



**Sacramento
Housing &
Redevelopment
Agency**

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

**Public Hearing
June 2, 2009**

**Honorable Mayor and Members of the City Council
Chair and Members of the Redevelopment Agency**

**Title: Approval of Disposition and Development Agreement and Loan for La
Valentina**

Location/Council District: 12th Street between C Street Alley and E Street, District 3,
Alkali Flat Redevelopment Area

Recommendation: Conduct a public hearing pursuant to Health and Safety Codes § 33433 and 33431 and upon conclusion adopt: 1) a **City Resolution** a) authorizing the Sacramento Housing and Redevelopment Agency (SHRA) to enter into a loan agreement for up to \$3,000,000 with Domus Development, L.L.C. or a related entity (Developer); b) authorizing amendment of the SHRA budget to allocate \$700,000 in City Home Investment Partnership Program (HOME) funds as a loan to the Developer for construction and permanent financing of the Project; and c) authorizing amendment of the SHRA budget to allocate \$700,000 in City Housing Trust Fund (HTF) funds as a loan to the Developer for construction and permanent financing of the Project; and 2) a **Redevelopment Agency Resolution** a) approving and authorizing the Executive Director, or her designee, to execute the Disposition and Development Agreement (DDA) and related documents with the Developer for the acquisition and development of the property; b) authorizing the Executive Director, or her designee, to execute a loan agreement and related documents of up to \$3,000,000 to the Developer for the Project; c) authorizing the Executive Director, or her designee, to amend the SHRA budget to allocate \$1,600,000 in Alkali Flat Tax Increment Funds as a loan to the Developer for construction and permanent financing of the Project; d) accepting up to \$631,000 in grant funds from the Cal-Resuse Program of the California Pollution Control Financing Authority (CPCFA); and e) approving the use of CPCFA funds for the environmental remediation of the property.

Contact: Lisa Bates, Deputy Executive Director, 440-1316; Christine Weichert, Assistant Director, Housing and Community Development, 440-1353

Presenters: Jeree Glasser-Hedrick, Housing Finance Program Manager; Bernadette Austin, Housing Finance Analyst

Department: Sacramento Housing and Redevelopment Agency

Approval of Disposition and Development Agreement and Loan for La Valentina

Description/Analysis

Issue: This report requests the approval of a Disposition and Development Agreement (DDA) with Domus Development, LLC (Developer), and a loan for construction and permanent financing of La Valentina (Project). The proposed Project will consist of the construction of a mixed-use, transit-oriented development on eight Agency-owned parcels. A location map is provided as Attachment 1. The Agency-owned property is located on two adjacent sites separated by D Street along the east side of the 12th Street corridor in the Alkali Flat Redevelopment Area.

The south site, (located between D and E Streets), will be a mixed-use development adjacent to the Alkali Flat/La Valentina Light Rail Station which will include a 1,300 square foot café, a 2,000 square foot community room, 5,000 square feet of commercial/retail space, a property management office, and resident bicycle and car parking on the ground floor. There will be 63 affordable rental units located on the second, third, and fourth floors. The north site, (located between the C Street Alley and D Street), will consist of 18 affordable split-level town home-style rental units. A site map is included as Attachment 2.

The City Council approved entering into an Exclusive Right to Negotiate (ERN), predevelopment loan, and loan commitment with the Developer on March 31, 2009. Additional background is provided as Attachment 3.

Agency funds and a land donation will be leveraged with Low Income Housing Tax Credits (LIHTC) and Transit Oriented Development (TOD) Housing Program funds awarded by the California State Housing and Community Development Department. Both the LIHTC and TOD funds are awarded through competitive processes. The Developer submitted the TOD application on April 2, 2009, and plans to submit an application for award of LIHTC on June 9, 2009. TOD funds will be awarded in June 2009, and LIHTCs will be awarded in August 2009. Project construction can begin as soon as all funding commitments have been secured, and construction is anticipated by early 2010. A summary of the sources and uses of project funds is included as Attachment 4. A cash flow proforma is included as Attachment 5. A schedule of maximum rents and income levels is included as Attachment 6.

