Sacramento Housing & Redevelopment Agency

REPORT TO REDEVELOPMENT AGENCY AND HOUSING AUTHORITY
City of Sacramento
915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Staff Report
August 7, 2008

Honorable Chair and Members of the Board

Title: Limited Partnership Restructure and Funding Request Approvals for Riverview Plaza Project

Location/Council District: 600 I Street, Council District 1

Recommendation: Adopt **1)** a **Housing Authority Resolution** a) approving the substitution of the Housing Authority of the City of Sacramento (Housing Authority) as the limited partner of Riverview Plaza Associates, A California Limited Partnership. (Partnership); b) authorizing acceptance of $300,000 ground lease partial payment from the Partnership; c) authorizing the Interim Executive Director to amend the budget to appropriate the $300,000 ground lease payment from the Partnership for the purchase of the current limited partner's (Chevron U.S.A. Inc) interest; d) authorizing the purchase of Chevron's limited partner interest for $300,000 e) authorizing the Interim Executive Director to amend the budget to pay for all transfer fees, costs and legal expenses on behalf Partnership and the Housing Authority, itself, in connection with the substitution of the Housing Authority as limited partner and purchase of Chevron's limited partner interest; f) approving acceptance of an Owner Participation Agreement, $5,000,000 Forgivable Loan and related documents with the Partnership for the project; g) approving the modification and extension of affordability restrictions on 33 residential units in the project in accordance with the requirements of tax increment funding as outlined in this staff report; and **2)** a **Redevelopment Agency Resolution** a) authorizing the Interim Executive Director to approve the transfer of Chevron's limited partner interest to the Housing Authority and waive the Redevelopment Agency's rights under the 2004 Put and Option Agreement; b) authorizing the Interim Executive Director to execute an Owner Participation Agreement (OPA) and Forgivable Loan Agreement in substantially the form attached with the Partnership for the project; c) authorizing the transfer of $5,000,000 from Downtown Tax-Exempt Tax Allocation Bonds to the project including the reimbursement of predevelopment costs associated with the work to be performed under the OPA; d) authorizing cost savings, if any, under the immediate needs budget, to be applied to other priority capital needs identified in the 2006 McGinnis Chen Capital Needs Assessment; e) approving the modification and extension of affordability restrictions on 33 residential units in the project for 55 years; f) authorizing the Interim Executive Director to execute other documents and perform other actions as necessary to make and reasonably administer the agreements.

August 7, 2008

Limited Partnership Restructure and Funding Request Approvals for River Plaza Project

Contact: Jim Hare, Assistant Director, Housing and Community Development, 440-1313; Lisa Bates, Deputy Executive Director, Housing and Community Development, 440-1322

Presenters: Jim Hare, Assistant Director, Housing and Community Development

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: Riverview Plaza is a 16-story residential and commercial mixed-use building located at 600 I Street (Vicinity Map, Attachment 1; Location Map, Attachment 2). The residential portion consists of 123 one-bedroom apartments rented to low- and very-low income seniors and one manager's unit. Riverview Plaza was developed as a tax credit project in 1989. The residential portion is owned by Riverview Plaza Associates, A California Limited Partnership which is composed of an investor limited partner (Chevron U.S.A Inc.) and a non-profit general partner, Sacramento Housing Development Corporation (SHDC). The County Board of Supervisors sits as the Board of SHDC. The commercial portion of the building (first two floors) is owned by the Housing Authority of the City of Sacramento.

Staff has conducted a thorough evaluation of the Riverview Plaza building and its financial structure to determine priority needs of the development. Staff will be presenting two separate reports that provide overall strategy recommendations to help ensure the fiscal and physical health of Riverview Plaza. The first report will address residential ownership restructure and the building's immediate repair work. The second report will recommend a financial restructure to help achieve a balanced operating budget and successful long-term operations.

Limited Partnership Restructure

The residential portion of Riverview Plaza has reached the end of its 15-year tax credit compliance period. Chevron has received all of its tax benefits and would like to be released from the Partnership. This action is typical at the end of the tax credit compliance period. Staff is recommending a restructure of the limited partnership which includes the Housing Authority's purchase of Chevron's limited partner interest for $300,000.

Capital Needs Assessment

In anticipation of the limited partnership restructure, Agency staff conducted a comprehensive evaluation of the capital needs of the building and found that immediate repairs should be addressed.

In 2006, the architectural and engineering firm of McGinnis Chen Associates, Inc. was hired to conduct a comprehensive capital needs assessment. Their report concluded that the exterior building shell should be repaired and other items, mostly involving interior systems, should be replaced or upgraded to achieve a 15-year life expectancy objective. The most immediate needs are: 1) repair the

exterior shell of the building to prevent water penetration, and 2) replace outdated portions of the building's Fire, Life and Safety evacuation system.

The project does not have sufficient operating reserves or the financial capacity to fund the recommended repairs. The requested $5 million loan will provide the necessary resources to complete the urgent repair work and ensure the building remains safe, inhabitable and affordable.

Policy Considerations: This request is consistent with the policies of the City of Sacramento supporting the preservation of affordable housing. Affordability restrictions on the property will be specified in a regulatory agreement between the Partnership and the Agency. Compliance with the regulatory agreement will be monitored by the Agency on a regular basis.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed action is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts loan financing and rehabilitation of existing facilities where the use remains unchanged. The National Environmental Policy Act (NEPA) does not apply.

Sustainability Considerations: The Riverview Plaza Project has been reviewed for consistency with the goals, policies and targets of the Sustainability Master Plan and the 2030 General Plan. If approved the contents of this report will advance the following goals, policies and targets as follows: the project supports Goal number 5 – Public health and Nutrition, specifically Target number 5 which calls for the redevelopment or rehabilitation of areas within the City or aged City facilities based on old, wasteful, and/or dysfunctional designs to achieve better results for people and the environment.

Other: The National Environmental Policy Act does not apply.

Committee/Commission Action: *Sacramento Housing and Redevelopment Commission*: At its July 16, 2008 meeting, the Sacramento Housing and Redevelopment Commission reviewed the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Coriano, Dean, Fowler, Gore, Morgan, Otto, Stivers

NOES: None

ABSENT: Mohr, Shah

Rationale for Recommendation: Riverview Plaza is in immediate need of repair to stop water intrusion coming through the exterior of the building. The caulking that was originally installed on the exterior shell of the building has surpassed its effective life cycle. Additionally, the Fire, Life & Safety evacuation system is outdated and is no longer serviceable. If repair needs are left unaddressed, the result will be the accelerated deterioration of the building, and higher maintenance costs. If approved, Agency funding requirements will extend the affordability of 33 very-low income units for an additional 55 years.

Financial Considerations: The recommended funding for the purchase of Chevron's limited partner interest will come from previously budgeted Partnership funds. The proposed funding for the Riverview Plaza repair work is $5 million of Merged Downtown Tax-Exempt Tax Allocation Bonds. These funds are most appropriate for projects where no repayment is expected or sought.

M/WBE Considerations: Minority and Women's Business Enterprise requirements will be applied to all activities to the extent required by federal funding.

Respectfully Submitted by: LaShelle Dozier
LA SHELLE DOZIER
Interim Executive Director

Recommendation Approved:

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RAY KERRIDGE
City Manager

Table of Contents

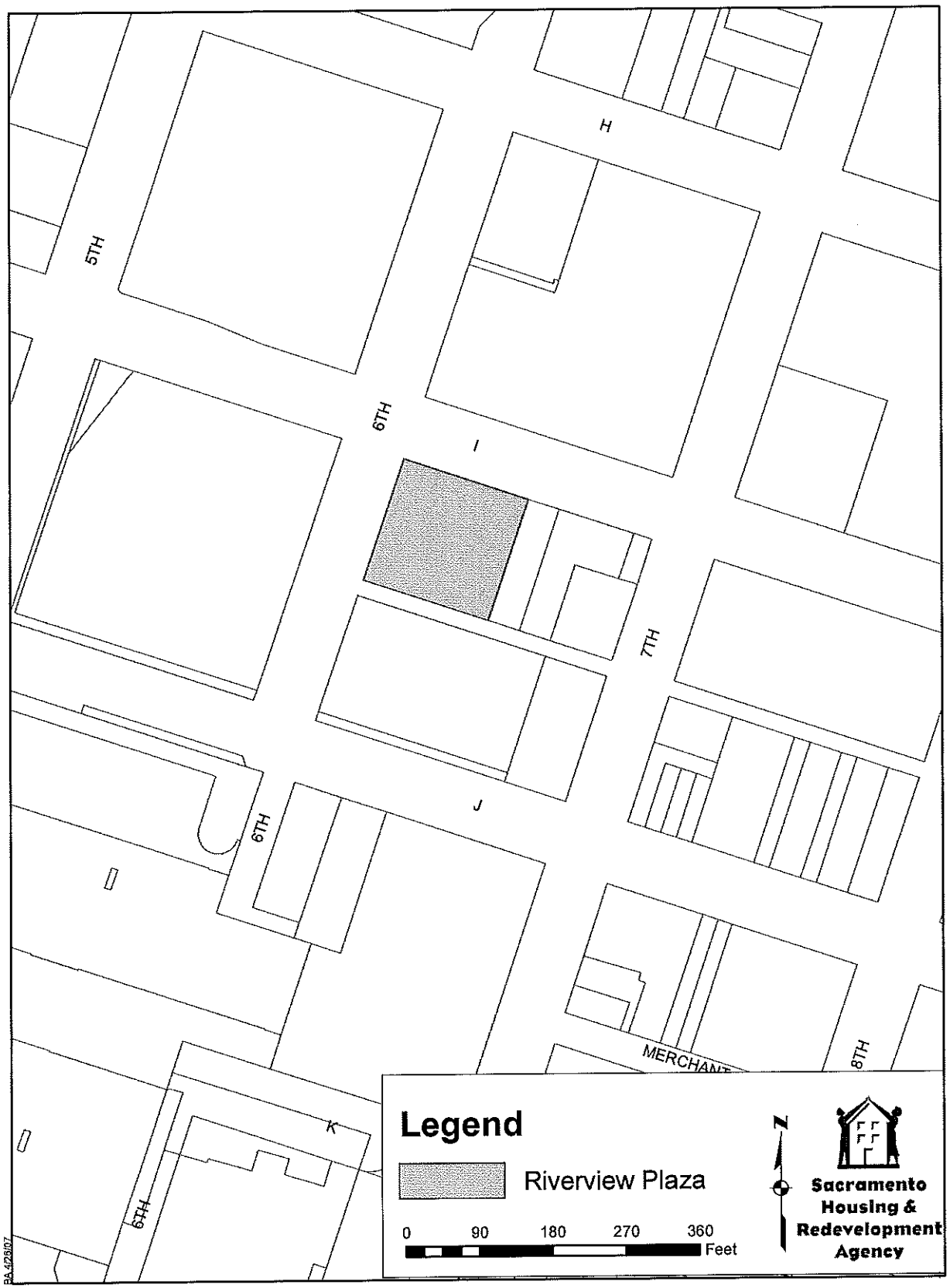
	Report	pg. 1
Attachments		
1	Vicinity Map	pg. 5
2	Location Map	pg. 6
3	Background	pg. 7
4	Repair Work Budget	pg. 10
5	Housing Authority Resolution	pg. 11
6	Redevelopment Agency Resolution	pg. 14
7	Exhibit A – Owner Participation Agreement	pg. 17
8	Exhibit B – Forgivable Loan Agreement	pg. 40

Attachment 1

Riverview Plaza Vicinity Map

Attachment 2

Riverview Plaza Location Map



Attachment 3

Background

Description of Development

Riverview Plaza is a mixed-use high rise located at 600 I Street in downtown Sacramento. Office and retail tenants occupy approximately 24,800 square feet on the first two floors. Agency staff occupies approximately 16,000 square feet, with the balance occupied by a day-care center, a hair salon, and vacant retail space. The residential portion of the building (floors 3-16) consists of 123 affordable one-bedroom senior apartments, a two-bedroom manager's apartment, and common areas including a large commercial kitchen, dining area, and swimming pool. The commercial and residential tenants share an underground garage with parking for 50 cars.

