEVELOPMENT AGENCY OF THE COUNTY OF SACRAMENTO, and MERCY HOUSING CALIFORNIA XLII, a CALIFORNIA LIMITED PARTNERSHIP also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of _____, 2008. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 1717.

RECITALS

A. Developer is the acquiring real property located at 5321 Stockton Boulevard, Sacramento, CA, in the County of Sacramento, California, more particularly described in attached Exhibit 1: Legal Description, which is incorporated into this OPA by this reference. The Property is located in Stockton Boulevard Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan.

B. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by property owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 33339).

C. The Agency is participating in this OPA because this OPA is consistent with, and furthers, the Redevelopment Plan and the Implementation Plan. Specifically and without limitation, the Agency has determined that the Project will increase and improve the supply of low- or moderate-income housing in the community and will eliminate the following blighting influences: low or stagnant property values and impaired investment in the Project Area, high number of property vacancies, low rents, and a high number of vacant lots and social deterioration. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: Elimination of blighting influences and the provision of affordable housing to extremely low income individuals.

D. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

AGREEMENT

NOW THEREFORE, in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: The acquisition and rehabilitation and conversion of a blighted property known as the Budget Inn which is a 101 unit motel. The conversion of the Property will result in a 74 unit apartment community of studio and one-bedroom apartments, plus one two-bedroom staff unit with the goal of providing permanent housing to disable homeless households. Approximately eight units in the front of the motel will be remodeled to create additional community space for the residents providing computer facilities, a lounge, central laundry and counseling offices. Services will also be provided on site to address the disabilities of the residents. A detailed management and social services plan must be submitted to and approved by the Agency as a condition of this OPA.

2. **Developer's Community Service Obligations.** The Project is being assisted with Agency Funding and a number of other state, county and federal programs to provide the maximum community benefit. Through this funding structure, Developer is able to ensure that the Project remains an attractive and well managed apartment complex Developer shall implement specific activities including but not limited to the following:

- a) twenty-four hour, seven days a week on-site, on-duty staffing;
- b) targeted outreach efforts in the Stockton Boulevard area in relation to tenant selection;

c) actively engage with neighborhood associations, community groups and business groups to identify potential tenants for occupancy;

d) establishment of a Community Relations Committee that will meet on a regular basis and will be composed of representatives of the neighborhood associations, Stockton Boulevard Partnership, the Police Department, residents, service provider staff and Developer staff;

e) provision of service to all tenants, including counseling by The Effort (or a similar program as approved by the Agency); and others as mandated by the Agency, Sacramento County Department of Mental Health, California Department of Housing & Community Development and California Housing Finance Agency; and

3. **AGENCY FUNDING.** Agency is providing funding to the Project under the Funding Agreements for acquisition of the Project as described in Section 1, in the form of an Acquisition and Construction Loan and a Conditional Grant Agreement. If Developer fails to develop the Project as and when required by this OPA, Developer must repay the Agency Funding as provided in the Funding Agreements. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency and Developer are entering into an operating covenant to assure the operation of the Project as described in Section 2, as well as other obligations and restrictions, including without limitation, use restrictions and restrictions on amounts that can be charged on sale or rental of the Property, as evidenced by the Regulatory Agreement.

3.1. Should Developer not be awarded the 9% low income housing tax credits, Developer will transfer the Property to Agency pursuant to an assignment and assumption agreement and debt will be canceled. .

3.2. The Project's financing includes operating and services funds that are not under the control of Developer nor Agency, including Section 8, Shelter Plus Care, Sacramento County Mental Health MHSA housing and services funding, and The Effort's program funding. Agency and Developer

hereby agree to work diligently and cooperatively to secure and maintain all such funding. The ability of Developer to meet the obligations in Paragraph 2 above and to serve the homeless population successfully is dependent on the availability of these funding sources in sufficient amounts. These initial amounts are detailed in the attached Exhibit A Property Operations Cash Flow, and Exhibit B Annual Services Budget and Sources. The inability to secure or renew the operating and services funds shall not constitute a default under the Agency Funding Agreement or any other Agency document. Should Developer, the Agency or other lenders determine at any time during the term of this Agreement that these funds are not sufficient to meet these obligations and all reasonable efforts have been made to find replacement funding, Developer shall have the right to pursue a transition of the Project to a conventional affordable housing model.

4. PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS. This OPA is a financing document of the Agency and not a land use or planning document. Approval of the Project under this OPA by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project, or the aesthetic design of the Project except as an approval by the Agency of the Project design concept as presented in this OPA. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this OPA and approvals given under this OPA. Based upon such review, the Agency shall have the right to approve or reject the Plans for reasonable cause. Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications. Agency's approval of Plans is not an assurance of their adequacy or correctness. Agency has reserved approval rights solely: (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the Final Plans conform to the Preliminary Plans; and (c) to assure that any Agency funds which may be obligated under this OPA are used as intended by the Agency.

4.1. CONCURRENT REVIEW. Agency agrees that its review of the Final Plans shall occur prior to or concurrently with County's review of such plans, so as not to delay the commencement and progress of Project development. Agency agrees that its review of the Final Plans is strictly limited to making a determination that the Final Plans conform to the architectural designs (but not the detailed schematics, if any) presented in the Plans, the Scope of Development, the uses permitted on the Property and the Redevelopment Plan.

4.2. PRELIMINARY PLANS. Developer has provided Agency with Preliminary Plans, and the Agency has approved the Preliminary Plans concurrently with this OPA. The Agency has been induced to undertake its obligations under this OPA by Developer's promise to develop the Project in accordance with the Plans, the Scope of Development and the provisions of this OPA.

4.3. PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS. Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the rehabilitation of the Project. Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to the Preliminary Plans and the Scope of Development. To the extent that the Preliminary Plans and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to

include all changes or corrections approved as provided in this OPA. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

4.4. DELIVERY. Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Redevelopment Agency of the City of Sacramento 630 I Street, Sacramento, CA 95814, and shall have clearly marked on its exterior "URGENT: Budget Inn Acquisition, Rehab and Conversion PROJECT PLAN REVIEW" or the equivalent.

4.4.1. DEEMED APPROVAL. The Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within fifteen (15) days after their proper delivery to Agency.