Policy Considerations: The recommended action is consistent with the following goals in the Alkali Flat Implementation Plan and Redevelopment Plan: 1) Develop a mixed-use/transit oriented development which will eliminate factors hindering economically viable use and eliminate an underutilized blighted parcel, 2) Provide safe, decent, adequate and sanitary housing through the development of a mixture of housing types for all income groups; and 3) Maximize private participation and investment in the redevelopment effort.

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Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed action meets the requirements of the California Environmental Quality Act ("CEQA"). The "La Valentina Station: Rezone, Plan Review, Special Permit, and Variances," which includes the negative declaration and mitigation measures for this project, as adopted by the City of Sacramento on March 24, 2009, is adequate and sufficient for the environmental review.

Sustainability Considerations: The 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 project will advance the following goals, policies and targets: (1) Goal number one – Energy Independence, specifically by reducing the use of fossil fuels, improving energy efficiency, and providing long term affordable and reliable energy, (2) Goal number three – Air Quality, specifically by reducing the number of commute trips by single occupancy vehicles and reducing vehicle miles traveled, (3) Goal number five – Public Health and Nutrition, specifically by maximizing the number of amenities that are located within ½ mile of all residents and cleanup, redevelopment, and reuse of areas that are brownfields, and (4) Goal number six – Urban Design, Land Use, Green Building, and Transportation specifically by reducing dependence on the private automobile by providing efficient and accessible public transit and transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy City.

Other: Environmental review pursuant to the National Environmental Policy Act (NEPA) is currently underway. The availability of federal funds for use in the Project is contingent upon the Federal Department of Housing and Urban Development's consent to the Agency's request for release of funds.

Committee/Commission Action: *Alkali Flat Redevelopment Agency Advisory Committee (RAC):* At its meeting on May 11, 2009, the RAC voted to support Staff's recommendation. The votes were as follows:

AYES: Carter, Delgado, Ferderer, Frankfield, Lough, Miller, Monighan, Owen

NOES: None

ABSENT: Camacho, Poe, Wright

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Committee/Commission Action: *Sacramento Housing and Redevelopment Commission:* At its meeting on May 20, 2009, the Sacramento Housing and Redevelopment Commission voted to support Staff's recommendation. The votes were as follows:

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

NOES: none

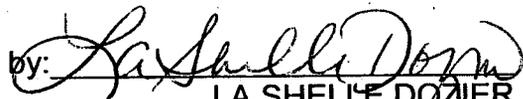
ABSENT: Shah, Stivers

Rationale for Recommendation: Over the past 18 years, Agency staff and three different development teams have unsuccessfully attempted to revitalize the La Valentina site. As a result, the site remains vacant and unimproved. The actions proposed in this report will enable construction on this mixed-use, transit-oriented development which should begin by early 2010. The approved project is designed to achieve goals of the Alkali Flat Redevelopment Plan. In addition, the actions recommended in this report enable the Agency to continue to fulfill its mission to provide a range of affordable housing opportunities in the City.

Financial Considerations: Staff recommends approval of a budget amendment of up to \$3,000,000 (consisting of \$700,000 from Housing Trust Funds, \$700,000 in City HOME funds, and \$1,600,000 from Alkali Flat Tax Increment Funds).

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:


LA SHELLE DOZIER
Executive Director

Recommendation Approved:


RAY KERRIDGE
City Manager

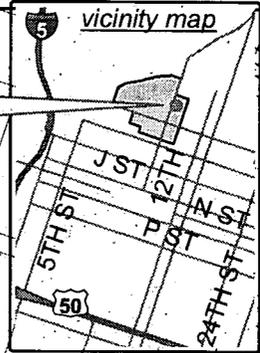
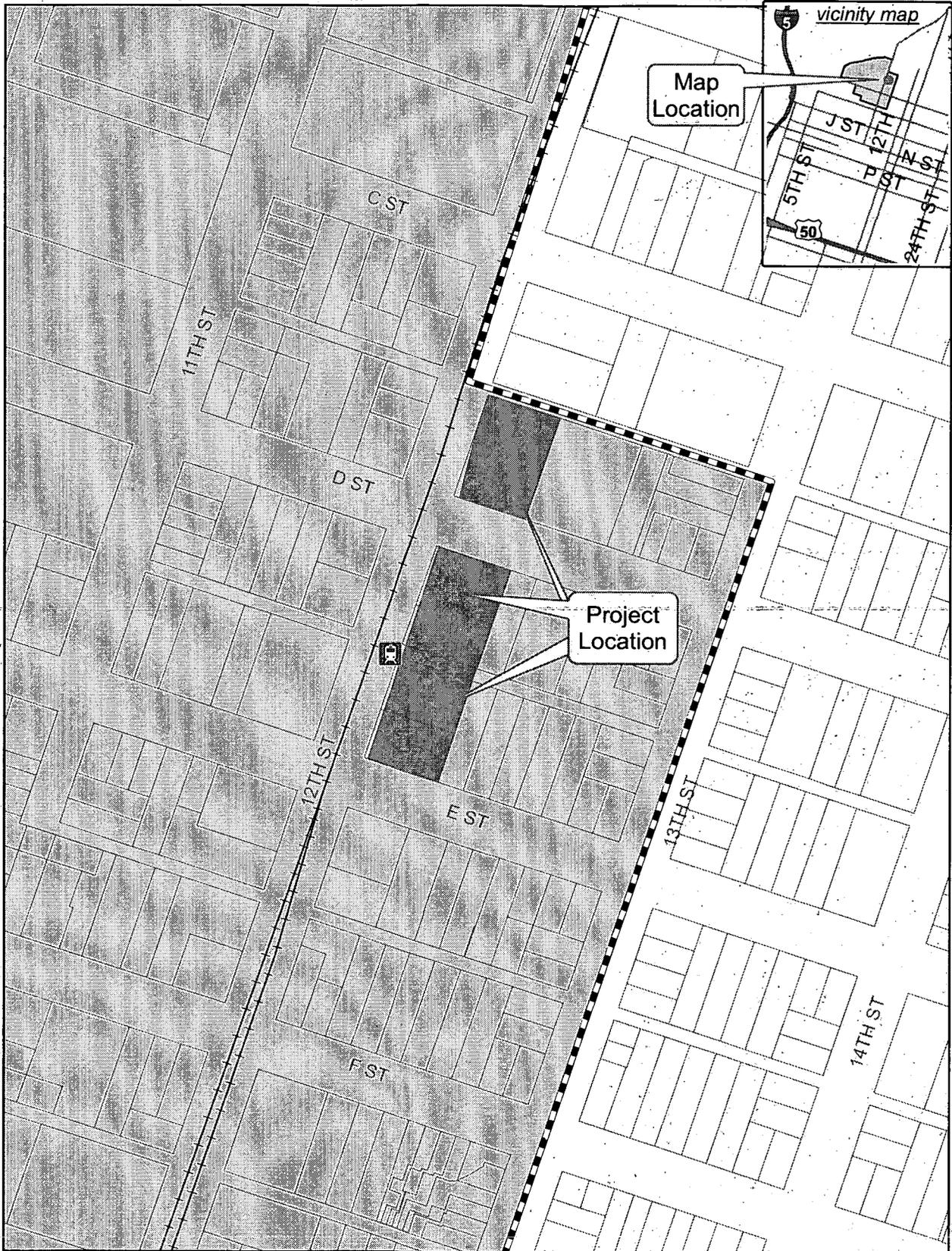
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La Valentina

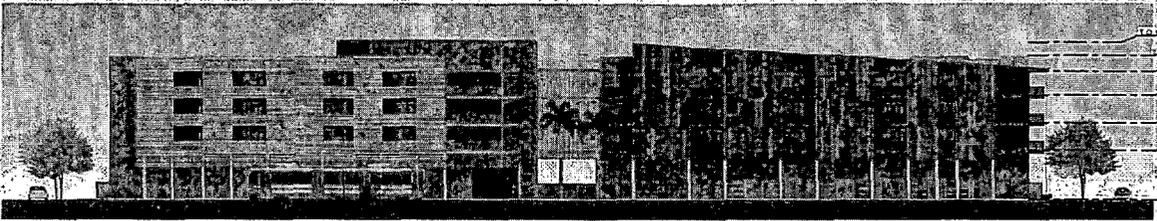


| | | | |
|--------------------------------|-----------------|---------------------|--|
| La Valentina Project Parcel | Light Rail Line | 0 200 400 | |
| Alkali Flat Redevelopment Area | Light Rail Stop | | |