The development was constructed in 1988 and placed in service as a nine percent Low Income Housing Tax Credit (LIHTC) project in 1989. Funding for the development included loans and grants from numerous public and private sources. In order for the project to be eligible for tax credits, ownership of the residential portion was transferred to a limited partnership, Riverview Plaza Associates, A California Limited Partnership, comprised of a tax credit investor, Chevron (with a 99% percent interest to maximize the tax credit benefits), and a non-profit general partner, SHDC (with a 1% percent interest), for which the Sacramento County Board of Supervisors serves as the Board of Directors.

The Housing Authority of the City of Sacramento owns the land and the commercial portion of the building and also manages the residential portion under a contract with the Partnership.

Limited Partnership Restructure

In 2004 when the 15-year tax credit compliance period expired, a Put and Option Agreement was executed with Chevron that gave, SHDC and/or the Redevelopment Agency of the City the option to acquire Chevron's interest in the property for $300,000 at any time. Chevron has indicated they would like to be released from the Partnership.

Staff is recommending a restructure of the limited partnership which includes: 1) transfer of SHDC/Redevelopment Agency option to purchase Chevron's limited partner interest to the Housing Authority, 2) substitution of the Housing Authority as limited partner in place of Chevron, and 3) purchase of Chevron's limited partner interest for $300,000 by the Housing Authority.

Under separate action to be authorized by SHDC, staff is recommending the Partnership to make a $300,000 partial payment on the Housing Authority ground lease. This report further recommends the Housing Authority to appropriate the $300,000 ground lease payment from the Partnership for the purchase of Chevron's interest.

Capital Needs Assessment

In anticipation of purchasing Chevron's interest, a comprehensive capital needs assessment was conducted by the architectural and engineering firm of McGinnis Chen Associates. The purpose of the investigation was to evaluate the condition of the major building components and systems to develop a recommended plan to achieve a minimum 15-year life expectancy objective. The report identified the most immediate needs are: 1) repair the exterior shell of the building to prevent water penetration, and 2) replace outdated portions of the building's Fire, Life and Safety evacuation system.

The exterior walls of the building are finished in lath and plaster on floors 1-2, and modular Exterior Insulation and Finish System (EIFS) panels on floors 3-16. The joints between the EIFS panels are sealed with caulking, which has surpassed its effective life. This caulking needs to be removed and the joints resealed to prevent water penetration. The new caulking product is superior to the original material and should last 25 years. Additionally, certain roofing components and window joints that allow water penetration into the structure also need to be repaired. The needs assessment further revealed that water intrusion had caused moisture damage in certain areas of the east stairway that should be addressed.

Riverview Plaza does not have sufficient operating reserves or the financial capacity to fund the recommended repairs. The $5 million Agency loan will provide the necessary resources to complete immediate repair needs. This report further recommends authorizing cost savings, if any, under the immediate needs budget, to be applied to other priority capital needs identified in the 2006 McGinnis Chen Needs Assessment. A copy of the immediate needs repair work budget is included as Attachment 4.

If the proposed funding request is approved, construction could begin in August 2008 with estimated completion in May 2009.

In the second report addressing the financial restructure, staff will recommend augmenting the project's capital needs reserve to fund additional capital needs and ongoing maintenance items that are not covered under the $5 million repair work budget.

Relocation

Temporary relocation of some residents may be required due to the proposed rehabilitation work. Any affected residents will be provided with temporary relocation benefits as required by State law.

Proposed Project Financing

The immediate repair needs are proposed to be financed with $5,000,000 of Merged Downtown Tax-Exempt Tax Allocation Bonds. The funding request will be structured as a Forgivable Loan between the City Redevelopment Agency and the Partnership. The loan shall be forgiven upon: a) the completion of the project including the replacement of outdated portions of the Fire, Life and Safety Evacuation System evidenced by the written approval of the City of Sacramento Fire Department, b) Agency's receipt of the final application by the general contractor for payment of retention fund, and c) Housing Authority's purchase of Chevron's limited partner interest.

Low-income Set-aside Requirements

The following chart summarizes the extended affordability resulting from the proposed City Redevelopment Agency funding.

Source	**% of Units**	**Affordability Restrictions**	**No. Units**	**Regulatory Requirements**
Downtown Housing Set-Aside Funds	26%	Very Low Income (50% AMI)	33	55 years
Total	**26%**	**Very Low Income (50% AMI)**	**33**	**55 years**

The project's affordability restrictions will be specified in a regulatory agreement with the Partnership and will be monitored by the Agency for the 55-year term of the restrictions.

RIVERVIEW PLAZA REPAIR WORK BUDGET		
IMMEDIATE NEEDS		
EXTERIOR BUILDING		COSTS
Turner Construction Contract		
Construction Hard Costs	$	2,646,951
General Conditions, Insurance and Fee	$	595,238
Contractor Contingency	$	126,363
Total	**$**	**3,368,552**
Performance Contracting Inc. Contract (EIFS +)		
Total	**$**	**843,465**
TOTAL EXTERIOR	**$**	**4,212,017**

FIRE, LIFE & SAFETY EVACUATION SYSTEM		COSTS
Clark Systems Contract		
Total	**$**	**417,603**
TOTAL FIRE, LIFE & SAFETY	**$**	**417,603**

TOTAL CONTRACTS	**$**	**4,629,620**
Pre-development Costs Reimbursement	**$**	**103,750**
Owner Contingency	**$**	**266,630**
TOTAL PROJECT COSTS	**$**	**5,000,000**

RESOLUTION NO. 2008 - _____

Adopted by the Housing Authority of the City of Sacramento

on date of

RIVERVIEW PLAZA: APPROVAL OF THE SUBSTITUTION OF THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO (HOUSING AUTHORITY) AS THE LIMITED PARTNER OF RIVERVIEW PLAZA ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP (PARTNERSHIP); AUTHORIZE ACCEPTANCE OF $300,000 GROUND LEASE PARTIAL PAYMENT FROM THE PARTNERSHIP; AUTHORIZE AMENDING THE BUDGET TO APPROPRIATE $300,000 GROUND LEASE PAYMENT FOR THE PURCHASE OF CHEVRON'S LIMITED PARTNER INTEREST; AUTHORIZE THE PURCHASE OF CHEVRON'S LIMITED PARTNER INTEREST FOR $300,000; AUTHORIZE INTERIM EXECUTIVE DIRECTOR TO AMEND THE BUDGET TO PAY FOR ALL TRANSFER FEES, COSTS AND LEGAL EXPENSES ON BEHALF OF THE PARTNERSHIP AND HOUSING AUTHORITY IN CONNECTION WITH THE LIMITED PARTNER SUBSTITUTION AND PURCHASE; AUTHORIZE EXECUTION OF DOCUMENTS TO PURCHASE CHEVRON'S LIMITED PARTNER INTEREST AND SUBSTITUTE THE HOUSING AUTHORITY AS LIMITED PARTNER OF THE PARTNERSHIP; ACCEPTANCE OF OWNER PARTICIPATION AGREEMENT, FORGIVABLE LOAN OF UP TO $5,000,000 AND RELATED DOCUMENTS TO THE PARTNERSHIP; MODIFICATION AND EXTENSION OF AFFORDABILITY RESTRICTIONS ON THIRTY-THREE (33) UNITS IN THE RIVERVIEW PLAZA RESIDENTIAL PROJECT

BACKGROUND

A. Riverview Plaza is a 16-story commercial and age-restricted residential project located at 600 I Street, Sacramento. The commercial portion is owned by the Housing Authority of the City of Sacramento. The 124-unit residential portion is owned by Riverview Plaza Associates, A California Limited Partnership (Partnership).

B. The residential portion of the project was financed with 9% low income housing tax credits in 1989. The 15 year tax credit compliance period expired in 2004.

C. The investor limited partner, Chevron U.S.A. Inc., has received all of its tax benefits under the tax credit financing and would like to be released from the Partnership.

D. McGinnis Chen Associates performed a comprehensive capital needs assessment in 2006 that evaluated the condition of the building components and systems.

E. Riverview Plaza is in need of immediate repairs to the exterior shell of the building and replacement of outdated portions of the Fire, Life and Safety evacuation system.

F. Riverview Plaza does not have sufficient reserves or the financial capacity to fund needed repair work to ensure the building continues to operate properly and efficiently.

G. The Partnership has made a funding request to the Redevelopment Agency of the City of Sacramento for a forgivable loan of $5,000,000 to fund immediate repair needed to the Riverview Plaza development.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

Section 1. It is determined that the action proposed by this resolution is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged.

Section 2. The Interim Executive Director is authorized to substitute the Housing Authority of the City of Sacramento as the limited partner of the Partnership.

Section 3. The Interim Executive Director or designee is authorized to execute all documents required to substitute the Housing Authority of the City of Sacramento as the limited partner of the Partnership.

Section 4. The Housing Authority is authorized to accept a $300,000 partial ground lease payment from the Partnership.

Section 5. The Interim Executive Director is authorized to amend the budget to appropriate the $300,000 ground lease payment from the Partnership for the purchase of the current limited partner's (Chevron U.S.A. Inc.) interest.

Section 6. The Housing Authority is authorized to purchase Chevron's limited partner interest for $300,000.

Section 7. The Interim Executive Director or designee is authorized to execute all documents required to purchase Chevron's limited partner interest.

Section 8. The Interim Executive Director is authorized to amend the budget to pay for all transfer fees, costs and legal expenses on behalf of the Partnership and Housing Authority, itself, in connection with the substitution of the

Housing Authority as limited partner and purchase of Chevron's limited partner interest.

Section 9. The Housing Authority approves the Partnership's funding request to the Redevelopment Agency of the City of Sacramento for a forgivable loan of $5,000,000 from Downtown Tax-Exempt Tax Allocation Bonds to the Partnership to complete immediate needs repair work to Riverview Plaza.

Section 10. The Partnership is authorized to apply cost savings, if any, under the immediate needs budget, toward other priority capital needs identified in the 2006 McGinnis Chen Associates Needs Assessment Report.

Section 11. The Partnership is authorized to accept recordation of a regulatory agreement on the property modifying and extending affordability restrictions on thirty three (33) of the residential units in the project for 55 years.

RESOLUTION NO. 2008 - _____

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

RIVERVIEW PLAZA: APPROVAL OF TRANSFER OF PARTNERSHIP INTEREST AND WAIVER OF OPTION RIGHTS; APPROVAL OF OWNER PARTICIPATION AGREEMENT, FORGIVABLE LOAN OF $5,000,000 TO RIVERVIEW PLAZA ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP; EXECUTION OF OWNER PARTICIPATION AGREEMENT, FORGIVABLE LOAN AGREEMENT AND RELATED DOCUMENTS; APPROVAL OF MODIFICATION AND EXTENSION OF AFFORDABILITY RESTRICTIONS ON THIRTY THREE (33) UNITS IN THE RIVERVIEW PLAZA RESIDENTIAL PROJECT; RELATED BUDGET AMENDMENT

BACKGROUND

A. Riverview Plaza is a 16-story commercial and age-restricted residential development located at 600 I Street, Sacramento. The commercial portion is owned by the Housing Authority of the City of Sacramento. The 124-unit residential portion is owned by Riverview Plaza Associates, A California Limited Partnership (Partnership) comprised of an investor limited partner (Chevron U.S.A. Inc.) and a non-profit general partner, Sacramento Housing Development Corporation (SHDC).