4.4.2. AGENCY DISAPPROVAL. If Agency disapproves, in whole or in part, the Final Plans or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the Preliminary Plans, the Approved Final Plans, the Scope of Development and with any items previously approved under this Section 4. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this OPA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

4.5. GOVERNMENTAL CHANGES. If any revisions or corrections of the Final Plans shall be required by any government official, agency, department or bureau in exercise of its proper jurisdiction, the Developer shall inform the Agency. If Agency and Developer concur in writing with the required change, Developer shall incorporate the change and it shall be deemed approved by Agency. If Agency or Developer reasonably disagrees with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

4.6. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLAN. If the Developer desires to make any substantial changes in the Final Plans as approved by the Agency, the Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final Plans. The Agency shall approve or disapprove the proposed change as soon as practicable. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

4.6.1. SUBSTANTIAL CHANGE. A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements. For purposes of this Section 4.6.1, a "substantial change" is a change that is material to the Agency in accomplishing its purposes under this OPA.

a) Material changes in the layout, elevation design, square footage.

b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.

c) Material changes in site development items for the Property that are specified in the Final Plans.

d) Any changes requiring approval of any city, county or state board, body, commission or officer.

e) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

4.6.2. MISREPRESENTATION. If the Agency's approval of the Final Plans is reasonably based upon a material misrepresentation to Agency by Developer or by anyone on Developer's behalf, the Agency may, within a reasonable time after discovery of the misrepresentation, take any action permitted by law with regard to any such misrepresentation, notwithstanding Agency's prior approval, including without limitation, rescission of the approval or such other equitable remedies as may then be appropriate to such rescission.

5. DEVELOPMENT PROVISIONS. As stated in detail in this Section 5, Developer shall rehabilitate and manage the Project according to the requirements established in this OPA, which include, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the rehabilitation of the Project. In interpreting the provisions of this OPA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law [commencing at Health and Safety Code Section 33000] shall control.

5.1. CONSTRUCTION CONTRACTS. Developer shall submit to Agency the construction contract for the Project. Agency's review of the construction contract shall be only for determining its compliance with this OPA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer's cost, the construction of the Project in accordance with this OPA.

5.2. GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the County of Sacramento.

5.3. SUBSTANTIAL CHANGES. Developer covenants and agrees that Developer shall not make or permit to be made any rehabilitation of the Project which incorporates a substantial change in the Final Plans, as described in Section 4.6, without Agency approval of such changes as provided in Section 4.6.

5.4. LOCAL, STATE AND FEDERAL LAWS. The Developer shall assure that the rehabilitation of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Developer acknowledges and agrees that all wage and hour laws and other labor laws as applicable, including without limitation prevailing wage requirements, are the sole responsibility of Developer and Developer's contractors and subcontractors. Developer and its contractors and subcontractors have undertaken to ascertain the applicability of such laws prior to preparation of the final Project budget and have included the costs arising from such laws in the final Project budget. Developer shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations. Before commencement of rehabilitation or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may

be required by any governmental agency having jurisdiction over such rehabilitation, development or work. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

5.5. PREVAILING WAGES. The Agency has advised, and the Developer acknowledges, that the Project is subject to the payment of prevailing wages under the laws of the State of California. Developer has had the opportunity to meet with Developer's legal counsel and to request a determination from the Department of Industrial Relations regarding the applicability of prevailing wage requirements to this Project. Developer has made its independent determination of the applicability of prevailing wage laws and has independently implemented such determination. Developer, therefore, indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from Developer's determinations and actions related to prevailing wage obligations for the work of this OPA. Additionally, the grant of EDI funds pursuant to the Funding Agreements, requires payment of Davis Bacon wages.

5.6. PUBLIC SAFETY PROTECTIONS. Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the Property or Developer's activities in connection with the Property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

5.7. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT. Developer for itself, the General Contractor and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the rehabilitation of the Project.

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

5.7.2. ADVERTISING. Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability.

5.8. PUBLIC IMPROVEMENTS. Developer shall, at Developer's expense as a Project cost, undertake and complete any modification, construction, relocation or improvement of public facilities, improvements and utilities for the development of the Property.

5.9. AGENCY ACCESS TO THE PROPERTY. Developer shall permit Agency representatives access, without charge, to the entire Property at any time during normal business hours and for any purpose

which Agency reasonably considers necessary to carry out its obligations and protect its interests under the OPA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the rehabilitation of the Project.

5.10. PROJECT SIGN. If Developer places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and Redevelopment Agency" as a participant in the Project. The Agency name on the sign shall be in letters not less than size of letters used to name any of the other participants.

5.11. CERTIFICATE OF COMPLETION. After the Agency has determined that Developer has completed the rehabilitation of the Project in accordance with the Final Plans and Developer's obligations under this OPA, the Agency will furnish the Developer with a "Certificate of Completion" certifying such completion. Such certification shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the OPA with respect to the obligations of the Developer to rehabilitate the Project as of the Completion Date, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute each Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

5.11.1. Such certification and such determination shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any provision of this OPA that is not related to construction of the Project.

5.11.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional fifteen (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the OPA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

5.12. CONSTRUCTION PERIOD EXTENSION FEE. If Developer does not complete the construction of the Project on or before the Completion Date stated in the Schedule of Performances, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning the calendar month following the Completion Date, a construction period extension fee of Twenty-Five Dollars and No Cents Dollars (\$25.00) for each day by which the completion of construction is delayed beyond said completion date. Construction Extension Fees due for days of delay occurring prior to the first payment date shall be paid in arrears at the time of the first payment under this Section 1. The number of days used in computation of the Construction Extension Fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay Construction Extension Fees when due is a material default of this OPA. Any unearned portion of an advance payment of any such extension fee shall be refunded by the Agency within thirty (30) days of completion of construction, or of termination of the OPA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to unpaid Construction Extension Fees and to declare Developer in material default of this OPA. In any event, Construction Extension Fees shall not be accepted for a time period greater than six months, at which time Developer shall be deemed in material default of this OPA.

5.13. **REPORTS.** During the period of construction, the Developer shall submit to the Agency a written report of the progress of the work as and when reasonably requested by the Agency, but not more often than once each month.

5.14. **MINORITY/WOMEN'S BUSINESS.** The provisions of this OPA related to the Property are subject to Agency's minority-owned and women-owned business enterprises ("M/WBE") requirements and Developer shall comply with the requirements of the Agency's M/WBE Policy, a copy of which has been previously received by Developer.

5.15. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure that the respective parties through the Project Documents have the responsibility of notifying the Project contractors, architects and engineers for the Project of the requirements of this OPA. Developer shall include, where applicable, the provisions of this OPA in construction contracts and subcontracts for the Project, and Developer shall undertake the enforcement of such provisions.

