

## RESOLUTION NO. 2009-018

Adopted by the Redevelopment Agency  
of the City of Sacramento

March 10, 2009

### **7<sup>th</sup> and H: AUTHORIZING AN EXCLUSIVE RIGHT TO NEGOTIATE (ERN), PREDEVELOPMENT LOAN AGREEMENT WITH MERCY HOUSING CALIFORNIA, AND AUTHORIZING ALLOCATION OF FUNDS FOR PREDEVELOPMENT EXPENSES**

#### **BACKGROUND**

- A. In September of 2006 the Redevelopment Agency adopted the Single Room Occupancy Preservation and Efficiency Apartment Replacement Action Plan, which calls for the Agency to develop 200 new efficiency apartments in the downtown redevelopment area within five years.
- B. In September of 2006 the Redevelopment Agency adopted the Ten Year Plan to End Chronic Homelessness, calling for 1) development of 280 new permanent supportive housing units within five years; and 2) prevention of homelessness through the development of new efficiency apartments in the downtown redevelopment area.
- C. In September of 2008, the Agency purchased a half-acre site at 7<sup>th</sup> and H from the City of Sacramento, and issued a Request for Qualifications for developers to create a new deeply affordable, high quality, high density, attractive housing project at that location.
- D. The Selection Committee, after reviewing four submittals, ranked Mercy Housing California's (MHC) team as the development group most qualified to realize the City's vision for 7<sup>th</sup> and H.
- E. The Agency and MHC wish to enter into an Exclusive Right to Negotiate to obligate the parties to work together to agree on the design and financing of the building, with public input, and prepare for an entitlement application and underwriting.
- F. Predevelopment funds are needed to pay for project design, fees, studies and other expenses to prepare the project for entitlements and underwriting. Estimated expenses are about \$600,000, of which MHC has agreed to pay for at least \$45,500.
- G. Use of Downtown Tax Increment funds from the SRO Preservation and Replacement Fund for the development of the 7<sup>th</sup> and H property will benefit the Downtown Redevelopment Area by providing high quality affordable housing to downtown workers and residents, ending homelessness for some downtown residents, and adding an attractive building with retail opportunities on a previously inactive site.
- H. The proposed action is exempt from environmental review per California Environmental Quality Act (CEQA) Guidelines Section 15262 as a planning activity for

the purpose of defining the project. National Environmental Policy Act (NEPA) does not apply.

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

- Section 1. All of the evidence having been duly considered, the findings, including the environmental findings, as stated above, are approved.
- Section 2. The Agency budget is amended to transfer \$455,000 in Downtown Tax Increment funds from the SRO Preservation and Replacement Fund to the 7<sup>th</sup> and H project.
- Section 3. The Executive Director, or her designee, is authorized to execute the attached Exclusive Right to Negotiate with Mercy Housing California.
- Section 4. The Executive Director, or her designee, is authorized to execute the attached Predevelopment Loan Agreement with Rural California Housing Corporation, an affiliate of MHC.
- Section 5. The Executive Director, or her designee, is authorized to take all actions necessary to facilitate design, public review and application for entitlements and to determine the feasibility of financing for the new development at 7<sup>th</sup> and H.

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- Exhibit A: Exclusive Right to Negotiate
- Exhibit B: Predevelopment Loan Agreement

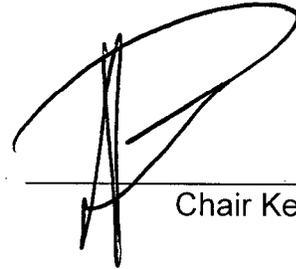
Adopted by the Redevelopment Agency of the City of Sacramento on March 10, 2009 by the following vote:

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

Noes: None.

Abstain: None.

Absent: Councilmember Tretheway.

A handwritten signature in black ink, consisting of a large, stylized 'K' and 'J' that overlap significantly. The signature is positioned above a horizontal line.