B. The residential portion of Riverview Plaza has reached the end of its 15-year tax credit compliance period. Chevron has received all of its tax benefits and would like to be released from the Partnership.

C. The Housing Authority of the City of Sacramento would like to purchase Chevron's limited partner interest.

D. SHDC would like to assign its right to purchase Chevron's interest.

E. McGinnis Chen Associates performed a comprehensive capital needs assessment in 2006 that evaluated the condition of the building components and systems.

F. Riverview Plaza is in need of immediate repairs to the exterior shell of the building and replacement of outdated portions of the Fire, Life and Safety evacuation system.

G. Riverview Plaza does not have sufficient operating reserves or the financial capacity to fund needed repair work to ensure the building continues to operate properly and efficiently.

H. The Partnership has made a funding request to the Redevelopment Agency of the City of Sacramento for a forgivable loan of $5,000,000 to fund immediate repairs needed to the Riverview Plaza development.

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

Section 1. It is determined that the action proposed by this resolution is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15310 and 15301(a) and (d) which exempts bond and loan financing and rehabilitation of existing facilities where the use remains unchanged.

Section 2. The Interim Executive Director is authorized to approve the transfer of Chevron's limited partner interest to the Housing Authority and waive the Redevelopment Agency of the City of Sacramento's rights under the 2004 Put and Option Agreement.

Section 3. The Interim Executive Director is authorized to amend the Agency budget to transfer $5,000,000 from Downtown Tax-Exempt Tax Allocation Bonds to the Riverview Plaza Project to fund immediate needs repair work to Riverview Plaza..

Section 4. A Forgivable loan of Merged Downtown tax-exempt tax allocation bond housing set-aside funds in the amount of $5,000,000 to the Partnership is approved.

Section 5. The Interim Executive Director is authorized to approve reimbursement of initial predevelopment costs associated with the repair work to be performed in the Owner Participation Agreement.

Section 6. Authorize cost savings, if any, under the immediate needs budget, to be applied to other priority capital needs identified in the 2006 McGinnis Chen Needs Assessment Report.

Section 7. The Interim Executive Director is authorized to prepare and execute all documents required for making the $5,000,000 Forgivable Loan to the Partnership for the Project. Documents include but are not limited to: Owner Participation Agreement, Forgivable Loan Agreement and Regulatory Agreement.

Section 8. The Interim Executive Director or designee is authorized to enter into and execute other documents and perform other actions necessary in accordance with their respective terms, all as approved by Agency Counsel.

Section 9. The Interim Executive Director is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with Agency policy, with this resolution, and with good legal practices for making of such forgivable loan.

Section 10. The recordation of a regulatory agreement on the property modifying and extending affordability restrictions on thirty three (33) of the very-low income residential units in the project for 55 years is approved.

Exhibit A – Owner Participation Agreement
Exhibit B – Forgivable Loan Agreement

EXHIBIT A

OWNER PARTICIPATION AGREEMENT

Using Funds from Tax Increment Housing Set- Aside Fund

Redevelopment Agency of the City of Sacramento

Merged Downtown Sacramento Redevelopment Project Area
Riverview Plaza
600 I Street, Sacramento, CA 95814

OWNER PARTICIPATION AGREEMENT

Tax Increment Housing Set- Aside Fund

Redevelopment Agency of the City of Sacramento
Merged Downtown Sacramento Redevelopment Project Area
Riverview Plaza
600 I Street, Sacramento, CA 95814

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and RIVERVIEW PLAZA ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP. also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of August __2008. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 15.

RECITALS

A. Developer is the owner of real property located at 600 I Street, Sacramento, CA 95814, in the City 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 Merged Downtown Sacramento Redevelopment Project 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 supply of low- or moderate-income housing in the community and will eliminate the following blighting influences: Deficient buildings. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: preserves and improves the stock of affordable housing.

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 project consists of repairing the exterior shell of the building which presently allows water to penetrate to the interior. The building shell and components of the building's major systems have surpassed or will surpass their effective life in the near future, accelerating deterioration of the building and higher maintenance costs. The project will also include replacement of outdated portions of the building Fire, Life and Safety evacuation system. . These items are described in the McGinnis Chen Associates Needs Assessment Investigation and Report, dated November 13, 2006. To the extent that there are cost savings or contingency funds not expended, those proceeds from the Agency Funding as described in Section 2, below, may be used for additional needs identified in that study.

2. **AGENCY FUNDING.** Agency is providing funding to the Project under the Forgivable Loan ("Funding Agreement") for development of the Project as described in Section 1. 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 Agreement. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as described in Section 1, 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.

2.1. The Agency Funding Agreement consists of a forgivable loan in an amount not to exceed Five Million Dollars ($5,000,000). The actual loan amount will be based upon cost incurred and may be less than $5,000,000. Loan Documents shall evidence the forgivable loan for the Project as building, repayable over a term of thirty (30) if not forgiven. This Loan shall be evidenced by a Note and a recorded Trust Deed.

2.2. **DEVELOPER'S POWER TO HAVE THE FORGIVABLE LOAN FORGIVEN.** Developer shall have the sole power to have the forgivable loan in the amount of the Loan for the work as described in Section 1, above, forgiven in whole or in part. Three conditions must occur for forgiveness. First, this loan shall be forgiven upon the completion of the project completion of the project including the replacement of outdated portions of the Fire, Life and Safety Evacuation System evidenced by the written approval of the City of Sacramento Fire Department. The second condition is Agency's receipt of the final application by the general contractor for payment of retention funds. The third condition is that the Housing Authority of the City of Sacramento purchase Chevron's limited partner interest and substitution as limited partner of Riverview Plaza Associates, A California Limited Partnership.

3. **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.

3.1. **CONCURRENT REVIEW.** Agency agrees that its review of the Final Plans shall occur prior to or concurrently with City'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.

3.2. **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.

3.3. **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 construction 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. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

3.4. **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 Downtown

Enterprise Department, which is staff to the Agency for the Project Area and shall have clearly marked on its exterior "URGENT: Riverview Plaza Repair Work PROJECT PLAN REVIEW" or the equivalent.

3.4.1. **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.

3.4.2. **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 3. 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.

3.5. **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 disagree with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

3.6. **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.

3.6.1. **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 3.6.1, a "material 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, or any change required by 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.

3.6.2. **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.

4. **DEVELOPMENT PROVISIONS.** As stated in detail in this Section 4, Developer shall construct and manage the Project according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction 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.

4.1. **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.

4.2. **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 City of Sacramento. Conditions to the project imposed by the City shall be considered obligations of the Developer under this OPA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

4.3. **SUBSTANTIAL CHANGES.** Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, as described in Section3.6, without Agency approval of such changes as provided in Section 3.6.

4.4. **LOCAL, STATE AND FEDERAL LAWS.** The Developer shall assure that the construction 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 construction 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 construction, 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.

4.5. **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Agency's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Developer represents to the Agency that Developer has obtained no other public subsidy for the Project. If Developer obtains another public subsidy, Developer shall pay prevailing wages for the Project. Therefore, Developer 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 the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them. The California Department of Industrial Relations has undertaken the aggressive and expansive enforcement of prevailing wage laws for redevelopment projects. 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.

4.6. **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.

4.7. **NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer for itself, Manager, 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 construction of the Project.

4.7.1. **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.

4.7.2. **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.

4.8. **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.

4.9. **AGENCY ACCESS TO THE PROPERTY.** Developer shall permit Agency representatives access, without charge, to the entire Property at any time 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 construction of the Project.

4.10. **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.

4.11. **CERTIFICATE OF COMPLETION.** After the Agency has determined that Developer has completed the construction 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 construct 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.

4.11.1. 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.

4.11.2. 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.

4.12. **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.

4.13. **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.

4.14. **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.

4.15. **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.

4.16. **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.

4.17. **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.

5. **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.

5.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity; (b) firm and binding loan commitments (as provided in Section 5.2) 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.

5.2. **COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this OPA, Developer shall assure that the loan documents, if any, 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.

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

6.1. **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.

6.2. **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.

7. **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.

8. **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.

9. **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.

9.1. **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).

9.2. **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.

9.3. **COMPREHENSIVE 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.

9.4. **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.

9.5. **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.

9.6. **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:

9.6.1. **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.

9.6.2. **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.

9.6.3. **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.

9.6.4. **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.

9.6.5. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 9 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.

10. **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. As a

condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party. After such return of property and funds and termination of the OPA, neither Agency nor Developer shall have any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary.

10.1. **OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default, 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

10.2. **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.

11. **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

12. **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.

12.1. **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 **Riverview Plaza Associates, A California Limited Partnership** ("OPA"). Lender requests, in accordance with Section 12.1 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]

12.2. **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.

12.3. **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.

12.4. **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.

12.5. **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 12.5 and Lender has failed to cure such default as provided in Section 12.5 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:

12.5.1. 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.

12.5.2. 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

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

12.5.4. 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.

12.6. **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 Owner 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 for the obligation to pay damages 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 Owner 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.

12.7. **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.

12.8. **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.

12.9. **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.

12.10. **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 12 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.

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

13.1. **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.

13.2. **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.

13.3. **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.

13.4. **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.

13.5. **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.

13.6. **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.

13.7. **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.

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

13.9. **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.

13.10. **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.

13.11. **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.

14. **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:

14.1. Addresses for notices are as follows:

14.1.1. Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Katherine Klein McFadden.

14.1.2. Developer: Riverview Plaza Associates, A California Limited Partnership., c/o 630 I Street, Sacramento, CA 95814; Attention: Kevin Odell.

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

14.2.1. 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;

14.2.2. 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;

14.2.3. 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

14.2.4. 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.

15. **DEFINITIONS.**

15.1. "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.

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

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

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

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

15.6. "City" is the City of Sacramento, a political subdivision of the State of California.

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

15.8. "Completion Date" is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is March 30, 2009.

15.9. "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.

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

15.11. "Developer" is Riverview Plaza Associates, L.P., a California limited partnership. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided (i) that the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at c/o 630 I Street, Sacramento, CA 95814.

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

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

15.14. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 3, 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.

15.15. "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.

15.16. "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**.

15.17. "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.

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

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

15.20. "Preliminary Plans" are the Project designs prepared by the Project architect, McGinnis Chen Associates, Inc., dated March __, 2008, a portion of which (consisting of various elevations) is attached as **Exhibit 2 Preliminary Plans**. Agency has approved the Preliminary Plans concurrently with the approval of this OPA.

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

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

15.23. "Project Area" is the Merged Downtown Sacramento Redevelopment Project Area, as defined in the Redevelopment Plan.

15.24. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the City Council of the City on June 17, 1986, by City 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.

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

15.25. "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**.

15.26. "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**.

15.27. "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.