5.16. **PROPERTY CONDITION.** Except as provided in this OPA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency.

5.17. **ZONING OF THE PROPERTY.** Agency exercises no authority with regard to zoning of the Property. Developer shall assure that zoning of the Property at the time of development shall be such as to permit the development and construction, use, operation and maintenance of the Project in accordance with the provisions of this OPA.

5.18. **NO WORK PRIOR TO CLOSE OF ESCROW.** Prior to Close of Escrow, Developer shall not commence any work or take any action that might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

6. **DEVELOPMENT FINANCING.** Developer shall be responsible for and shall pay all costs of developing the Project except as otherwise provided in this OPA. As a condition precedent to Agency's obligation to provide the Agency Funding, Developer shall provide the Agency with a complete and firm Project budget including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, as possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements. To the extent that funds specified in this OPA for the Project are insufficient to fully fund the Project, the Developer shall provide evidence, satisfactory to the Agency, of the additional required construction and permanent financing. Except as expressly provided in this OPA, no party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this OPA or otherwise to make any contribution beyond its obligations stated in this OPA.

6.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 6.3 (b) firm and binding loan commitments (as provided in Section 6.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this OPA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, requests for clarification, further evidence or audited financial reports.

6.2. COMMITMENT AND LOAN REQUIREMENTS. As a material obligation under this OPA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this OPA. The Agency may reject a loan commitment unless such commitment: (a) is subject only to Lender's reasonable conditions of title and Developer's execution of standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contains only usual, customary, and commercially reasonable loan terms; (c) continues in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provides for an Agency Funding term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this OPA, that requires amendment of this OPA or that requires the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

7. USE COVENANTS. Developer shall own and manage the Property in accordance with the provisions of this OPA.

7.1. NONDISCRIMINATION. Developer covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on the basis of race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property and the Project, nor shall the Developer or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in Property and the Project. The foregoing covenants shall run with the land.

7.2. REGULATORY AGREEMENT. Developer covenants by and for itself, its heirs, executors, administrators, and all persons claiming under or through it, that the Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

8. INDEMNIFICATION. Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency.

Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Developer.

This indemnification provision shall survive the termination of this agreement.

9. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to: (a) the removal, discharge or release of Hazardous Substances on the Property after Developer has taken possession of the Property; or (b) the existence of Hazardous Substances on the Property, which were not on the Property prior to Developer's taking possession of the Property.

10. LIABILITY INSURANCE. With regard to this OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

10.1. LIABILITY INSURANCE POLICY LIMITS. Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

10.2. WORKER'S COMPENSATION. Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000 or statutory limits, whichever are greater.

10.3. COMMERCIAL GENERAL LIABILITY. Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency Counsel). Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence, for bodily injury coverage; \$2,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

10.4. COMPREHENSIVE AUTOMOBILE LIABILITY. Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$1,000,000.

10.5. FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE. For the duration of OPA, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project.

In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

10.6. INSURANCE PROVISIONS. Each policy of insurance required under this OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

10.6.1. ADDITIONAL INSURED. During the term of construction, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the worker's compensation policy, unless otherwise approved by Agency's legal counsel in writing.

10.6.2. SINGLE PROJECT INSURANCE. It is the intent of the parties that the Project have available all the specified insurance coverages. Developer shall not provide insurance coverages that are considered in aggregate with other Projects which Developer or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Developer shall immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

10.6.3. CANCELLATION. Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

10.6.4. FAILURE TO MAINTAIN. If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this OPA, the Agency shall have the right to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

10.6.5. BLANKET COVERAGE. Developer's obligation to carry insurance as required under this Section 10 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 10 with respect to such insurance shall otherwise be satisfied by such blanket policy.

11. DEFAULTS AND REMEDIES. Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party, provided that the defaulting party shall promptly begin and diligently pursue such cure to completion. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by

this OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA.

12. **OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default by Developer shall be foreclosure. Upon the occurrence of any default by any party, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this OPA as allowed under this OPA, at law or in equity.

12.1. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this OPA.

13. **ATTORNEY'S FEES AND RELATED COSTS.** If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. The term "prevailing party" shall include without limitation, the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law. In any event, the prevailing party shall mean the party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such party. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

14. **ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, the Developer may, upon written Agency approval, obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this OPA in making the Loan and that Agency's obligations under this OPA are inducements to Lender's making of the Loan.

14.1. **NOTICES.** If the Agency gives any notice of default to Developer under this OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated _____ between the Redevelopment Agency of the City of Sacramento and **Mercy Housing**

California XLII (“OPA”). Lender requests, in accordance with Section 14.1 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

14.2. ASSIGNMENTS AND TRANSFERS OF THE LOAN. Agency shall not be bound to recognize any assignment of the Loan or related encumbrance of the Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

14.3. LENDER NOT OBLIGATED TO CONSTRUCT. Notwithstanding any of the provisions of the OPA, Lender shall not be obligated by the provisions of the OPA to construct or complete the Project. Nothing in this Section or any other provision of the OPA shall be construed to permit or authorize Lender to devote the Property to any uses, or to construct any improvements on the Property, other than those uses or improvements provided or permitted in the OPA.

14.4. LENDER'S OPTION TO CURE DEFAULTS. After any default of Developer's obligations under the OPA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the OPA. Any Lender who properly completes the Project as provided in the OPA shall be entitled, upon written request made to the Agency, to Certificate of Completion from the Agency in a manner provided in the OPA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Developer's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the OPA by the Developer shall not apply to the part of the Property to which such Certification relates. Nothing in this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

14.5. DEFAULT BY DEVELOPER. In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 14.5 and Lender has failed to cure such default as provided in Section 14.5 provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

14.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this OPA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay

damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer.

14.5.2. Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property, and if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

14.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

14.5.4. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

14.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Property from the Developer to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this OPA (except to the extent of any monies due and unpaid from Developer under this OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's right, title and interest under this OPA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Developer to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the right to assign or transfer Developer's right, title and interest under this OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this OPA.

14.7. **MODIFICATIONS.** No modification or amendment to the OPA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

14.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this OPA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this OPA and provided such modifications, instruments, and agreements serve a material economic purpose.

14.9. **ESTOPPEL CERTIFICATE.** Any party may, at any time, request in writing of any other party to certify in writing that, to the knowledge of the certifying party, (i) this OPA is in full force and effect and a binding obligation of the parties; (ii) this OPA has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments; and (iii) the requesting party is not in

default in the performance of its obligations under this OPA, or, if in default, describing the nature and extent of any such defaults. A party receiving such a request shall execute and return such certificate to the requesting party, or give a detailed written response explaining why it will not do so, within ten (10) days following its receipt. The City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

14.10. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER. In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this OPA or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer without the prior written consent of Agency. The transfer or assignment, pursuant to this Section, requires the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer. Such a transfer as permitted in this Section 14 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Developer and the parties signing the OPA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision.