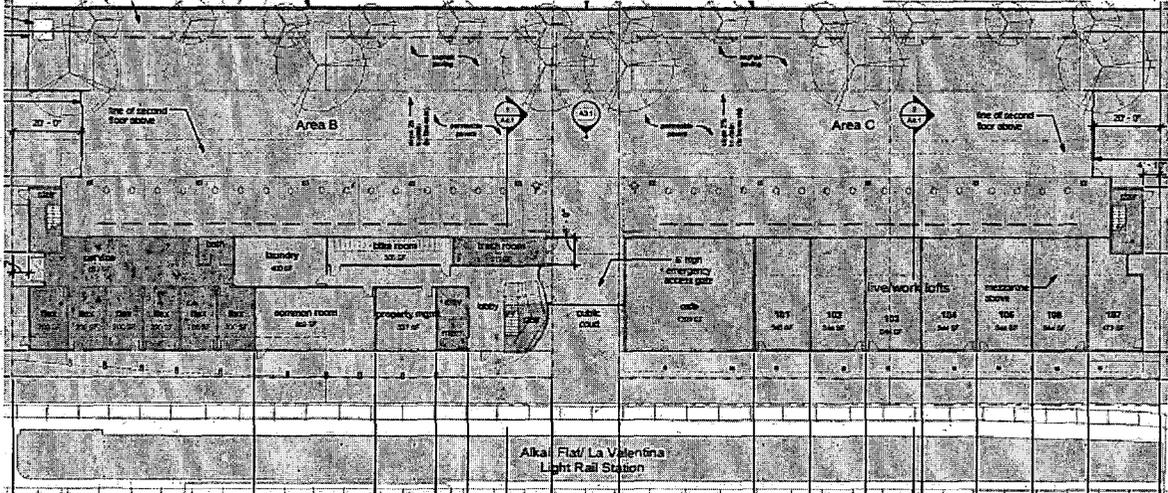
SHRA GIS
April 22, 2009

Site Map

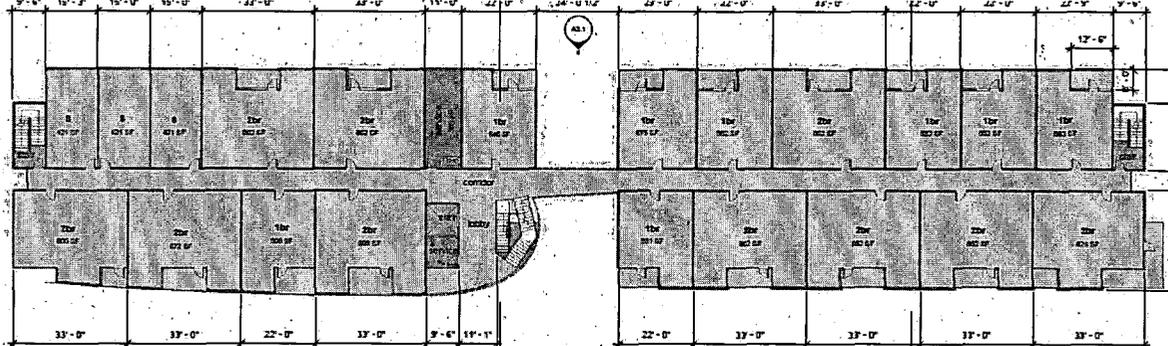
South Site: Mixed-Use Development



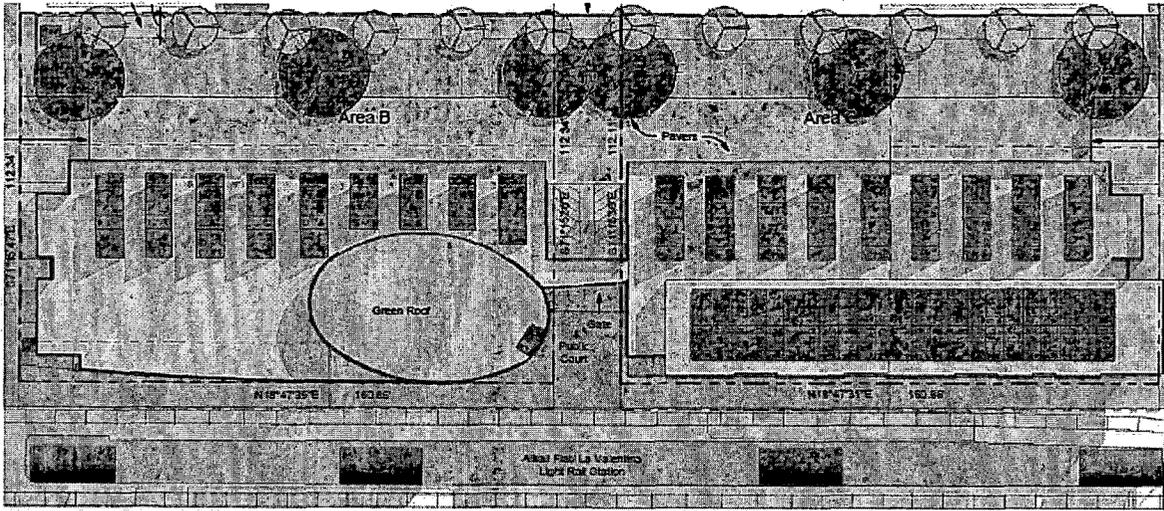
First Floor



Second, Third, and Fourth Floors



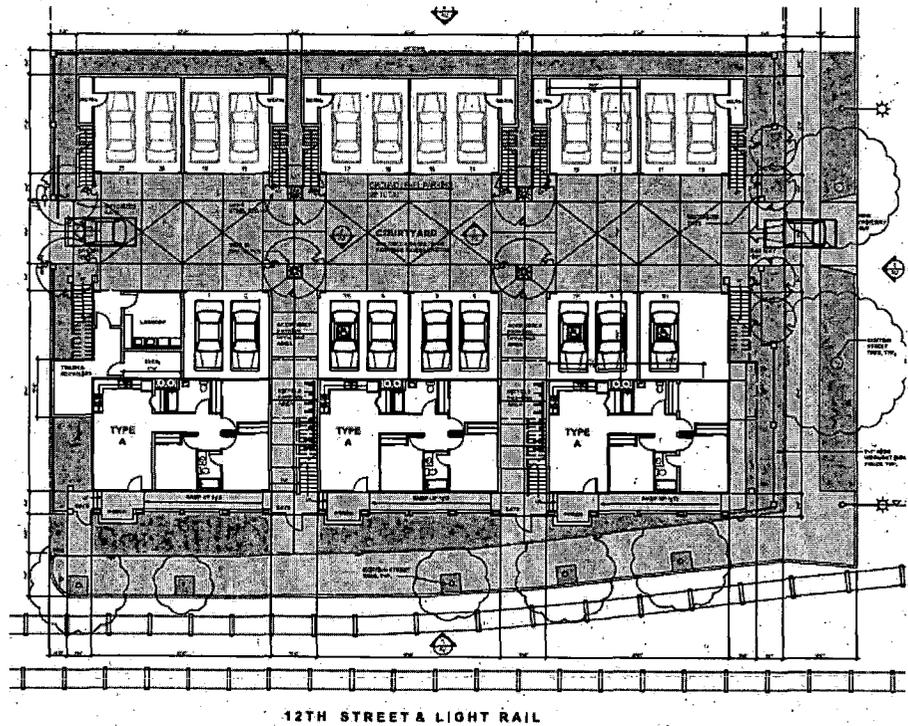
Roof