15.28. "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 :
RIVERVIEW PLAZA ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: Sacramento Housing Development Corporation, a California nonprofit corporation

By: _____
LaShelle Dozier
Interim Director

Approved as to form:

_____
Developer Counsel

By: _____
John Dangberg, Assistant City Manager,
As designated signatory

Approved as to form:

_____
Agency Counsel

FORGIVABLE LOAN AGREEMENT
RIVERVIEW PLAZA REPAIR WORK

IN CONSIDERATION of their mutual promises, the parties agree as follows:

1. **LOAN.** The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement. Lender and Borrower have entered this Loan Agreement as of the Effective Date.

2. **DEFINITIONS TABLES.** The capitalized terms in this Loan Agreement shall have the meanings assigned in the following Definitions Tables and in Section 3 Definitions. Terms being defined are indicated by quotation marks. If an item in the Definitions Table is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate.

"EFFECTIVE DATE"		Being the date as of which this Loan Agreement shall be effective.
"LENDER"	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	630 I Street, Sacramento CA 95814	
"BORROWER"	The borrower of the Loan funds whose name, legal status and address are:	
Name	Riverview Plaza Associates, A California Limited Partnership	
Legal Status	limited partnership	
Principal Address	c/o 630 I Street, Sacramento, CA 95814	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of	n/a
"LOAN PROGRAM"	Lender's Loan Program, commonly known as	Downtown Project Area Tax Increment Housing Fund
"LOAN AMOUNT"	Five Million Dollars and No Cents ($5,000,000.00)	
"INTEREST RATE"	The interest rate is 4% per year, simple interest, if not forgiven.	
"PAYMENT START DATE"	One year from the scheduled date of completion, if not forgiven.	
"MATURITY DATE"	The first day of the 360 calendar month following the Effective Date.	

"PAYMENT SCHEDULE"	In the event that this Loan is not forgiven, payments shall be made annually from residual receipts. For purposes of this payment schedule only, the following definitions shall apply: Residual Receipts are defined as Revenues less Operating Expenses, but only if Revenues exceed Operating Expenses, during the period. Revenues are defined as the total income received by the project during the period from (a) tenant rent payments, (b) supplemental rent payments from other sources (including tenant-based and project-based payments), (c) income derived from fees and services, and (d) operating subsidies. Operating Expenses are defined as the following expenses relating to the ownership and operation of the project during the period: (a) administrative expenses including a property management fee, (b) utilities expenses, (c) operating and maintenance expenses, (d) taxes and insurance expenses, (e) resident services expenses, (f) deposits to replacement reserve accounts as required by the loan documents, (g) existing , superior debt. The unpaid balance of the Loan, including without limitation principal and interest, shall be all due and payable on the Maturity Date, including without limitation all unpaid principal, interest. Should this loan be refinanced or the Property sold, this loan shall be due and payable.	
"BORROWER EQUITY"	n/a.	Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Borrower is investing in the Project.
	Borrower's equity is its ownership interest in the property	Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees).
"SPECIAL TERMS"	This Loan contains a Forgivability Provision more fully described in Section H, below.	
"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	The project consists of repairing the exterior shell of the building which presently allows water to penetrate to the interior. The building shell and components of the building's major systems have surpassed or will surpass their effective life in the near future, accelerating deterioration of the building and higher maintenance costs. The project will also include replacement of the building evacuation system. These items are described in the McGinnis Chen Needs Assessment Investigation and Report, dated November 13, 2006. To the extent that there are cost savings or contingency funds not expended, proceeds from this Loan may be used for additional needs identified in that study. This in no may alters, modifies or amends the maximum loan amount.

B. "COLLATERAL" The Collateral securing repayment of the Loan, which Collateral consists of the following:	
"PROPERTY"	The following described real property, which is security for the Loan and the site of the Project:
Address	600 I Street, Sacramento, CA 95814
Assessor's Parcel Number	006 0032 029 0001and 006 0032 029 0002
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in **Exhibit 1: Legal Description** attached and incorporated by reference.
Borrower's Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.

"ADDITIONAL COLLATERAL"	The Additional Collateral securing repayment of the Loan is any additional security required by Lender under this Loan Agreement, including without limitation the following items, if any		
	"PERSONAL PROPERTY"	Borrower's interest in the following personal property, tangible and intangible, and all other such property listed as security in this Loan Agreement:	Materials and supplies for the Project
	OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	None

C. "ESCROW INFORMATION":		
"Title Company" and "Escrow Agent"	Stewart Title of Sacramento	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow.
"Escrow"	The escrow with Escrow Agent	
"Closing Date"		Which is the date for close of the Escrow, as it may be extended.

D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Loan Agreement):	
EXHIBIT	DEFINED TERM
Exhibit 1: Legal Description	"Legal Description"
Exhibit 2: Scope of Development	"Scope of Development"
Exhibit 3: Note Form	"Note"
Exhibit 4: Trust Deed Form	"Trust Deed"
Exhibit 5: Regulatory Agreement	"Regulatory Agreement"
Exhibit 6: Escrow Instructions	"Escrow Instructions
Exhibit 7: Subordination Agreement	"Subordination Agreement"

E. "APPROVAL DOCUMENTS" Borrower shall submit the following documents for Lender approval:
Construction Agreements for the Project
Architectural Agreement for the Project
Borrower's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project
Evidence of financing as described in Article II of this Loan Agreement
Plans and Specifications as defined in Article II of this Loan Agreement

F. "ASSIGNED DOCUMENTS" Borrower shall assign the following documents to Lender:
Construction Contract
Architectural Contract

G. "CONSTRUCTION INFORMATION":			
"Completion Date"	May 31, 2009	Which is the date on or before which the Completion of the Project must occur.	
"General Contractor"	Turner Construction Company	Which is the general contractor for construction of the Project.	
"Project Architect"	McGinnis Chen Associates	Which is the architect for design of the Project	
"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursement:	Ten Percent (10%)
		Percentage of Loan:	Ten Percent (10%)

H. "SPECIAL PROVISIONS" The following special provisions shall be in addition to the provisions of this Loan Agreement:
This Forgivable Loan is made pursuant to the Owner Participation Agreement ("OPA") between the Lender and the Borrower.

1. "Forgivability Provision". Borrower has the sole power to have this loan forgiven. This loan shall be forgiven upon the completion of the Project including the completion of the fire and safety auxiliary system as evidenced by the written approval of the Metro Fire Department. Upon such completion of the Project and such written approval, repayment of the Loan is forgiven; and the Agency shall reconvey the lien of the Trust Deed, shall mark the Note cancelled, and shall return the cancelled Note to Borrower. The Agency shall also execute appropriate releases applicable to any other Security Documents securing the Loan.

   a. Borrower's Power to Have the Forgivable Loan Forgiven. Borrower shall have the sole power to have the forgivable loan in the amount of the Loan for the work as described in Section 1, above, forgiven in whole or in part. Three conditions must occur for forgiveness. First, this loan shall be forgiven upon the completion of the project completion of the project including the replacement of outdated portions of the Fire, Life and Safety Evacuation System evidenced by the written approval of the City of Sacramento Fire Department. The second condition is Agency's receipt of the final application by the general contractor for payment of retention funds. The third condition is that the Housing Authority of the City of Sacramento purchase Chevron's limited partner interest and substitution as limited partner of Riverview Plaza Associates, A California Limited Partnership.

2. Should the Borrower not cause the loan to be forgiven, repayment shall commence one year from the Effective Date of this Loan and continue on an annual payment basis. Payments are to be annually from Residual Receipts. Payments are to be applied first to outstanding accrued interest and then to principal according to the Payment Schedule.

3. The simple interest loan will be subordinated to existing funding and agreements from CalHFA, HoDag (City of Sacramento) and Redevelopment Agency of the City of Sacramento loans.

This Loan is made pursuant to the Owner Participation Agreement between the Parties, made concurrently with this Loan Agreement ("OPA"). This Loan Agreement is subject to the OPA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.

Loan funds shall be used solely for Project construction. No Loan funds shall be used for additional predevelopment costs, except as provided in an approved Lender budget. Unless otherwise noted in the budget, predevelopment costs are not subject to withholding as Retention.

Housing Authority of the City of Sacramento is approved by the Lender as "Property Manager" for the Property and Project.

3. **DEFINITIONS.** Terms not defined in this Loan Agreement shall have the definitions assigned in the Trust Deed. As used in this Loan Agreement, the following terms shall have the following meanings:

3.1. "Budget" is the budget approved by Lender for the development of the Project.

3.2. "Change" means any extra work or installation of materials not included in the Plans and Specifications or any change in or deviation from the Plans and Specifications.

3.3. "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date.

3.4. "Completion of the Project" means that, in Lender's sole judgment the Project has been constructed, rehabilitated, completed, equipped, and furnished in a good and proper manner in accordance with the Plans and Specifications, the Scope of Development and the Budget as approved by Lender; all notices of completion with respect to the Project have been filed and all statutory lien periods have expired; all costs of constructing the Project have been paid, including, without limitation, interest on the Note which may be due prior to the Completion Date; all necessary certificates of occupancy have been issued; and all of the conditions to final disbursement of the Loan have been satisfied.

3.5. "Escrow" is the escrow with Title Company for the closing of the Loan.

3.6. "Escrow Instructions" means the Escrow Instructions for the Escrow signed by each of the parties to this Loan Agreement.

3.7. "Event of Default" is breach of or default in a party's obligations under this Loan Agreement, the Trust Deed, the Note and any other instrument which is incorporated in this Loan Agreement or which otherwise secures the repayment of the Loan.

3.8. "Financial Statements" means the financial statements of Borrower (and any other persons on whose financial capacity the Lender has relied in making this Loan) as may be required by Lender from time to time, including operating statements, balance sheets, and any other financial reports and information that Lender may require.

3.9. "Fixtures" means all fixtures located on or within the Project or now or later installed in or used in connection with any of the Project, including, as applicable and without limitation, all partitions, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air conditioning and air cooling equipment, built-in refrigerators, and gas and electric machinery, appurtenances, and equipment, whether or not permanently affixed to the Project.

3.10. "General Contractor" means the general contractor named by Borrower in his application or supporting documents as the general contractor to do the Project, or any other general contractor so designated by Borrower and approved in writing in advance by Lender.

3.11. "Governmental Authority" means the United States of America, the State of California, the County of Sacramento, the City of Sacramento or any other political subdivision, agency, department, commission, board, bureau, or instrumentality of any of them.

3.12. "Governmental Requirement" means any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a Governmental Authority.

3.13. "Loan" is the loan from Lender to Borrower made pursuant to this Loan Agreement.

3.14. "Loan Agreement" means this Construction and Permanent Loan Agreement including Article I and II, all Exhibits attached to this Loan Agreement (which are incorporated in this Loan Agreement by this reference) and the Loan Documents which are not otherwise included in this definition.

3.15. "Loan Documents" means the Note, this Loan Agreement, the Security Documents, and all other documents (including guaranties) evidencing, securing, or relating to the Loan.

3.16. "Loan Maturity Date" means the date on which the entire unpaid balance of the Loan, including principal and interest, is due and payable.

3.17. "Loan Proceeds" means funds disbursed by Lender on account of the Loan and pursuant to this Loan Agreement.

3.18. "Other Lender Draw" means a draw request or other request for disbursement submitted to another lender for the Project.

3.19. "Personalty" means, whether or not listed as Additional Collateral, all of Borrower's interest in all accounts, contract rights, and general intangibles (specifically including any insurance proceeds and condemnation awards) arising out of the ownership, development, or operation of the Property, and all furniture, furnishings, equipment, machinery, construction materials and supplies, leasehold interests in personal property, and all other personal property (other than Fixtures) of Borrower now or later located about the Property, together with all present and future attachments, accessions, replacements, substitutions, and additions, and the cash and noncash proceeds.