15. DOCUMENT INTERPRETATION. This OPA shall be interpreted in accordance with the following rules.

15.1. INTEGRATED DOCUMENTS; SEVERABILITY. This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA, including the incorporated documents, integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this OPA shall, to any extent, be held invalid or unenforceable, the remainder of this OPA shall remain in full force and effect and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

15.2. CONFLICTING PROVISIONS. If conflicts are discovered in provisions of this OPA and such incorporated documents, this OPA shall control with regard to plan review and construction terms, the Funding Agreement shall control with regard to funding terms and the Regulatory Agreement shall control with regard to affordability restrictions. In any event, the conflicts shall be construed so as to meet the intent of this OPA.

15.3. WAIVERS AND AMENDMENTS. All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

15.4. CAPTIONS, GENDER AND NUMBER. The section headings, captions and arrangement of this OPA are for the convenience of the parties to this OPA. The section headings, captions and

arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

15.5. **DRAFTER.** This OPA shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this OPA. All exhibits referred to in this OPA are attached to it and incorporated in it by this reference.

15.6. **MERGER.** All of the terms, provisions, representations, warranties, and covenants of the parties under this OPA shall survive the Close of Escrow and shall not be merged in the Grant Deed or other documents.

15.7. **TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this OPA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

15.8. **GOVERNING LAW.** This OPA shall be governed and construed in accordance with California law.

15.9. **INSPECTION OF BOOKS AND RECORDS.** Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Property as reasonably necessary to carry out its purposes under this OPA.

15.10. **OWNERSHIP OF DATA.** If this OPA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency any and all data acquired for development of the Property. Agency shall have full ownership and rights to use such data.

15.11. **SUCCESSORS.** This OPA shall inure to the benefit of and shall be binding upon the parties to this OPA and their respective heirs, successors, and assigns.

16. **NOTICES.** All notices to be given under this OPA shall be in writing and sent to the following addresses by one or more of the following methods:

16.1. Addresses for notices are as follows:

16.1.1. Agency: Redevelopment Agency of the County of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Alan Saunders.

16.1.2. Developer: Mercy Housing California XLII, 3120 Freeboard Drive, West Sacramento, CA 95691; Attention: Vice President.

16.2. Notices may be delivered by one of the following methods:

16.2.1. Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

16.2.2. A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;

16.2.3. Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or

16.2.4. Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Developer or Agency may respectively designate by written notice to the other.

17. DEFINITIONS.

17.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

17.2. "Agency Funding" is the funding provided by the Agency under this OPA to Developer for the Project.

17.3. "Agency Funding Agreement" is the Construction and Permanent Loan Agreement.

17.4. "Certificate of Completion" is the certificate issued by the Agency certifying Developer's completion of the rehabilitation of the Project.

17.5. "CEQA" is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.

17.6. "County" is the County of Sacramento, a political subdivision of the State of California.

17.7. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

17.8. "Completion Date" is the date on which a certificate of occupancy is issued by the City of Sacramento and is when Developer must complete the construction of the Project. The Completion Date for the Project shall be no later than December 31st of the second calendar year after the award of the 9% tax credits by the California Tax Credit Allocation Committee. .

17.9. "Construction Extension Fee" is the fee payable by Developer for each day by which the completion of construction is delayed beyond the date for completion of construction.

17.10. "Contractor" is the general contractor or contractors with whom Developer has contracted for the rehabilitation of the Project.

17.11. "Developer" is Mercy Housing California XLII, a California limited partnership. The principal office of the Developer is located at 3120 Freeboard Drive, West Sacramento, CA 95691.

17.12. "Escrow" is the escrow for the transactions contemplated by this OPA.

17.13. "Escrow Instructions" means the escrow instructions for the close of the Escrow.

17.14. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 4, which shall include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this OPA. The Final Plans shall incorporate any related mitigation measures that may be required for compliance with CEQA. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this OPA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this OPA, including without limitation, the Preliminary Plans and the Scope of Development.

17.15. "Hazardous Substances" as used in this OPA shall include, without limitation to, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C.1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory) and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.

17.16. "Legal Description" is the legal description of the various parcels of real property affected by this OPA. The Legal Description is attached as **Exhibit 1 Legal Description**.

17.17. "Lender" shall include all holders of any lien or encumbrance as security for a loan on all or any part of the Property. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this OPA.

17.18. "Loan" is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Project.

17.19. "OPA" is this Owner Participation Agreement between Agency and Developer, including all documents incorporated in this OPA by reference.

17.20. "Preliminary Plans" are the Project designs prepared by the Project architect, ***Architect name***, dated ***Preliminary Plan Date***, a portion of which is attached as **Exhibit 2 Preliminary Plans**. Agency has approved the Preliminary Plans concurrently with the approval of this OPA.

17.21. "Plans" shall mean either or both Preliminary Plans and Final Plans as the context may indicate.

17.22. "Project" is all of the work to be accomplished under this OPA.

17.23. "Project Area" is the Stockton Boulevard Redevelopment Project Area, as defined in the Redevelopment Plan.

17.24. "Property" is that real property to be developed under this OPA, as more particularly described in the Legal Description. The Property includes all improvements contained within the Property

17.25. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the County Council of the County on June 17, 1986, by County Ordinance Nos. 86-064, 86-065, 86-066 and 86-067, Fourth Series. A copy of the Redevelopment Plan as initially adopted was recorded on July 29, 1986, in the Official Records of the County of Sacramento, in Book 86-07-29, beginning at pages 1633, 1738, 1690 and 1787, respectively.

17.26. "Regulatory Agreement" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions, which run with the Property as a condition of Agency Funding.

17.27. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as **Exhibit 3: Schedule of Performances**.

17.28. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as **Exhibit 4: Scope of Development**.

17.29. .

17.30. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the enforced delay, as determined by Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Developer has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

THE PARTIES HAVE EXECUTED THIS OPA in Sacramento, California as of the date first written above.