Chair Kevin Johnson

Attest:

  
Shirley Concolino, Secretary

**AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE (“ERN”)  
7TH AND H STREET RESIDENTIAL**

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO (“Agency”) and MERCY HOUSING CALIFORNIA, (“Developer”), have entered into this Agreement for Exclusive Right to Negotiate (“Agreement”) as of \_\_\_\_\_, (“Effective Date”) upon the follow terms:

1. **RECITALS.** This Agreement is based upon the following recitals, facts and understandings of the Parties:

a. Developer desires to negotiate with Agency to acquire and develop certain real property (“Property”) located in the City of Sacramento, County of Sacramento, State of California, as described in the Legal Description attached and incorporated in this Agreement by this reference. The Property is within Railyards Redevelopment Project Area (“Project Area”) and is owned by the Agency. The development of the Property (“Project”) is consistent with Railyards Redevelopment Project Plan (“Redevelopment Plan”) and its implementing documents, has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area and increasing the stock of affordable housing available to the Project Area and to Downtown Sacramento.

b. The Parties desire to investigate the feasibility of the Project and to negotiate a Disposition and Development Agreement (“DDA”) for transfer, financing and development of the Property.

c. The development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.

d. Concurrent with this ERN, the Redevelopment Agency of the City of Sacramento is entering into a predevelopment agreement with Rural California Housing Corporation, an affiliate of Developer Mercy Housing California, for the purpose of implementing certain predevelopment activities as more fully defined in that agreement.

2. **Identity of Parties. THE LEGAL IDENTITIES OF THE PARTIES TO THIS AGREEMENT AND THEIR ADDRESSES ARE AS FOLLOWS:**

a. Developer is Mercy Housing California, a nonprofit corporation, organized and doing business in the State of California. The principal office of Developer is located at 3120 Freeboard, Suite 202, West Sacramento, CA 95691. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer. Initially, the principals of Developer are Greg Sparks, Northern California Director.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 630 I Street, Sacramento, California 95814.

Notices to any party shall be personally delivered or sent by first class mail to its principal office address. All notices shall be clearly marked “Attention: 7th and H Street Residential”.

3. **EXCLUSIVE NEGOTIATION.** During the term of this Agreement, the parties shall negotiate exclusively with each other, and in good faith, regarding the Property and the Project. The parties acknowledge and agree that neither party is obligated by this Agreement or otherwise to undertake the Project or any other Project on the Property and that no party has a cause of action against the other arising under this Agreement for failure to approve or undertake the Project.

4. **TERM.** This Agreement shall be effective as of the Effective Date, and shall terminate upon the earlier of full execution of a DDA or one hundred and sixty (160) days after the Effective Date (the “Term”), unless extended by written agreement of the parties.

5. **LEGISLATIVE ACTION.** Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This Agreement does not restrict the legislative authority of the Agency in any manner, whatsoever, and does not obligate the Agency to enter into the DDA or to take any course of action with respect to the Project.

a. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.

b. Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Planning Department, Design Review/Preservation Board and Building Department. If the Proposal is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval.

6. **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency shall prepare the environmental documentation and consider the environmental effects of the Project prior to considering action to approve the proposed DDA.

a. Nothing in this Agreement shall be construed to limit the application of CEQA to the Project or to changes in the Project or to control the actions of Agency in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its respective obligations under this Agreement. Agency shall not be liable, in any respect, to Developer or any third party beneficiary of this Agreement for their action or inaction in fulfilling their respective CEQA obligations.

b. Agency will not consider the approval of the Project unless and until it has fully reviewed and considered the environmental impacts of the proposed Project in accordance with CEQA. After CEQA review, Agency is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to approve a DDA or any other agreement. After CEQA review, Agency is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for the approval of the Project or take any other action in support of the proposed Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project.

c. Upon Agency request, Developer shall supply data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project.

7. **SCHEDULE OF PERFORMANCES.** The parties shall perform the following stated obligations at the times specified in the following schedule ("Schedule of Performances"):