3.20. "Plans and Specifications" means the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street, and utility plans and specifications for the Project, including all supplements, amendments, and modifications.

3.21. "Potential Default" means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse.

3.22. "Project" means the development of the Property in accordance with the Plans and Specifications including, without limitation, all existing buildings, improvements, and appurtenances on the Property, all work of demolition and rehabilitation to be conducted on the Property, and all improvements, additions, and replacements constructed or placed at any time on the Property.

3.23. "Security Documents" means the Trust Deed, together with all other documents entered into between Borrower and Lender or by Borrower in favor of, or for the benefit of, Lender that recite that they are to secure the Loan.

3.24. "Title Policy" means the title insurance policies to be issued in connection with this Loan, as further defined in the Escrow Instructions.

3.25. "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 the parties shall be extended for the period of the enforced delay, as determined by the Lender, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after it 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.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** As a material inducement to Lender to enter into this Loan Agreement and to make the Loan to Borrower, Borrower unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to Lender, as of the Close of Escrow, as follows:

4.1. **LEGAL ORGANIZATION.** Borrower is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

4.2. **BORROWER'S POWERS.** Borrower has full authority to execute this Loan Agreement, the Note, the Trust Deed, and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

4.3. **BINDING OBLIGATION.** This Loan Agreement, the Note, the Trust Deed, and each of the other Loan Documents constitutes a legal and binding obligation of, and is valid and enforceable against, each party other than Lender, in accordance with the terms of each.

4.4. **LITIGATION.** There are no actions, suits, or proceedings pending or, to the best knowledge of Borrower, threatened against or affecting Borrower, the Property, or any part of it, or involving the validity or enforceability of the Trust Deed, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any Governmental Authority. Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or other Governmental Authority.

4.5. **NO OTHER BREACH.** The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Borrower or any of its general partners is a party or by which it or they or the Property may be bound or affected.

4.6. **NO DEFAULT.** There is no Event of Default or Potential Default on the part of Borrower.

4.7. **TITLE TO PROPERTY.** Borrower is the sole legal and beneficial owner of the Property, which is free of all claims, liens, and encumbrances other than those shown in the Title Policy.

4.8. **NO UNAPPROVED LOANS.** Borrower has not received financing for either the acquisition of the Property, the construction of the Project or the permanent financing of the Project except as has been specifically disclosed to and approved by Lender in writing.

4.9. **TITLE OF PERSONALTY.** All Personalty is vested solely in Borrower, free of all claims, liens, and encumbrances, and the security interest of Lender in the Personalty is a first lien.

4.10. **USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of construction of the Project in accordance with the Plans and Specifications and for other purposes specified in the Loan.

4.11. **TAXES PAID.** Borrower has filed all required Federal, State, County, and City tax returns and has paid all taxes due and owing. Borrower knows of no basis for additional assessments with respect to any taxes, other than the lien of taxes not yet due.

4.12. **PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Borrower or its agents and employees, and to the best of Borrower's knowledge, no violation of any Governmental Requirement exists.

4.13. **ACCURACY.** All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to Lender concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct, and sufficiently complete to give Lender true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

5. **LOAN.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to finance the development of the Project and for other purposes as specified in the Scope of Development, subject to the terms, conditions, representations, warranties, and covenants in this Loan Agreement.

5.1. **PRINCIPAL AMOUNT.** The principal amount of the Loan shall be the actual disbursements of the Lender on account of the Project, not to exceed the amounts stated in the Budget (as the Budget may be adjusted by written approval of Lender). In any event, the principal amount of the Loan shall not exceed the Loan Amount.

5.2. **USE OF LOAN FUNDS.** Loan funds shall be used solely for actual costs of the Project as stated in the Budget. No Loan funds shall be used for any costs, except as provided in the Budget. Unless otherwise noted in the Budget, allowed predevelopment costs, if any, are not subject to the withholding as Retention.

5.3. **LOAN TERMS.** The Loan is made pursuant to the Loan Program and is subject to the laws, rules and regulations of the Loan Program. Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement. Interest, at the Interest Rate, shall accrue on each disbursement of Loan Proceeds commencing on the date on which each such disbursement is made. Repayment of the loan shall be made, in payments of principal and interest, in lawful tender of the United States, in accordance with the Payment Schedule.

5.4. **CLOSING IN ADVANCE OF SENIOR LOAN.** Lender will subordinate this Loan to the senior loan, provided that the senior loan does not require modification of this Loan Agreement or Lender's entery into any agreements containing new or modified Loan terms.

5.5. **NOTE AND SECURITY DOCUMENTS.** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. Repayment of the Note is to be secured by the Trust Deed covering the Property and the Project. Borrower shall execute the Trust Deed in favor of the Title Company as Trustor in trust for the benefit of Lender and deliver it to Escrow for recordation. The Loan is also secured by the Additional Collateral, if any, as evidenced by the applicable Security Documents.

5.6. **REGULATORY AGREEMENT.** The Regulatory Agreement imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Loan. Borrower shall execute the Regulatory Agreement prior to Close of Escrow and deliver it to Escrow for recordation.

5.7. **ESCROW.** The parties shall open the Escrow promptly after the Effective Date. Escrow shall close as provided in the Escrow Instructions on or before the Closing Date.

5.8. **COMMISSIONS.** Lender is not responsible, by this Loan Agreement or otherwise, to pay commissions in relation to this transaction.

6. **PERFORMANCE CONDITIONS.** The following are conditions precedent to performance under this Loan Agreement:

6.1. **CONDITION OF TITLE.** Lender shall cause Escrow Agent to issue to Borrower (with a copy to Lender) the Preliminary Report, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. At Close of Escrow, Lender's Trust Deed shall be a valid lien against the Property securing the Loan and subject to no exceptions to title (of record or off record) other than the exceptions listed in the "Conditions of Title" in the Escrow Instructions.

6.2. **CONDITIONS TO LENDER'S PERFORMANCE.** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (d) the Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and (e) Lender has approved the Approval Documents.

6.3. **CONDITIONS TO BORROWER'S PERFORMANCE.** Borrower's obligation to perform under this Loan Agreement is subject to satisfaction of all of the following conditions: (a) Lender has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower has met the Conditions to Close of Escrow, (d) Lender's representations and warranties in this Loan Agreement are correct as of the date of this Loan Agreement and as of the Close of Escrow; and (e) the Loan Agreement continues to be in full force and effect, no default on the part of Lender has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Lender under the Loan Agreement.

7. **RELOCATION.** Lender is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Lender is informed by Borrower that there shall be no displacement of residents or businesses due to this Project. If this rehabilitation does involve unforeseen displacement, Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Borrower's compliance with the relocation requirements as stated in this Section 7 is a material element of this Loan. Borrower's failure to comply with the relocation requirements as stated in this Section 7 is an Event of Default, subject to Borrower's opportunity to cure in accordance with applicable law.

7.1. **RELOCATION COSTS.** Unless otherwise stated in this Agreement, any amounts paid by Lender for relocation costs and services shall be considered advances under the Loan.

7.2. **COOPERATION AND ACCESS.** Borrower shall cooperate fully with Lender in complying with such relocation laws, including without limitation, providing Lender access to all tenants of the Property, to all books and records related to the tenants of the Property and to all properties offered for temporary or permanent relocation. Prior to taking any action with respect to relocation of tenants, Borrower shall meet with Lender to establish reasonable protections for tenants and related reporting requirements for Borrower.

8. **CONSTRUCTION.** As a condition of the Loan, Borrower will diligently proceed with construction in accordance with the Scope of Development as approved by Lender. Borrower shall complete such work on or before the Completion Date, subject to Unavoidable Delay.

8.1. **CHANGES.** In order to assure sufficient funding for the Project, Borrower shall not authorize any Change without the prior written consent of Lender. If in the judgment of Lender, a Change, together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will, as a condition precedent to Lender's consent, provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes. Borrower will submit any such Change to Lender for approval on a form acceptable to Lender, together with approvals by the Project Architect, if any, and the General Contractor. Borrower shall maintain funds available in the contingency reserve that are in substantially the same percentage of the original contingency reserve as the percentage of the Project then remaining to be completed.

8.2. **CONTRACTORS AND CONTRACTS.** Upon Lender's request, Borrower will furnish to Lender correct lists of all contractors, subcontractors and material suppliers employed in connection with the Project, specifying their addresses, their respective portion of the Project and their respective Project cost. Lender may contact directly each contractor, subcontractor, and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan. All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

8.3. **INSPECTION.** Lender may, at any time and without notice to Borrower, enter on the Property and inspect the Project; and, during regular business hours, examine the books, records, accounting data, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Project and to make extracts or copies. Borrower shall make all such documents available to Lender promptly on demand. Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Lender and its Lender's designated agent and to permit all appropriate access to the Property and to all relevant books and records. Borrower shall bear the cost of reasonable inspections, except

that Lender shall bear its costs of inspection. If however, Lender's inspection discovers issues of a nature that require further third-party review or investigation, Borrower shall bear the costs of such third party review.

8.4. **PROTECTION AGAINST LIEN CLAIMS.** Borrower shall promptly and fully discharge all claims for labor, materials and services in connection with the Project. Borrower shall promptly file a valid Notice of Completion on completion of the Project. Borrower shall promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of (30) days or more. Borrower shall take all other reasonable steps to protect against the assertion of lien claims against the Property. Within ten (10) days after the filing of any claim of lien against the Property, Borrower shall record a surety bond in the office of the Recorder of the County where the Property is located in an amount sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender as evidenced by Lender's written acceptance of such assurance.

8.4.1. Lender, at any time, may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers. Lender, at any time, may require Borrower to make any payments for the Project by joint check made payable to the General Contractor and subcontractor for whose account the payment is to be made, as joint payees.

8.4.2. In any event, Borrower is not required to pay, prior to adjudication, any claims for labor, materials, or services that Borrower, in good faith, reasonably disputes, and that Borrower, at its own expense, is currently and diligently contesting in the proper forum, provided that Borrower has filed the surety bond or given Lender such other assurance as Lender accepts in writing.

8.5. **SECURITY INSTRUMENTS.** Upon request by Lender and subject to the security interests of lender whose loan is secured by the Property and senior to Lender's security interest in the Property, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

8.6. **OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, if any, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

8.6.1. **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

8.6.2. **LIQUIDATED DAMAGES.** IF BORROWER FAILS TO PROVIDE TO LENDER ANY OTHER LENDER DRAW, AS AND WHEN REQUIRED UNDER THIS LOAN AGREEMENT, LENDER SHALL BE IRREPARABLY HARMED IN THAT BORROWER'S ABILITY TO REPAY THE LOAN AND LENDER'S SECURITY FOR THE LOAN SHALL BE IMPAIRED TO AN UNKNOWN EXTENT. BORROWER AND LENDER AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL RESULTING DAMAGES IN SUCH EVENT. BORROWER AND LENDER, THEREFORE, AGREE THAT AN AMOUNT EQUAL TO TWO PERCENT (2%) OF THE LOAN AMOUNT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO LENDER ON ACCOUNT OF SUCH EVENT, RECEIPT OF WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF LENDER FOR SUCH EVENT, AND ONLY FOR SUCH EVENT. PAYMENT OF SAID AMOUNT TO LENDER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO LENDER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SAID AMOUNT SHALL BE IMMEDIATELY DUE AND PAYABLE AS OF THE DATE ON WHICH BORROWER DELIVERED SUCH OTHER LENDER DRAW TO THE OTHER LENDER. LENDER SHALL HAVE THIRTY (30) DAYS AFTER RECEIVING ACTUAL NOTICE OF SUCH EVENT TO NOTIFY BORROWER IN WRITING THAT LIQUIDATED DAMAGES UNDER THIS SECTION ARE DUE. BORROWER SHALL HAVE FIFTEEN (15) DAYS AFTER SUCH WRITTEN NOTIFICATION TO CURE THE DEFAULT BY WITHDRAWING THE OTHER LENDER DRAW AND RETURNING ANY DISBURSEMENT ON ACCOUNT OF SUCH OTHER LENDER DRAW. IF BORROWER FAILS TO PAY LIQUIDATED DAMAGES WHEN DUE UNDER THIS SECTION, THE LOAN SHALL BE ALL DUE AND PAYABLE AT THE ELECTION OF LENDER.