DEVELOPER :
MERCY HOUSING CALIFORNIA XLII
A California limited partnership

By: Mercy Housing Calwest, a California
nonprofit public benefit corporation
Its: General Partner

By: _____
Its: _____

Approved as to form: _____

Developer Counsel

**AGENCY: THE REDEVELOPMENT AGENCY
OF THE COUNTY OF SACRAMENTO**

By: _____
LaShelle Dozier, Interim Executive
Director

Approved as to form:

Agency Counsel

CONDITIONAL GRANT AGREEMENT
 [Secured by Deed of Trust]
 Budget Inn 5321 Stockton Boulevard, Sacramento, CA

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, ("Grantor"), whose address is 630 I street, Sacramento, California grants to the **MERCY HOUSING CALIFORNIA XLII**, a California Limited Partnership, ("Grantee"), with its principal office at 3120 Freeboard Drive, Suite 202, West Sacramento, CA 95691, the principal amount ("Conditional Grant") of ONE MILLION TWO HUNDRED SEVENTY THREE THOUSAND DOLLARS (\$1,273,000), or so much as may be actually advanced under this agreement ("Grant Agreement") and the Owner Participation Agreement between Grantor and Grantee, dated _____ 2008.

This Conditional Grant is secured by a deed of trust ("Deed of Trust") on the real property ("Site") described in the attached "Legal Description" incorporated in this Grant Agreement by this reference. This Conditional Grant is subject to the terms and conditions of the OPA and to the terms and conditions stated below.

The Conditional Grant shall become unconditional upon the issuance of a certificate of occupancy, provided that all conditions have then been met and Grantee is not then in default of the OPA or this Grant Agreement. Grantee's obligations regarding repayment of the amount of the Conditional Grant shall cease when the Conditional Grant becomes unconditional. Grantee shall repay the grant if Grantee is in default of any of the following covenants and conditions and has not immediately commenced and diligently cured such default:

1. **GRANT PURPOSE AND USE OF FUNDS.** Grantor is making this Conditional Grant for the public benefits derived from the use of the proceeds in the following project ("Project"): Budget Inn Acquisition, Rehabilitation and Conversion Project- This Project is to convert the 101 unit motel on Stockton Boulevard into a 74 unit apartment with studio and one-bedroom apartments which would provide permanent housing and services to homeless individuals seeking the opportunity for housing with services to address issues with physical and mental disabilities. The proceeds of the Conditional Grant shall be used solely for the Project.
2. **DISBURSEMENT.** The proceeds of this Conditional Grant shall be disbursed upon execution by each party and delivery to the other party of this Grant Agreement and subject to the following conditions and procedures:
3. **CONDITIONS TO DISBURSEMENT.** Agency shall not be obligated to disburse any of the Conditional Grant proceeds unless and until all of the conditions are met with respect to each such disbursement:
 - (i) The proceeds of the Conditional Grant are used solely for the following: It is anticipated that the Grant Funds shall be used exclusively for the acquisition of the Project.
 - (ii) Grantee is not and shall not be in default of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.
 - (iii) Grantee is not in default of any provision of this Grant Agreement, subject to the rights of Grantee to cure such default.
 - (iv) Grantee has fully complied with the following disbursement procedures.

4. DISBURSEMENT PROCEDURES. Grantor shall disburse the Conditional Grant proceeds according to the following procedures: Grantee has made written demand for disbursement stating the amount requested and the intended use of the proceeds to be disbursed which shall be deposited into the escrow for the acquisition of the Project.

5. PREVAILING WAGES Grantor advises Grantee that the Project is subject to the payment of prevailing wages under California law. Grantee shall inform the Contractor and shall require the Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Grantor's determination of the applicability of California prevailing wage requirements. Grantee and Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Grantee and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Grantee indemnifies, holds harmless and defends the Grantor from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Grantee or Contractor or both of them. EDI funds (federal funds) are also being used in the funding of this Project. Grantee shall comply with Davis-Bacon prevailing wage requirements as they may apply as described in the Federal Requirements.

6. DEFAULT OF OPA. Grantee shall not default in any material provision of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.

7. NO SALE OR EXCESS REFINANCING. Grantee shall not, without Grantor's written consent: (a) sell or transfer all or any portion of the Site; or (b) refinance the Site for an amount greater than One Hundred Percent (100%) of the independently appraised, fair market value of the Site reduced by the amount of this Conditional Grant remaining unpaid. Grantor shall not withhold consent to sell to an otherwise financially qualified buyer who assumes Grantee's obligations under this Conditional Grant and accepts the terms of this Conditional Grant. This section shall not apply to the admission of an investor limited partner to Grantor.

8. LOW INCOME TENANTS AND HCV/ SEC. 8 TENANTS Grantee shall not permit discrimination against tenants because of their status as low-income tenants or as tenants receiving "HSV" or "Section 8" rental assistance or any other assistance from the U.S. Department of Housing and Urban Development or from any other federal, state or local program of housing or income assistance.

9. **MAINTAIN LOANS.** Grantee shall comply with the provisions of all loans secured by the Site and shall promptly and timely cure any default under said loans.

10. **ADEQUATE RESERVES.** Grantee shall maintain, or cause to be maintained, adequate capital, operational and regular and deferred maintenance reserves for the Project in accordance with ordinary and usual business practices of a prudent property owner. Funds in said reserve accounts shall be used solely for the designated purposes unless such use has first been approved in writing by Grantor.

11. **PROFESSIONAL MANAGEMENT.** Grantee shall obtain and maintain, for the term of the Regulatory Agreement from the date of occupancy of improvements on the Site required by the OPA, independent professional property management services with a firm approved by Grantor. Grantor hereby approves Mercy Services Corporation as the property manager for the Project.

12. **NO NUISANCE.** Grantee shall permit no activity on the Site that may be construed to be a nuisance to any tenant on the Site, to any adjacent tenants or property owners or to the general public. In the event that such a nuisance is occurring on the Site, Grantee shall take immediate action to stop such nuisance and to prevent future occurrences of such nuisance.

13. **OCCUPANCY.** Grantee shall not permit the occupancy of any residential unit on the Site to exceed the occupancy limits established by the U.S. Department of Housing and Urban Development for subsidized housing units.

14. **PROJECT MAINTENANCE.** Grantee shall assure that the following maintenance and use provisions for the Site shall be enforced:

15. **BUILDING UPKEEP.** Grantee shall keep the exterior appearance of all buildings and structures in a clean and attractive condition. Grantee shall perform refinishing of surfaces immediately when observed to be needed due to damage or deterioration.