Responsible Party	Action	Due Date
Developer	Submit Deposit	Within ten (10) days following the Effective Date
Developer and Agency	Meet and confer concerning progress of the foregoing actions; Developer to submit progress reports at each meeting	At least once each month during the term of this Agreement, as it may be extended, commencing not later than twenty (20) days of the Effective date
Developer	Submit information as requested by Agency and City staff for review of Developer's proposal, for environmental review inclusion in presentation to governing bodies	Within ten (10) days of request, or as deemed reasonable by the parties
Developer	Submission of complete conceptual development site plan for the Project that describes and depicts the size, location and orientation of proposed building	Within forty-five (45) days following the Effective Date
Developer	Submission of proposed financing, operations and program plan	Within ninety (90) days following the Effective Date
Developer	Project design completion sufficient for entitlements, and submission for entitlements	Within one hundred- twenty (120) days following the Effective Date
Developer and Agency	If agreement reached, DDA submitted to Governing Board and Council	September 2009

8. **EXTENSION.** Upon written request of Developer, Agency shall reasonably consider recommendation to its governing board of an extension of the initial term of this Agreement if Developer has acted diligently and in good faith in performing its obligations under this Agreement and if there is a reasonable likelihood that the parties can negotiate a mutually acceptable DDA. Approval of such extension shall be at the sole discretion of the Agency's governing bodies.

9. **DEPOSIT FEE.** Developer shall deliver to Agency a deposit of Ten Thousand Dollars and No Cents (\$10,000.00) ("Deposit")

a. Prior to execution of the DDA for the Project or termination of negotiations between Agency and Developer, Agency may expend the Deposit solely for payment of all reasonable and necessary third-party fees, costs and expenses (the "Third Party Costs") for predevelopment activities for the Project incurred by Agency, including, without limitation, costs related to preparation of the environmental documentation for the Project and supporting studies other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement. Fifteen days prior to any such expenditures, Agency shall provide the Developer with a schedule of anticipated expenditures on the Third Party Costs. The parties anticipate that Third Party Costs will not exceed \$10,000. If the actual expenditures exceeds the anticipated amount the parties shall meet and confer with respect to the budget for such costs, and Agency is not obligated to continue with the Project until Developer has deposited such additional funds as may reasonably be needed to pay such remaining Third Party Costs. It is agreed and understood that the required Deposit is a Deposit only, and that to the extent that the costs of the Project exceed the Deposit, Developer is responsible for the payment of any and all such additional costs.

a. If the Agency in good faith fails prior to expiration of the Term to approve a proposed DDA that has been negotiated under this Agreement, which is duly before it for consideration and which has been executed by the Developer, Agency will refund to Developer the Deposit remaining after payment of such Third Party Costs incurred to the date of the hearing regarding approval of the DDA.

b. If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after payment of Third Party Costs incurred through the date of such termination will be refunded to the Developer.

c. If the terms of the DDA are not finalized during the Term due to a default by the Developer, the Deposit is the property of the Agency, without restriction as to its use, unless the Agency agrees in writing to extend the Term.

d. If the terms of the DDA are not finalized during the Term due to a default by the Agency, the Agency shall return the entire Deposit to the Developer, without any deduction, and the Agency shall be solely responsible for any Third Party Costs it may have incurred under this Agreement.

e. If the parties are otherwise unable, despite their good faith efforts to execute a DDA prior to expiration of the Term, the Deposit remaining after payment of Third Party Costs incurred through the Term will be refunded to the Developer.

10. **DEFAULTS.** Either of the Agency or the Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party, (b) does not negotiate the DDA in good faith and upon the terms stated in this Agreement, (c) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) refuses to execute the DDA which has been prepared in accordance with the terms negotiated between the parties when negotiations are completed and deposit any funds then required of it for the DDA (except if the Agency has disapproved the Project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have thirty (30) days to cure the default. Should the defaulting party fail to cure the default within the thirty (30) days, the non-defaulting party may terminate this Agreement by written notice to the defaulting party, and may pursue equitable remedies available to it for such default, subject to Sections 9.c and 9.d.

a. After termination of this Agreement for default of Developer, Developer shall have no rights under this Agreement to participate in the development of the Project, and the Agency shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

b. The remedies contained in this Section 9 are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, contingent, consequential or otherwise.

11. **DISPOSITION AND DEVELOPMENT AGREEMENT.** In addition to other provisions stated in this Agreement, the DDA will address, without limitation, the following provisions (a) use covenants to run with the land; (b) payment and performance bonding and other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) performance assurances such as the deposit; (f) limitation on transfers prior to Project completion; (g) compliance with CEQA mitigation; (h) Agency's rights to revest the Property upon Developer default; (j) extension fees for delay in construction, and liquidated damages; (k) Agency's rights to cure defaults, assume loans and complete construction; (l) delayed transfer of title to land; and (m) loan guarantees and additional securities.