_____Lender's Initials

_____Borrower's Initials

8.7. **NO PRIOR LIENS.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

8.8. **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Lender's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no other public subsidy for the Project. If Borrower obtains other public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no public subsidy for the Project that does not meet such criteria. If Borrower obtains other non-qualifying public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.

9. **LOAN DISBURSEMENT PROCEDURES.**

9.1. **CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

9.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

9.1.2. If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

9.1.3. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

9.1.4. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

9.1.5. Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

9.1.6. Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

9.2. **CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.2.1. There is no legal action threatened or pending against Borrower or affecting the Property or any Additional Collateral.

9.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement.

9.2.3. Lender has provided proof of all insurance required by the Loan Documents.

9.2.4. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

8.7. **NO PRIOR LIENS.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

8.8. **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Lender's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no other public subsidy for the Project. If Borrower obtains other public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no public subsidy for the Project that does not meet such criteria. If Borrower obtains other non-qualifying public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.

9. **LOAN DISBURSEMENT PROCEDURES.**

9.1. **CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

9.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

9.1.2. If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

9.1.3. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

9.1.4. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

9.1.5. Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

9.1.6. Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

9.2. **CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.2.1. There is no legal action threatened or pending against Borrower or affecting the Property or any Additional Collateral.

9.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement.

9.2.3. Lender has provided proof of all insurance required by the Loan Documents.

9.2.4. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3. **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.3.1. As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

a. That the Project has been duly completed in a good and proper manner using sound, new materials;

b. That the Project complies with the Plans and Specifications, the requirements of all Governmental Authorities and any other party having enforceable rights regarding the construction of the Project; and

c. That the Project is structurally sound.

9.3.2. Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

9.3.3. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3.4. Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

9.3.5. Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

a. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

b. Borrower has obtained final certificates of occupancy for all of the Project;

c. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

d. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

9.3.6. Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.

9.3.7. Lender has received written approval from the surety on any bond required by Lender.

9.3.8. Borrower has submitted to Lender a final cost certification prepared by a financial or construction professional.

9.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 9.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

9.5. **COMPLIANCE.** To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and Specifications, will comply in full with, all Governmental requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

8.7. **No Prior Liens.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

8.8. **Prevailing Wages.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Lender's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no other public subsidy for the Project. If Borrower obtains other public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no public subsidy for the Project that does not meet such criteria. If Borrower obtains other non-qualifying public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.

9. **Loan Disbursement Procedures.**

9.1. **Conditions Precedent to Each Loan Disbursement.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

9.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

9.1.2. If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

9.1.3. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

9.1.4. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

9.1.5. Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

9.1.6. Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

9.2. **Conditions Precedent to First Disbursement.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.2.1. There is no legal action threatened or pending against Borrower or affecting the Property or any Additional Collateral.

9.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement.

9.2.3. Lender has provided proof of all insurance required by the Loan Documents.

9.2.4. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3. **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.3.1. As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

a. That the Project has been duly completed in a good and proper manner using sound, new materials;

b. That the Project complies with the Plans and Specifications, the requirements of all Governmental Authorities and any other party having enforceable rights regarding the construction of the Project; and

c. That the Project is structurally sound.

9.3.2. Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

9.3.3. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3.4. Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

9.3.5. Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

a. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

b. Borrower has obtained final certificates of occupancy for all of the Project;

c. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

d. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

9.3.6. Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.

9.3.7. Lender has received written approval from the surety on any bond required by Lender.

9.3.8. Borrower has submitted to Lender a final cost certification prepared by a financial or construction professional.

9.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 9.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

9.5. **COMPLIANCE.** To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and Specifications, will comply in full with, all Governmental requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

10. **RESIDENTIAL OPERATIONS.**

10.1. **PROPERTY MANAGEMENT COMPANY.** For the life of the Loan, Borrower shall obtain and maintain a property management agreement with a top quality and duly accredited real estate property management company or a governmental housing entity for the management of the Property, and shall assure the compliance of the property management with such agreement. Lender shall not disburse any funds under this Loan Agreement unless and until it has reviewed and approved the agreement as adequate and the property management company as top quality and duly accredited. Lender shall have right to review and approve any proposed changes to scope of said agreement and to changes in the real estate property management company, prior to Borrower's making such changes. Any such changes made without Lender approval shall be a default of the loan. The Lender has approved the Property Manager as a qualified property management company for the Project.

10.2. **REPLACEMENT RESERVES.** Borrower shall maintain reserves for replacement and repairs required to be made the Property, fixtures on the Property or personal property used on the Property, or otherwise as approved by Lender, in an amount, at all times, not less than Two Hundred Fifty Dollars ($250) for each residential unit in the Project

10.3. **VERIFICATION OF NET INCOME.** When requested by Lender, Borrower shall provide certified financial statements and such other evidence as the Lender may deem necessary to verify the Project net income, including without limitation copies of certified rent rolls, bank statements, billing statements and invoices.

11. **DEFAULT.**

11.1. **EVENTS OF DEFAULT.** At the option of Lender, each of the following events will constitute an Event of Default subject to applicable cure rights, if any:

11.1.1. The occurrence of an Event of Default under the Trust Deed.

11.1.2. Subject to Borrower's legal rights to contest a governmental requirement, Borrower's failure to comply with any governmental requirements, unless within ten (10) days after notice of such failure by Lender or the respective governmental entity or after any action has been commenced to enforce such requirement, Borrower has cured such failure.

11.1.3. Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction, occupancy, or use of the Project, unless within ten (10) days after notice by the issuing entity or Lender of such failure, Borrower has promptly cured such failure.

11.1.4. Any material deviation from the Plans and Specifications in the construction of the Project, or the appearance or use of defective workmanship or materials in the construction of the Project, if Borrower fails to remedy them or to diligently proceed to remedy them to Lender's satisfaction within ten (10) days after Lender's written demand to do so.

11.1.5. Borrower's failure to complete the construction of the Project by the Completion Date.

11.1.6. The filing of any lien against the Property or Project or the service on Lender of any bonded stop notice related to the Loan, if the claim of lien or bonded stop notice continues for thirty (30) days without discharge, satisfaction, or the making of provision for payment (including bonding) to the satisfaction of Lender.

11.1.7. The attachment, levy, execution, or other judicial seizure of any portion of the Property or Project, or any substantial portion of the other assets of Borrower, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.

11.1.8. Making of any unauthorized payment from Loan Proceeds or other funds of Lender.

12. **REMEDIES.**

12.1. **OPTION TO ACT.** On the occurrence of any Event of Default, in addition to its other rights in this Loan Agreement or in any of the other Loan Documents, at law, or in equity, Lender may, without prior demand, exercise any one or more of the following rights and remedies:

12.1.1. Terminate its obligation to make disbursements.

8.7. **NO PRIOR LIENS.** Borrower shall not allow the Project construction to begin or materials to be delivered to the Project until after Close of Escrow.

8.8. **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Lender's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no other public subsidy for the Project. If Borrower obtains other public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no public subsidy for the Project that does not meet such criteria. If Borrower obtains other non-qualifying public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender 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 Borrower or General Contractor or both of them.

9. **LOAN DISBURSEMENT PROCEDURES.**

9.1. **CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT.** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent:

9.1.1. No Event of Default or Potential Default of Borrower has occurred and is continuing.

9.1.2. If requested by Lender, Borrower has furnished to Lender, as a Project cost, an endorsement to the Title Policy showing no intervening liens or encumbrances on the Property and insuring the full disbursement, together with a satisfactory report under the California Uniform Commercial Code showing no liens or interests other than those of Lender.

9.1.3. Lender is satisfied that all completed work has been done using sound, new materials and fixtures, in a good and proper manner, and all materials, fixtures, and furnishings installed on or acquired for the Property will be owned by Borrower free of any liens, encumbrance, or other interests of any kind other than Lender's lien or security interest.

9.1.4. The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement.

9.1.5. Borrower has paid Lender all commitment, loan, and other fees then due, and Borrower has submitted to Lender all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Lender for approval under this Loan Agreement.

9.1.6. Borrower has delivered to Lender all funds, documents, instruments, policies, evidence of satisfaction of conditions, and other materials then due or otherwise requested by Lender under the Loan Documents.

9.2. **CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.2.1. There is no legal action threatened or pending against Borrower or affecting the Property or any Additional Collateral.

9.2.2. All conditions to Close of Escrow have been satisfied in accordance with the Loan Agreement.

9.2.3. Lender has provided proof of all insurance required by the Loan Documents.

9.2.4. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3. **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 9.1 have been met:

9.3.1. As applicable, the Project Architect and the Lender's designated agent will have certified to Lender, on AIA Form G704 and in a manner satisfactory to Lender:

a. That the Project has been duly completed in a good and proper manner using sound, new materials;

b. That the Project complies with the Plans and Specifications, the requirements of all Governmental Authorities and any other party having enforceable rights regarding the construction of the Project; and

c. That the Project is structurally sound.

9.3.2. Borrower has provided to Lender a true, accurate and complete copy of the final draw request to all other lenders for the Project.

9.3.3. Borrower has filed all tax returns required to be filed and paid all taxes due, which, if unfiled or unpaid, might adversely affect Lender's security under the Security Documents.

9.3.4. Title policy endorsements in form and amount satisfactory to Lender (including an endorsement insuring lien-free completion of the Project) have been furnished to Lender.

9.3.5. Borrower has furnished evidence, in form and substance satisfactory to Lender, that:

a. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

b. Borrower has obtained final certificates of occupancy for all of the Project;

c. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

d. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

9.3.6. Borrower has filed a notice of completion of the Project necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens.

9.3.7. Lender has received written approval from the surety on any bond required by Lender.

9.3.8. Borrower has submitted to Lender a final cost certification prepared by a financial or construction professional.

9.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 9.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

9.5. **COMPLIANCE.** To the best of Borrower's knowledge, the construction, use, and occupancy of the Property and Project comply in full with, or if built according to the Plans and Specifications, will comply in full with, all Governmental requirements. No right to construct or use the Project is to any extent dependent on any real property other than the Property. All approvals, licenses, permits, certifications, filings, and other actions normally accepted as proof of compliance with all Governmental requirements by prudent lending institutions that make investments secured by real property in the general area of the Property, to the extent available as of the date of this Loan Agreement, have been given or taken, or Borrower is entitled to have them given or taken as the ministerial act of the applicable Governmental Authority.