16. **GROUNDS UPKEEP.** Grantee shall maintain all grounds and landscaped areas within the Site and those adjacent to the Site, which the Grantee may control or otherwise maintain, in a condition consistent with first-quality landscape care. Grantee shall assure that shrubs and trees are to be properly and consistently pruned and that all landscaped areas are reasonably kept free of weeds, undesirable plants and trash.

17. **TRASH STORAGE.** Grantee shall assure that all trash, including lawn, shrub and tree cuttings are placed in a screened enclosure when stored for pickup and that collected trash of any kind is not allowed to stand outside of an enclosure for more than eight (8) hours.

18. **STORAGE AND REPAIRS.** Grantee shall assure that no painting, repairing or storage of personal property is permitted in any open parking area, balcony area, or common area or any other area visible to the public.

19. **SIGNS.** Grantee shall not install or permit the installation or use of any sign on the Site which creates a hazard by protruding, overhanging, blinking, flashing, exhibiting animation or other dangerous conditions. Grantee shall not install or permit the installation or use of any billboards, pennants, bunting or similar devices for advertising or commercial display which are not in accordance with all applicable

ordinances, regulations and codes. All nonconforming signs shall be removed within the time specified by the organization have jurisdiction over the sign or by the Grantor.

20. **FEDERAL REQUIREMENTS.** Grantee represents that Grantee has reviewed the attached "Federal Requirements Attachment" incorporated in this Grant Agreement by this reference. Grant shall fully comply with all applicable requirements stated in such attachment.

21. **INDEMNITY.** Grantee indemnifies, and will hold harmless and defend, the Grantor, its officers, directors, commissioners, employees and agents against all claims, demands, penalties, judgments, awards, orders, expenses and liabilities related to the Property, Grantee's activities on the Property or arising from Grantee's rights and obligations under this Grant Agreement. Such liabilities include without limitation, strict liability in tort or liability resulting from a finding that Grantor or Grantee are engaged in a joint venture or partnership. Such expenses include without limitation, court costs, arbitration or mediation fees, witness fees, investigator fees and attorney's fees, whether or not litigation is commenced. The indemnity provisions of this Section 21 shall survive the termination of this Grant Agreement, whatever the reason for such termination.

22. **ATTORNEY'S FEES AND COSTS.** If a party institutes any action (including without limitation, arbitration, mediation, motions, hearings, suits and appeals) to enforce a provision of this Grant Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its fees, costs and expenses in connection with such action, including without limitation, the prevailing party's expert witness fees, investigator fees and reasonable attorney's fees. Payment of such fees shall include payment for such services whether provided by employees of the prevailing party or independent providers. Prevailing party shall mean the party who obtains a more favorable result than that offered by it in settlement of the issues, or in the absence of such settlement offer, the party obtaining a favorable result.

23. **NOT ASSIGNABLE.** Except as described in Section 7, Grantee shall have no right to, and shall not, assign this Conditional Grant, whether directly, by operation of law, or otherwise.

24. **BOOKS AND RECORDS.** Grantee shall maintain such books and records related to the operation of the Project as are considered reasonable and necessary under generally accepted accounting principles and shall permit Grantor to view the books and records at any time during regular business hours.

25. **INTERPRETATION.** This Grant Agreement incorporates the Deed of Trust and the OPA in this document by this reference. This Grant Agreement integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. As the context may indicate, the singular and plural forms each include the other and gender references include all other genders. If any provision of this Grant Agreement is held invalid for any reason, the other provisions shall be given full force and effect to the extent that the purpose and intent of this Conditional Grant can then be met.

26. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this Grant Agreement must be in writing and duly executed by the waiving party. All amendments to this Grant Agreement must be in writing and duly executed by the Grantor and Grantee.

27. **CUMULATIVE RIGHTS AND REMEDIES.** No right, power or remedy given to Agency by the terms of this Grant Agreement or the OPA is intended to be exclusive of any other right, power or remedy,

and each such right, power or remedy will be cumulative and in addition to every other right, power or remedy given to the Grantor by the terms of any instrument, by any statute or otherwise.

28. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of the Grantor shall be personally liable to the Grantee, or any successor in interest, in the event of any default or breach by the Grantor or for any obligations under the terms of this Grant Agreement.

29. **NOTICES AND DEMANDS.** A notice, demand or other communication under this Grant Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail postage or prepaid, return receipt requested, or delivered personally or by national courier service, delivery charges prepaid, to the address set out above, or at such other address for the receiving party as has been duly noticed under this Section 28.

EXECUTED AT SACRAMENTO, CALIFORNIA, as
of the date first written above. GRANTEE:
MERCY HOUSING CALIFORNIA XLII, a
California Limited Partnership

Grantor:
**Redevelopment Agency of the City Of
Sacramento**

By: Mercy Housing Calwest, a California
nonprofit public benefit corporation,
its general partner

By: _____
LaShelle Dozier
Interim Executive Director

By: _____

Its: _____

Grantor Counsel approval as to form:

Date: _____

Approved as to form:

Grantee Counsel

Exhibit C

PERMANENT SUPPORTIVE HOUSING RENT SUBSIDY AGREEMENT

THIS PERMANENT SUPPORTIVE HOUSING RENT SUBSIDY AGREEMENT AGREEMENT ("Agreement") is made effective as of the _____ day of _____, _____, by and between Sacramento Housing & Redevelopment Agency ("Agency") and Mercy Housing California XLII, a California Limited Partnership ("Owner").

RECITALS

A. Owner was formed for the purpose of owning real property in Sacramento, California and rehabilitating and operating 75 residential units thereon for extremely low and very low income households, including one manager's unit (the "Project"). Seventy-four (74) of the units have been designated for use as permanent supportive housing for homeless (or at risk of becoming homeless) individuals.

B. Owner has applied for funds from the CalHFA/MHSA program to subsidize the rental payments and operating costs of Twenty-Five (25) permanent supportive housing units.

C. Despite diligent efforts, Owner has not identified or obtained the funding necessary to operate Forty-Nine (49) permanent supportive housing units. Such funding is necessary because the future residents of such units will be unable to pay sufficient rent to offset the cost of Project operations and maintenance. Therefore, additional rental subsidy is required to ensure the operational and financing feasibility of the Project.

D. As a condition of Agency funding, Owner has agreed to restrict Seventy-Four (74) permanent supportive housing units ("Agency Restricted Units") to very low income levels pursuant to an agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Property ("Regulatory Agreement").