12. **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement. There is a separate agreement, the Predevelopment Agreement by and between the Agency and Developer, that specifies what, if any, predevelopment activities or costs for planning, environmental architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA will be funded by the Agency.

13. **ASSIGNMENT.** This Agreement is not assignable by either party in whole or in part without the prior written consent of the other parties.

14. **APPLICABLE LAW; VENUE.** This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

15. **ATTORNEYS' FEES.** In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs incurred in connection with such dispute. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: **REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**      Approved as to form:

By: \_\_\_\_\_  
LaShelle Dozier, Executive Director

\_\_\_\_\_  
Agency Counsel

DEVELOPER: **MERCY HOUSING CALIFORNIA**

By: \_\_\_\_\_  
\*\*\*Developer signatory\*\*\*  
\*\*\*Developer signatory title\*\*\*

**PREDEVELOPMENT LOAN AGREEMENT**  
**7TH & H STREETS**  
**625 AND 631 H STREET AND 716 7<sup>TH</sup> STREET SACRAMENTO, CALIFORNIA**

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 this Article 1 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	Sacramento Housing and Redevelopment Agency	
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	Rural California Housing Corporation.	
Legal Status	Nonprofit Public Benefit Corporation	
Principal Address	3120 Freeboard, West Sacramento, California 95691	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of	
"LOAN PROGRAM"	Lender's Loan Program, commonly known as	HOME
"LOAN AMOUNT"	Four Hundred Fifty Five Thousand Dollars and No Cents (\$455,000)	
"INTEREST RATE"	The interest rate is three percent (3%) per year, simple interest.	
"PAYMENT START DATE"	Principal and interest shall be deferred as per the Payment Schedule, below.	
"MATURITY DATE"	Principal and interest shall be paid in full at the closing of the Construction Loan or December 31, 2011, whichever shall occur first., except as provided in "Special Terms".	
"PAYMENT SCHEDULE"	Principal and Interest to be deferred until the Maturity Date	
"BORROWER EQUITY"	Ten Thousand Dollars and No Cents (\$10,000.00)	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.
	N.A.	Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees).
"SPECIAL TERMS"	<p>This Predevelopment Loan is being made in conjunction with an Exclusive Right to Negotiate by and between Mercy Housing California and the Redevelopment Agency of the City of Sacramento (the "ERN").</p> <p>In the event that the ERN expires or otherwise terminates without a Disposition and Development Agreement ("DDA") between Mercy Housing California and the Redevelopment Agency approved by the Agency's governing bodies at their sole discretion, the work product, including but not limited to reports, drawings and plans as paid for with the proceeds of this Predevelopment Loan shall be provided to and then owned by the Agency. In this event, upon an assignment of the work product to the Agency, the Borrower's obligations under this Loan Agreement shall be satisfied and the Loan shall be deemed paid in full.</p>	

"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	Predevelopment activities including, but not limited to the design development for the clinic, retail and housing to be proposed on the North-West corner of 7 <sup>th</sup> & H Streets in Sacramento and the initial geotechnical, noise and utility scoping work, and initial planning fees.
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**B. "COLLATERAL" The Collateral securing repayment of the Loan, which Collateral consists of the following:**

"PROPERTY"	The following described real property, which is the site of the Project:	
Address		
Assessor's Parcel Number		
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in <b>Exhibit 1: Legal Description</b> 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 unless either a DDA is not entered into between the Borrower and the Agency or the DDA is entered into and either party terminates the DDA.	
"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; work product
OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	None

**C. "ESCROW INFORMATION":**

"Title Company" and "Escrow Agent"	n/a	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
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Note Form</u>	"Note"
<u>Exhibit 3:</u>	
<u>Exhibit 5:</u>	
<u>Exhibit 6:</u>	