10. **RESIDENTIAL OPERATIONS.**

10.1. **PROPERTY MANAGEMENT COMPANY.** For the life of the Loan, Borrower shall obtain and maintain a property management agreement with a top quality and duly accredited real estate property management company or a governmental housing entity for the management of the Property, and shall assure the compliance of the property management with such agreement. Lender shall not disburse any funds under this Loan Agreement unless and until it has reviewed and approved the agreement as adequate and the property management company as top quality and duly accredited. Lender shall have the right to review and approve any proposed changes to scope of said agreement and to changes in the real estate property management company, prior to Borrower's making such changes. Any such changes made without Lender approval shall be a default of the loan. The Lender has approved the Property Manager as a qualified property management company for the Project.

10.2. **REPLACEMENT RESERVES.** Borrower shall maintain reserves for replacement and repairs required to be made to the Property, fixtures on the Property or personal property used on the Property, or otherwise as approved by Lender, in an amount, at all times, not less than Two Hundred Fifty Dollars ($250) for each residential unit in the Project

10.3. **VERIFICATION OF NET INCOME.** When requested by Lender, Borrower shall provide certified financial statements and such other evidence as the Lender may deem necessary to verify the Project net income, including without limitation copies of certified rent rolls, bank statements, billing statements and invoices.

11. **DEFAULT.**

11.1. **EVENTS OF DEFAULT.** At the option of Lender, each of the following events will constitute an Event of Default, subject to applicable cure rights, if any:

11.1.1. The occurrence of an Event of Default under the Trust Deed.

11.1.2. Subject to Borrower's legal rights to contest a governmental requirement, Borrower's failure to comply with any governmental requirements, unless within ten (10) days after notice of such failure by Lender or the respective governmental entity or after any action has been commenced to enforce such requirement, Borrower has cured such failure.

11.1.3. Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction, occupancy, or use of the Project, unless within ten (10) days after notice by the issuing entity or Lender of such failure, Borrower has promptly cured such failure.

11.1.4. Any material deviation from the Plans and Specifications in the construction of the Project, or the appearance or use of defective workmanship or materials in the construction of the Project, if Borrower fails to remedy them or to diligently proceed to remedy them to Lender's satisfaction within ten (10) days after Lender's written demand to do so.

11.1.5. Borrower's failure to complete the construction of the Project by the Completion Date.

11.1.6. The filing of any lien against the Property or Project or the service on Lender of any bonded stop notice related to the Loan, if the claim of lien or bonded stop notice continues for thirty (30) days without discharge, satisfaction, or the making of provision for payment (including bonding) to the satisfaction of Lender.

11.1.7. The attachment, levy, execution, or other judicial seizure of any portion of the Property or Project, or any substantial portion of the other assets of Borrower, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.

11.1.8. Making of any unauthorized payment from Loan Proceeds or other funds of Lender.

12. **REMEDIES.**

12.1. **OPTION TO ACT.** On the occurrence of any Event of Default, in addition to its other rights in this Loan Agreement or in any of the other Loan Documents, at law, or in equity, Lender may, without prior demand, exercise any one or more of the following rights and remedies:

12.1.1. Terminate its obligation to make disbursements.

12.1.2. Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due.

12.1.3. Make any disbursements after the happening of any one or more of the Events of Default, without waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further disbursements, regardless of Lender's previous exercise of any rights and remedies.

12.1.4. Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Loan Agreement or the Trust Deed.

12.1.5. Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents, together with interest at the maximum amount allowed by law from the date the funds were spent until repaid which amounts will be deemed secured by the Trust Deed.

12.2. **RIGHTS CUMULATIVE, NO WAIVER.** All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver will be implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms.

12.3. **DISCLAIMER.** Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default, Lender will not be liable to construct, complete, or protect the Project; to pay any expense in connection with the exercise of any remedy; or to perform any other obligation of Borrower.

12.4. **GRANT OF POWER.** Subject to the prior rights of lenders whose loans are secured by the Property and senior to the rights of Lender, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, to act for Borrower in its name, place, and stead as provided in this Loan Agreement, to take possession of the Property and Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the work of construction, and to market, sell, or lease the Property and Project; to make any additions, changes, and corrections in the Plans as may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers, architects, inspectors, consultants, property managers, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property or Personalty, or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Property or Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property or Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

13. **LIABILITY INSURANCE.** With regard to this Loan Agreement, the Borrower shall obtain and maintain for the life of the Regulatory Agreements, and require the General Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Borrower, General 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 his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his 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 Borrower, 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 Borrower's obligations under this Loan Agreement.

13.1. **LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 13 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS ($100,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

13.2. **WORKER'S COMPENSATION.** Borrower shall obtain and maintain worker's compensation coverage shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than $1,000,000.

13.3. **COMMERCIAL GENERAL LIABILITY.** Borrower shall obtain and maintain Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better. Such insurance shall have limits of liability, which are not less than $1,000,000, per occurrence limit; $5,000,000 general aggregate limit, and $5,000,000 products and completed operations aggregate limit, all per location of the Project.

13.4. **COMPREHENSIVE AUTOMOBILE LIABILITY.** Borrower shall obtain and maintain comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having a combined single limit of not less than $1,000,000.

13.5. **PROPERTY INSURANCE.** For the duration of the Regulatory Agreements, Borrower shall obtain and maintain property insurance in ISO policy form CP 10 30 - Building and Personal Property Coverage - Causes of Loss - Special Form, to the full insurable value of the Property with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), Boiler and Machine to the extent necessary to obtain full insurance coverage, and with such other endorsements and in such amounts as the Lender may reasonably require to protect the Project and the Property. In the event of damage to the Project and subject to the requirements of Lender, Borrower shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

13.6. **INSURANCE PROVISIONS.** Each policy of insurance required under this Loan Agreement shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII , which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by Lender's legal counsel. Each policy shall contain the following provisions as applicable, unless otherwise approved by Lender's legal counsel in writing in advance:

13.6.1. **ADDITIONAL INSURED.** Borrower shall obtain a policy in ISO form CG 20 33 or better, naming Lender as additional insured under the Commercial General Liability Policy.

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

13.6.3. **CERTIFIED POLICY COPY.** Borrower shall provide Lender with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Borrower shall provide Lender with a Certificate of Insurance of Insurance for each policy on the applicable ACORD form. The ACORD form shall not substitute for the policy. ACORD 25-S "Certificate of Liability Insurance shall be used for liability insurance deleting the sentence in the top right-hand block immediately below the title (commencing "This certificate is issued as a matter of information . . .) and in the bottom right-hand box above the authorized representative signature, deleting the words "endeavor to" and "but failure to do so shall impose not obligation or liability of any kind upon the insurer, its agents or representatives."

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

13.7. **FAILURE TO MAINTAIN.** If Borrower fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Loan Agreement, the Lender shall have the right, upon five (5) days written notice and opportunity to cure, to purchase the insurance on Borrower's behalf, and Borrower shall promptly reimburse the full cost of such insurance to the Lender. If Borrower fails to reimburse the Lender for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

13.8. **BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 16 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 Lender 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 Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 13 with respect to such insurance shall otherwise be satisfied by such blanket policy.

14. **MISCELLANEOUS.**

14.1. **NONRECOURSE.** Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this Loan, Borrower, and Borrower's principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

14.2. **CURE BY PARTY OTHER THAN BORROWER.** Any lender whose loan is secured by the property and any principal of Borrower may cure a default of the Loan, provided that such cure rights shall be the same as Borrower's cure rights. Such other curing party must cure by the date on which Borrower was obligated to cure, except if Lender is obligated by this Loan Agreement to give separate notice to such other curing party, in which instance, the cure period shall begin when Lender makes such notice to such other curing party.

14.3. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a taking of all of the Property, the proceeds shall be applied to the sums provided by this Loan, subject to any claims of prior lienholder, with the excess, if any, paid to junior lienholders and Borrower, as they may determine. In the event of the partial taking of the Property, unless Borrower and Lender otherwise agree in writing, and subject to any claims of prior lienholders, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to junior lienholders and Borrower, as they may determine.

If the condemnor offers to make an award or settle a claim for damages to the Property and: (1) the Property is abandoned by Borrower; or (2) after notice by Lender to Borrower of the condemnor's offer, Borrower fails to respond to Lender within 30 days after the date such notice is mailed; Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

14.4. **SUBORDINATION.** Lender will subordinate this Loan to the senior loan, or existing loans, provided that such loans for the Project indicated in the Budget meet all requirements of this Loan Agreement, and that these loans do not require modification of this Loan Agreement, Lender's execution of any agreements containing new or modified Loan terms or Lender's execution of any agreement creating a contractual relationship between Lender and the senior lenders including obligations or liabilities between Lender and the senior lenders.

14.5. **FEDERAL REQUIREMENTS.** If any Loan Program is federally funded, Borrower shall comply with all laws, rules, regulations and funding requirements that govern the use of such funds. Lender shall fully cooperate with, and assist, Borrower in fulfillment of such obligations.

14.6. **NATURE OF REPRESENTATIONS AND WARRANTIES.** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Loan Agreement, in any other Loan Documents, and in any other document delivered to Lender by Borrower will be deemed to have been relied on by Lender, regardless of any investigation, inspection, or inquiry made by Lender or any related disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

14.7. **FINANCIAL STATEMENTS.** Borrower shall provide Financial Statements when requested by Lender, but in any event not more often than quarterly during construction of the Project or annually, thereafter. Borrower shall assure that Financial Statements are prepared in accordance with generally accepted accounting principles. If requested by Lender as reasonably necessary to assure the security of its Loan, Borrower shall provide Financial Statements prepared or reviewed by a licensed Certified Public Accountant or Public Accountant and fully reflecting the assets and liabilities of the party concerning whom they were prepared.

14.8. **NO WAIVER.** No failure or delay on the part of Lender in exercising any right or remedy under the Loan Documents will operate as a waiver nor will Lender be estopped to exercise any right or remedy at any future time because of any such failure or delay. No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Loan Agreement will not be construed to waive any subsequent breach of the same covenant, term, or condition.

14.9. **NO THIRD PARTIES BENEFITED.** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other Person will have any right of action or any rights to funds at any time on deposit in the Construction Account or the Impound Account, if established.

14.10. **NOTICES.** Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents.

14.10.1. **METHOD.** All notices to be given under this Loan Agreement shall be in writing and sent to the addresses stated above for the respective recipient by one or more of the following methods.

a. 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;

b. 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;

c. 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

d. 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 Borrower or Lender may respectively designate by written notice to the other.

14.10.2. **SHORT TERM NOTICES.** Notices, including requests for approval, requiring action in less than thirty (30) days may only be given by the foregoing overnight courier or hand delivery method, and shall include the following language on its face: "URGENT – TIME SENSITIVE – IMMEDIATE ACTION REQUIRED" and marked for delivery to Portfolio Management. Such notice shall include the time allowed under this Loan Agreement for action.

14.11. **ACTIONS.** Lender will have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties, or the disbursement of any funds under this Loan Agreement. In connection with that, Lender may incur and pay costs and expenses, including, without limitation, reasonable attorney fees. Borrower agrees to pay to Lender on demand all these expenses, and Lender is authorized to disburse funds from the Construction Account for that purpose. This Section does not apply to actions or proceedings between the parties.

14.12. **SIGNS.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project, which sign shall remain for the duration of construction. If Borrower 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. Lender's name on the sign shall be in letters not less than size of letters used to name any of the other participants.