E. Under the Regulatory Agreement, the Agency has the option, but not the obligation, to buy down the Agency Restricted Units from very low income units to extremely low income levels. The annual price per unit is equivalent to the pro-rata operating deficit caused by operation of the Project for the benefit of extremely low income tenants. The buy-down price reflects the extremely low income rent levels and the extraordinary costs associated with permanent supportive housing for the extremely low income population. In addition, the buy-down price reflects the fact that Owner has committed to ensure that the rent for Forty-Nine (49) of the Agency Restricted Units (the "Agency Subsidized Units") does not exceed thirty percent (30%) of the actual income of each tenant or 19% of AMI, whichever is more.

F. Agency has agreed and commits pursuant to this Agreement to provide a rental subsidy to Owner on behalf of the tenants of Agency Subsidized Units for a sixteen (16) year period to buy down the Agency Subsidized Units to extremely low income affordability levels in order to supplement rents paid by the tenants of the units and ensure the operational and financing feasibility of the Project.

G. Agency and Owner are entering into this Agreement to specify the conditions and procedures under which Agency will disburse rental subsidy funds to the Owner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Definitions.

- a. Budget. Budget means a statement of projected operations of the Agency Subsidized Units component of the Project for a calendar year in the form of **Exhibit A** attached hereto.

- b. Draw Request. Draw Request means a request in the form of **Exhibit B** attached hereto for a payment of funds pursuant to this Agreement.
- c. Agency Subsidized Unit Expenses. Agency Subsidized Unit Expenses means for any year beginning as of the issuance of a certificate of occupancy for the Project by the City of Sacramento, cash costs and expenses paid by the Owner in connection with the Agency Subsidized Units for reasonable and ordinary operating and maintenance costs. Reasonable and ordinary operating and maintenance costs are defined as the following:
 - i. Reasonable and ordinary operating and maintenance costs consist of third party costs for operational expenses such as property management salaries, administrative costs, utilities, minor repairs, and contract services; pro-rata costs of Project-based costs such as insurance, taxes, and governmental fees and charges; a management fee not to exceed \$43 per unit per month in the first year, and standard operating and replacement reserve deposits.
 - ii. Reasonable and ordinary operating and maintenance costs also consist of a pro-rata amount of mortgage payments, deferred developer fees, or partnership management and investor asset management fees related to the Agency Subsidized Units, which have been either included in the final Project pro forma or approved by Agency annually in advance as part of Owner's annual budget submission as required in Section 3.
 - iii. Reasonable and ordinary operating and maintenance costs may not consist of bond service fees to the Agency; owner distributions, capital expenditures paid from the replacement reserve, or expenses incurred for Agency Subsidized Units that have been vacant in excess of thirty (30) consecutive days.
- d. Agency Subsidized Unit Income. Agency Subsidized Unit Income means, for any year, all income earned from the operation of the Project in its ordinary course of business in connection with the Agency Subsidized Units, including all rents, rent subsidies including tenant- and project-based subsidies, resident service subsidies, operating subsidies and other amounts paid to the Owner by or on behalf of tenants and excluding interest on reserve accounts or payments received under this Agreement.
- e. Agency Subsidized Unit Operating Deficit. Agency Subsidized Unit Operating Deficit means the annual amount (or the projected amount shown in the Budget, as the case may be) in which the Agency Subsidized Unit Expenses exceed the Agency Subsidized Unit Income at the end of the Budget year.
- f. Rental Subsidy Holding Account. Rental Subsidy Holding Account shall mean the account to which payments are made for the purpose of funding Agency Subsidized Unit Operating Deficits in accordance with this Agreement.

2. Establishment and Use of Account

- a. Rental Subsidy Holding Account. Owner shall promptly establish the Rental Subsidy Holding Account and shall thereafter administer such account in accordance with this Agreement. All Agency payments made under this Agreement shall be deposited into the Rental Subsidy Holding Account when received and all expenditures from the Rental Subsidy Holding Account shall comply with the restrictions set forth in Subsection b.
- b. Use of Funds. Owner may use the funds in the Rental Subsidy Holding Account to pay Agency Subsidized Unit Expenses approved in writing by the Agency. Expenditures made pursuant to a Budget or Draw Request approved in writing by the Agency shall satisfy this requirement. Such funds are intended to cover operating losses that result from the inability of tenants in the Agency Subsidized Units to pay sufficient rent to offset the cost of Agency Subsidized Unit Expenses.

3. Submissions by Owner; Review of Budget.

- a. Owner shall submit to Agency in each calendar year of Project operation during the term of this Agreement and in form and substance acceptable to Agency, the following documents. For the first year of Project operation, Owner shall submit all of the following documents that are available.

November 1: i. budget for the upcoming calendar year.

March 1: i. operating statement for the preceding calendar year for the Project and a separate operating statement for Agency Subsidized Units;

ii. rent roll as of December 31 of the preceding calendar year indicating for each unit the tenant, the rent, the rent subsidy, if any, and the lease renewal date; and

iii. bank statements showing the balance in the Project's operating account and reserve accounts as of December 31 of the preceding calendar year for Agency Subsidized Units together with reconciliation of such balances for the preceding calendar year; and

iv. current fire and liability insurance policies for the Project.

May 1: i. certified financial statements of Owner; and

August 1: i. bank statement for the Rental Subsidy Holding Account for the preceding June 30; and

- b. Other Documents. Owner shall furnish to Agency such additional documentation, including timesheets, payrolls, vouchers, invoices, or cancelled checks, as shall be reasonably requested by Agency within thirty (30) days after such request.
- c. Review of Budget. Agency shall approve or reject a Budget submitted by Owner under Subsection a. above by notice to Owner given on or before the later of (i) December 1 or (ii) thirty (30) days after receipt of such budget and all other documentation required to be provided under Subsections a. and b. above. If Agency rejects the Budget, such notice shall be accompanied by a statement of Agency's objections to the Budget within ten (10) days thereafter. Agency may, without limitation, reject any Budget in which the Agency Subsidized Unit Expenses are, in the reasonable opinion of the Agency, excessive, in which event Agency shall explain Agency's reason for finding such costs excessive.