**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

**F. "ASSIGNED DOCUMENTS" Borrower shall assign or cause to be assigned the following documents to Lender:**

Construction Contract
Architectural Contract

<b>G. "CONSTRUCTION INFORMATION":</b>			
"Completion Date"	July 31, 2009	Which is the date on or before which the Completion of the Project, ie, the predevelopment activities described above, must occur.	
"General Contractor"	TBD.	Which is the general contractor for construction of the Project	
"Project Architect"	Mogavero and Notestine and SERA Architects	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:	N.A.
		Percentage of Loan:	no retention for soft costs

<b>H. "SPECIAL PROVISIONS" The following special provisions shall be in addition to the provisions of this Loan Agreement:</b>
The Loan proceeds are for predevelopment costs including but not limited to such items as architectural, fees, engineering fees, geotechnical reports, planning and environmental studies. These predevelopment costs shall be funded with HOME proceeds.

**3. DEFINITIONS. Terms not defined in Article I and II of this Loan Agreement shall have the definitions assigned in the Trust Deed. If a definition in Article I refers to an Exhibit that is an attached document form, the attached document is a true and correct copy of the document referenced. As used in this Loan Agreement, the following terms shall have the following meanings:**

3.1. "Accumulated Interest" shall mean the interest accrued while the payments are deferred.

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

3.3. "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.

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

3.5. "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.

3.6. "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.

3.7. "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.

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

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

3.10. "Loan Agreement" means this Predevelopment 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.

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

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

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

3.14. "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.

3.15. "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.

3.16. "Project" means the predevelopment work of the Property necessary to define the Project and determine its feasibility in accordance with the Exclusive Right to Negotiate entered into between Mercy Housing California and the Redevelopment Agency of the City of Sacramento as well as all work of demolition and investigation to be conducted on the Property.

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 Effective Date, 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, 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 and the Note constitute a legal and binding obligation of, and are valid and enforceable against, each party other than Lender, in accordance with the terms of each.

4.4. **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 is a party or by which it or the Property may be bound or affected.

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

4.6. **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.

4.7. **USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of project predevelopment/due diligence and deposits under the purchase contract.

4.8. **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.

4.9. **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 predevelopment/due diligence of the Project and deposits under the purchase contract 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. Loan funds shall be used solely for costs incurred by third party contractors. 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. **NOTE AND SECURITY DOCUMENTS.** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender. Lender shall have a security interest in the work product paid for with the proceeds of this Loan.

5.5. **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. **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) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Effective Date, and (c) 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.

6.2. **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) Lender's representations and warranties in this Loan Agreement are correct as of the Effective Date; and (c) 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.

6.3. **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 and Borrower agree and acknowledge that there are no tenants and that there is no displacement that will result from the activities contemplated by this Loan Agreement.

7. **ADDITIONAL SECURITY INSTRUMENTS.** Upon request by Lender, 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, at any time and from time to time may reasonably require additions of new contracts. 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.

7.1. **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

**7.2. CONTRACTORS AND CONTRACTS.** Upon Lender's request, Borrower will furnish to Lender correct lists of all consultants, 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 consultant, 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.

**7.3. INSPECTION.** Lender may, 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 predevelopment consultants to cooperate fully) with the Lender and its Lender's designated agent and to permit all appropriate access to all relevant books and records. Borrower shall bear the cost of reasonable inspections.

**7.4. 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 20 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.

**7.4.1.** 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.

**7.5. SECURITY INSTRUMENTS.** Upon request by Lender, 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.

**7.5.1. 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.

**7.6. 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.

**7.7. PROJECT SIGN.** 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.

**7.8. PREVAILING WAGES.** 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 Agency 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 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 Borrower or Contractor or both of them. If more than eleven (11) units

are assisted with HOME funds as the Funding Source (as indicated in the Regulatory Agreement), Borrower shall comply with Davis-Bacon prevailing wage requirements as described in the Federal Requirements.

**8. LOAN DISBURSEMENT PROCEDURES.** These predevelopment loan proceeds shall be disbursed following: (a) Borrower's execution of the Note and Loan Agreement ; and (b) the satisfaction of the conditions to disbursement in this Section. Borrower may, on a monthly basis, make draws for the reimbursement of expenses permitted herein by submitting invoices from the consultants and other contractors performing eligible work.