14.13. **ASSIGNMENT.** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Borrower shall not assign this Loan Agreement or any interest it may have in the monies due or, except as otherwise provided, convey or encumber the Property without the prior written consent of Lender

to a party other than a general partner or managing member of Borrower or a single asset entity wholly owned and controlled by Borrower or a general partner or managing member of Borrower. However, if there is an assignment, conveyance, or encumbrance, Lender may nevertheless at its option continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications, and will be secured by the Trust Deed. Lender may at any time assign the Loan Documents to any affiliate of Lender or to a national bank or other lender having experience with construction lending, and the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and the assignee will be substituted in the place and stead of Lender, with all rights, obligations, and remedies of Lender, including, without limitation, the right to further assign the Loan Documents. In addition, Lender may at any time assign a participation in the Loan to any other party, provided that Lender continues to be primarily obligated under this Loan Agreement.

14.14. **PREPAYMENT.** Borrower may prepay the Loan only on and subject to the terms and conditions in the Note. Borrower shall have no rights to receive, and under no circumstances will Borrower receive repayment of any fees previously paid to Lender.

14.15. **BORROWER'S RESPONSIBILITIES.** To prevent and avoid construction defects, Borrower shall inspect, review, supervise, and assure the high quality, adequacy, and suitability of: (i) the Plans and Specifications and all changes and amendments; and (ii) architects, contractors, subcontractors, and material suppliers employed or used in the Project, and the workmanship of and the materials used by all of them; and (iii) the progress and course of construction and its conformance with the Plans and Specifications and any amendments, alterations, and changes that may be approved by Lender. Borrower will, at Borrower's expense, defend, indemnify, save, and hold Lender harmless against all claims, demands, losses, expenses, damages (general, punitive, or otherwise), and causes of action (whether legal or equitable) asserted by any Person arising out of the use of the proceeds of the Loan. Borrower will pay Lender on demand all claims, judgments, damages, losses, or expenses (including attorney fees and expenses) incurred by Lender as a result of any legal action arising out of the use of the proceeds of the Loan. The provisions of this Section will survive the termination of this Loan Agreement and the repayment of the Loan.

14.16. **NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE.** Borrower acknowledges, understands, and agrees as follows:

14.16.1. The relationship between Borrower and Lender is, and will at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy, or suitability of the Project work, except as to matters which are within the intent and purpose for which Lender has made the Loan.

14.16.2. Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate, or defective building or construction.

14.16.3. Lender will not be responsible or liable to Borrower for any loss or damage of any kind to person or property whether suffered by Borrower or any other Person or group of Persons or for negligent, faulty, inadequate, or defective building or construction, and Borrower will hold Lender harmless from any liability, loss, or damage for these things.

14.17. **CONTROLLING LAW; VENUE.** The Loan Documents will be governed by and construed in accordance with California law. The venue for any legal action or proceeding will be in the County of Sacramento, California.

14.18. **CONSENTS AND APPROVALS.** All consents and approvals by Lender required or permitted by any provision of this Loan Agreement will be in writing. Lender's consent to or approval of any act by Borrower requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

14.19. **SURVIVAL OF WARRANTIES AND COVENANTS.** The warranties, representations, conditions, covenants, and agreements in this Loan Agreement and in the other Loan Documents will survive the making of the Loan and the execution and delivery of the Note and will continue in full force until the Indebtedness has been paid in full. Nothing in this Section is intended to limit any other provision of the Loan Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Loan Document.

14.20. **RECORDING AND FILING.** Borrower, at its expense, will cause the Security Documents and all supplements to be recorded and filed and re-recorded and re-filed in any manner and in any places as Lender will reasonably request, and will pay all recording, filing, re-recording, and re-filing taxes, fees, and other charges.

14.21. **LOAN EXPENSES.** In making the first disbursement, Lender may, at its option, deduct from the proceeds of that disbursement a sum equal to the aggregate of the following, to the extent Lender has knowledge of it and demand has been made on Lender at the time of the deposit: all expenses specifically incurred in connection with the Loan or the preparation, execution, and delivery of the Loan Documents, including, but not limited to, recording costs and expenses, transfer and other taxes (if any), surveys, appraisal fees, title and hazard insurance premiums, recording, notary, and escrow charges, and all other similar, usual, or customary loan closing charges and expenses; and any other budgeted expenses that have been approved by Lender in writing; and Lender will, for the benefit of Borrower, pay those amounts over to the respective parties on whose behalf the demands will have been received by Lender. Borrower will pay directly any expenses in connection with the Loan not so paid by Lender, including, without limitation, any of the expenses specified above, and will hold Lender free from any cost, liability, or obligation of any nature in connection with it, including reasonable attorney fees incurred by Lender. Borrower further agrees to pay on demand all out-of-pocket costs and expenses reasonably incurred by Lender including, without limitation, the fees and disbursements of Lender's outside counsel, in connection with: (i) the administration of the Loan, including, without limitation, all approvals or consents given or contemplated to be given under the Loan Documents, all amendments to the Loan Documents entered into by Lender or requested by any Loan Party, and all title insurance policies and endorsements required by Lender, and (ii) the enforcement of any rights or remedies under the Loan Documents, whether any action or proceeding is commenced, or the protection of the security, or interests of Lender under the Loan Documents. All costs and expenses, together with interest at Loan rate, will form a part of the indebtedness and will be secured by the Security Documents.

14.22. **NO REPRESENTATIONS BY LENDER.** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.

14.23. **AMENDMENT.** The Loan Documents and the terms of each of them may not be modified, waived, discharged, or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge, or termination is asserted.

14.24. **TERMINATION.** Except as otherwise provided in the Loan Documents, all rights and obligations under this Loan Agreement will terminate except as to any accrued obligations effective on the payment of all Indebtedness owing by Borrower to Lender.

14.25. **COUNTERPARTS.** The Loan Documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

14.26. **SEVERABILITY.** If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected, impaired, or invalidated.

14.27. **CAPTIONS.** All Article and Section headings in the Loan Documents are inserted for convenience of reference only and do not constitute a part of the Loan Documents for any other purpose.

14.28. **INDEMNITY.** Borrower agrees to defend, indemnify, and hold Lender harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney fees that Lender may reasonably incur as a direct or indirect consequence of the making of the Loan, Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the other Loan Documents, the failure at any time of any of Borrower's representations or warranties to be true and correct, or any act or omission by Borrower, any contractor, subcontractor, engineer, architect, or other Person with respect to the Property, the Project, or any portion of them. Borrower will pay immediately on Lender's demand any amounts owing under this indemnity, together with interest at the maximum rate permitted by law from the date Lender makes a payment or incurs a loss. Borrower's duty to indemnify Lender will survive the release and cancellation of the Note and the reconveyance or partial reconveyance of the Trust Deed.

14.29. **FURTHER ASSURANCES.** At Lender's request and at Borrower's expense, Borrower will execute, acknowledge, and deliver all other instruments and perform all other acts necessary, desirable, or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.

14.30. **DISCLOSURE OF INFORMATION.** If Lender elects to sell the Loan, Lender may forward to the buyer of the Loan all documents and information related to the Loan in Lender's possession, including without limitation all Financial Statements, whether furnished by Borrower or otherwise.

14.31. **LENDER'S AGENTS.** Lender may designate agents or independent contractors to exercise any of Lender's rights under the Loan Documents. Any reference to Lender in any of the Loan Documents will include Lender's employees, agents, and independent contractors.

14.32. **INTEGRATION AND INTERPRETATION.** The Loan Documents contain or expressly incorporate by reference the entire agreement between Lender and Borrower with respect to the covered matters and supersede all prior negotiations. Any reference to the Property or Project in any of the Loan Documents will include all or any portion of them. Any reference to the Loan Documents themselves in any of the Loan Documents will include all amendments, renewals, or extensions approved by Lender.

14.33. **NUMBER, IDENTITY AND GENDER.** When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. Person means any natural person, corporation, firm, partnership, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

THE PARTIES HAVE EXECUTED THIS LOAN AGREEMENT in Sacramento, California as of the Effective Date.

BORROWER:
RIVERVIEW PLAZA ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP

By: Sacramento Housing Development Corporation, a California nonprofit corporation, It general partner.

By: _____
LaShelle Dozier
Interim Executive Director

Date: _____

Approved as to form:

_____
Borrower Counsel

LENDER:
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
John Dangberg, Assistant City Manager, As designated Signatory

Date: _____

Approved as to form:

_____
Lender Counsel

Exhibit 1: Legal Description

Exhibit 2: Scope of Development

Exhibit 3: Note Form

Exhibit 4: Trust Deed Form

Exhibit 5: Regulatory Agreement

Exhibit 6: Escrow Instructions

Exhibit 7: Subordination Agreement

When recorded, return to:

Sample, acceptable Subordination Agreement

SUBORDINATION AGREEMENT

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

THIS AGREEMENT, made this _____ day of _____,20__, by _____ owner of the land hereinafter described and hereinafter referred to as "Owner", and The Sacramento Housing and Redevelopment Agency present owner and holder of the deed of trust and note first hereinafter described and hereinafter referred to as "Beneficiary";

WITNESSETH

THAT WHEREAS, Owner did on _____, execute a deed of trust to _____ as trustee, covering: _____ to secure a note in the sum of $_____, dated _____, in favor of beneficiary, which deed of trust was recorded _____, in book _____ page _____, Official Records of said county and is subject and subordinate to the deed of trust next hereinafter described; and

WHEREAS, Owner has executed, or is about to execute, a note in the amount of $ _____, dated _____, in favor of _____, hereinafter referred to as "Lender", payable with interest and upon the terms and conditions described therein, which note evidences an additional loan to be made by Lender to Owner under the terms and provisions of, and secured by, said deed of trust in favor of Lender; and

WHEREAS, it is a condition precedent to obtaining said additional loan that said deed of trust in favor of Lender, securing all obligations recited therein as being secured thereby, including but not limited to said additional loan, shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien or charge of the deed of trust first above mentioned; and

WHEREAS, Lender is willing to make said additional loan provided the deed of trust securing the same is a lien or charge upon said land prior and superior to the lien or charge of the deed of trust first above mentioned and provided that Beneficiary will specifically and unconditionally subordinate the lien or charge of the deed of trust first above mentioned to the lien or charge of said deed of trust in favor of Lender; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make said additional loan to Owner; and Beneficiary is willing that the deed of trust securing the same shall constitute a lien or charge upon said land which is unconditionally prior and superior to the lien or charge of the deed of trust above mentioned.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the additional loan above referred to, it is hereby declared, understood, and agreed as follows:

(1) That said deed of trust in favor of Lender, as to said additional loan as well as all other obligations recited as being secured thereby, and any renewals or extensions hereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the lien or charge of the deed of trust first above mentioned.

(2) That Lender would not make its additional loan above described without this subordination agreement.

(3) That this agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the deed of trust first above mentioned to the lien or charge of the deed of trust in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the deeds of trust hereinbefore specifically described, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the deed of trust first above mentioned, which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

Beneficiary declares, agrees, and acknowledges that

(a) He consents to and approves (i) all provisions of the note evidencing said additional loan and the deed of trust securing same, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's additional loan;

(b) Lender in making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) He intentionally and unconditionally waives, relinquishes, and subordinates the lien or charge of the deed of trust first above mentioned in favor of the lien or charge upon said land of the deed of trust in favor of Lender, as to said additional loan as well as all other obligations recited therein as being secured thereby, and understands that in reliance upon and in consideration of this waiver, relinquishment and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

(d) An endorsement has been placed upon the note secured by the deed of trust first above mentioned that said deed of trust has by this instrument been subordinated to the lien or charge of the deed of trust in favor of Lender above referred to.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

_____
Beneficiary

_____
Owner