4. Payment to Rental Subsidy Holding Account.

- a. Budgeted Deficit. If the Budget approved by Agency for any year includes an Agency Subsidized Unit Operating Deficit; Agency shall pay the amount of such Agency Subsidized Unit Operating Deficit to the Rental Subsidy Holding Account in four equal quarterly installments. Agency shall pay the first installment to the Rental Subsidy Holding Account on the first day an approved Budget takes effect.

b. Actual Deficit. If Owner shall require additional operating funds due to reasonably unforeseen circumstances or events connected to the Agency Subsidized Units, Owner may submit to Agency from time to time, but not more frequently than two (2) times in any year, a Draw Request for disbursement of additional funds to the Rental Subsidy Holding Account. Such Draw Request shall identify such circumstances or events and shall be accompanied by a twelve month Operating Statement through the end of the most recent calendar quarter. Agency shall evaluate the Draw Request and supporting documentation and, if approved, shall pay the amount specified in the Draw Request to the Rental Subsidy Holding Account. Agency commits, subject to the limitations detailed in Section 7, to fund such requests that are made due to the unexpected decrease or unavailability of certain disability benefits for tenants. Owner and Agency acknowledge that Section 7 below is based upon the assumption that all tenants will have these certain disability benefits which in 2008 equate to 22% of the Area Median Income.

5. Affordability Levels.

- a. Extremely Low Income. Owner agrees that the Agency payments made pursuant to this Agreement are sufficient to buy down the Agency Subsidized Units to extremely low income affordability levels as set forth by the Regulatory Agreement, for the term of this Agreement. Therefore, Owner shall assure the affordability of the Agency Subsidized Units at extremely low income levels for the term of this Agreement.

- b. Actual Income or 19% of AMI. Owner commits that the tenant-paid rent for the Agency Subsidized Units will not exceed thirty percent (30%) of the actual income or 30% of 19% of AMI of each tenant which ever is more. Owner and Agency acknowledge the Project tenants will be eligible for state and federal disability or social security income and that these benefits are estimated to be currently equal to 19% of the Area Median Income (AMI). However, enrollment in such benefit programs may not be in effect at the time of move-in. Owner and Agency agree that other Project reserves will be used to cover such temporary additional Project income deficits.

6. Default.

- a. Default. Failure by Owner to submit any documents due under Section 3 above on the date such documents shall be due or perform any other obligations of Owner under this Agreement shall be deemed a default by Owner under this Agreement.
- b. Remedies. Upon occurrence of a default, Agency shall give notice of such default to Owner and may, at its option, in addition to any and all other remedies available to it, (a) immediately withhold any requested contribution pursuant to a Draw request, provided that Agency shall, upon a cure of such default, reinstate such contributions; and (b) if such default is not cured within sixty (60) days after notice thereof, terminate this Agreement.

7. Limitations on Operating Deficit Funding Obligation; Termination.

- a. Total Obligation. The Owner specifically agrees that when Agency has contributed Three Million Two Hundred Twenty-Eight Thousand Eight Hundred Ten Dollars (\$3,228,810) or sixteen (16) years have passed from the date of the first disbursement under this Agreement, Agency shall have no further obligation under this Agreement to make payments to the Owner for the payment of Agency Subsidized Unit Operating Deficits and this Agreement shall terminate.
- b. Annual Obligation. The Owner agrees that Agency shall have no obligation under this Agreement to make payments totaling more than Three Hundred Ninety Six Thousand Eight Hundred Sixty Four DOLLARS (\$396,864) per calendar year.
- c. Excess Expenses. The Owner agrees that Agency shall have no obligation under this Agreement to make payments for Agency Subsidized Unit Expenses that exceed the projected amounts for such units listed in the pro forma for the Project, which is attached as Exhibit C attached hereto.
- d. Owner's Obligation. Upon termination of this Agreement, Owner shall have no further obligation to Agency to operate any of the units for extremely low income tenants, unless Agency exercises its option to buy down the affordability of the units pursuant to the Regulatory Agreement.

- e. Transition of Project. Should Owner pursue a transition of the Project to a conventional affordable housing model then this Agreement for permanent supportive housing rental subsidy shall terminate upon the conversion of the Project to a conventional housing model.

8. Other Funding Sources.

Owner shall diligently work with the Agency to identify and obtain additional funding sources to provide rental subsidies and operating assistance to the Agency Subsidized Units during the term of this Agreement. Owner shall accept any additional funding sources that are compatible with the goals and operations of the Project. Any such additional funding sources shall be considered Agency Subsidized Unit Income for the purposes of this Agreement and shall offset the amount of rental subsidy provided pursuant to this Agreement.

9. Representations and Warranties of Agency. Agency represents and warrants that:

- a. It has full power and authority to execute, deliver and perform this Agreement and any instrument or agreement required under this Agreement, and to perform and observe the term and provisions of this Agreement;
- b. All action on its part necessary for the execution, delivery and performance of this Agreement and any instrument or document required under this Agreement has been duly taken;
- c. Its agents and officers executing this Agreement and any instrument or agreement required under this Agreement are fully authorized to execute the same;
- d. This Agreement constitutes the valid and binding agreement enforceable against Agency in accordance with its terms;
- e. Its obligations under this Agreement do not conflict with its obligations under any other agreement; and
- f. Neither the entry into nor the performance of, nor compliance with, this Agreement, or other documents executed concurrently herewith has resulted or will result in any violation of, or be in conflict with, or invalidate, cancel or make inoperative, or interfere with, or result in the creation of any lien, encumbrance or any other charge upon its property pursuant to, or constitute a default under, any charter, by law, Owner agreement, trust agreement, mortgage, deed of trust, indenture, contract, credit agreement, franchise, permit, judgment, decree, order, easement, restriction or other charge, right or interest applicable to Agency.

10. **Applicable Law.** This Agreement, and the application or interpretation in this Agreement, shall be governed by the laws of the State of California as applied to contracts between residents of California wholly to be performed within the State. The parties consent to the jurisdiction and venue of any federal or State court in Sacramento, California and also consent to service of process by any means authorized by California or federal law.

11. **Modification.** This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties.

12. **Severability.** If any provision of this Agreement is determined to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties. In the event, all of the other provisions shall be deemed valid and enforceable to the greatest possible extent.

13. **Headings.** The headings used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

14. **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered including but not limited to overnight delivery or deposited in the certified U.S. Mail, return receipt requested, first class and postage prepaid, addressed to each party at the following addresses or such other address as may be designated by a notice pursuant to this Section:

Owner:

With a copy to:

With a copy to
Limited Partner:

Agency: Sacramento Housing & Redevelopment Agency
630 I Street
Sacramento, CA 95814

Any notice provided in accordance with this Section shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

15. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. However, Owner shall not assign this Agreement or any interest it may have in the Rental Subsidy Holding Account without the prior written consent of Agency, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Sacramento Housing & Redevelopment Agency

By: _____
Its: _____

Mercy Housing California XLII, a California Limited Partnership

By: Mercy Housing Calwest, its general partner

By: _____
Its: _____

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