**8.1. 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:

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

8.1.2. Lender is satisfied with the quality, adequacy, and suitability of third party consultants, including architects, contractors, appraisers and environmental consultants employed or used in the Project, and the workmanship of all of them.

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

8.1.4. 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.

8.1.5. 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.

**8.2. CONDITIONS PRECEDENT TO DISBURSEMENT.** Borrower's request for the 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 loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 8.1 have been met:

Borrower has presented invoices or similar documentation from third party contractors for actual costs of the Project as stated in the Budget.

**8.2.1. DEFAULT**

**8.3. 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:

8.3.1. Borrower's failure to comply with any Governmental Requirements.

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

**9. REMEDIES**

**9.1. OPTION TO ACT.** On the occurrence of any Event of Default and Borrower's failure to cure within 30 days of written notice, 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:

9.1.1. Terminate its obligation to make disbursements.

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

9.1.3. 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.

9.1.4. 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.

9.1.5. 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 .

9.2. **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.

9.3. **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.

## 10. INSURANCE

10.1. **LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 10 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:

### 10.2.

**WORKER'S COMPENSATION.** Borrower shall obtain and maintain worker's compensation coverage which 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.

10.3. **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 form endorsed by Insurer to evidence that coverage is equivalent or better. Such insurance shall have limits of liability which are not less than \$1,000,000 general aggregate limit.

10.4. **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.

10.5. **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:

10.5.1. **ADDITIONAL INSURED.** Borrower shall obtain a policy in ISO form CG 20 33 or form endorsed by Insurer to evidence that coverage is equivalent or better, naming Lender as additional insured under the Commercial General Liability Policy.

10.5.2. **CERTIFIED POLICY COPY.** Borrower shall provide Lender with a certificate of insurance evidencing each required policy of insurance as and when received by Borrower. Borrower shall provide Lender with a Certificate of Insurance for each policy on the applicable ACORD form. ACORD 25-S "Certificate of Liability Insurance shall be used for liability insurance deleting the sentence 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."

10.5.3. **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.

10.6. **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, after providing Borrower with not less than 7 days notice 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.

10.7. **BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 14 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 11 with respect to such insurance shall otherwise be satisfied by such blanket policy.

## 11. MISCELLANEOUS

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

11.2. **SUBORDINATION.** There is no need to subordinate this Loan as the principal and interest shall be fully repaid at the Maturity Date.

11.3. **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.

11.4. **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.

11.5. **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.

11.6. **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.

**11.7. 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 under this Loan Agreement.

**11.8. 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. All notices to be given under this Loan Agreement shall be in writing and sent to the addresses stated above by one or more of the following methods. Copies of any notices to the Borrower shall also be sent to:

**RURAL CALIFORNIA HOUSING CORPORATION**  
3120 Freeboard Drive, Suite 202  
West Sacramento, CA 95691  
Atten: Greg Sparks

(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.

(e) It shall be the responsibility of the above identified notices to provide written information if there is a change in address.

**11.9. 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 this Loan Agreement for that purpose. This Section does not apply to actions or proceedings between the parties.

**11.10. 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. Notwithstanding any other provision of this Loan Agreement, Borrower may assign this Loan Agreement to a single asset entity in which Borrower 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 Loan Agreement and all agreements related to this Loan Agreement, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. 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.

11.11. **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.

11.12. **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.

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

11.13.1. 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.

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

11.13.3. 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.

11.14. **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

11.15. **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.

11.16. **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.

11.17. **LOAN EXPENSES.** In making the 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.

11.18. **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.

11.19. **NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between Lender and Borrower. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Lender and Borrower other than that of a lender and borrower.

11.20. **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.

11.21. **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.

11.22. **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.

11.23. **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.

11.24. **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.

11.25. **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.

11.26. **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.

11.27. **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.

11.28. **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.

11.29. **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.

11.30. **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 :**  
**RURAL CALIFORNIA HOUSING CORPORATION, a**  
**California nonprofit public benefit corporation**

**AGENCY:**  
**REDEVELOPMENT AGENCY OF THE CITY OF**  
**SACRAMENTO AGENCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

By: \_\_\_\_\_  
LaShelle Dozier, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Borrower Counsel

\_\_\_\_\_  
Agency Counsel