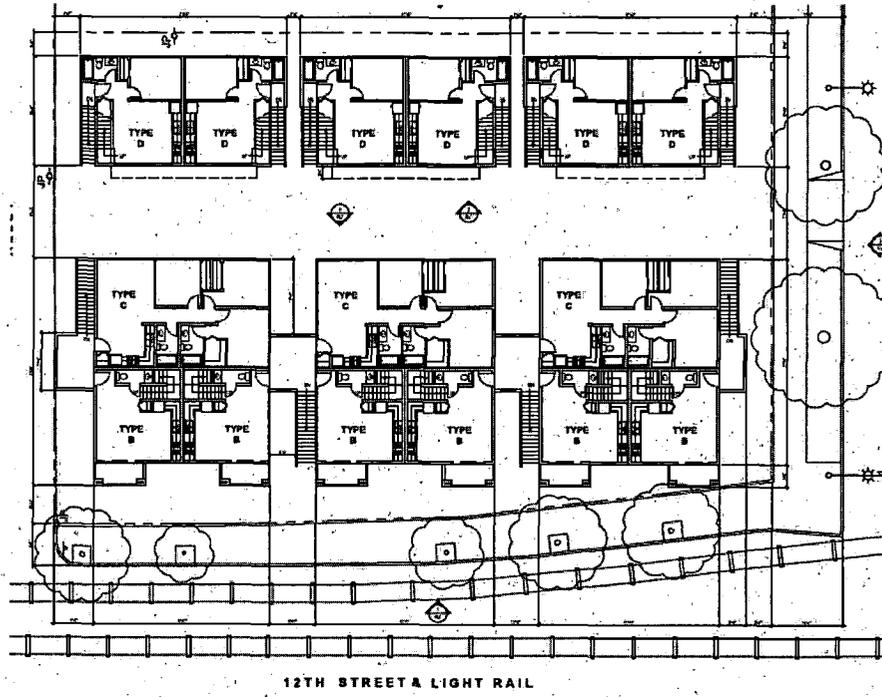
North Site: Townhomes



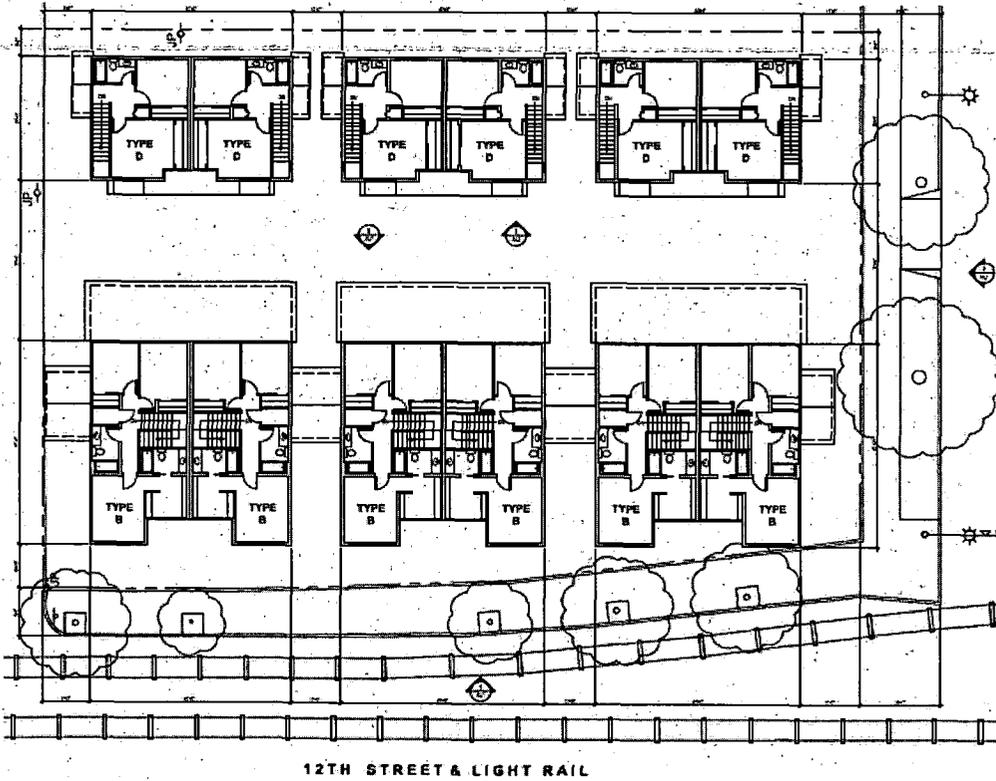
First Floor



Second Floor



Third Floor



Project Background

Site Description

The La Valentina Development Site (Site) consists of eight parcels on approximately 1.23 acres of land which were incrementally acquired by the Sacramento Housing and Redevelopment Agency (Agency) from 1986 through 2008. The site is comprised of mostly vacant parcels in a highly visible and blighted area of the Alkali Flat Redevelopment Area. One parcel contains a residential structure that had been vacant for four years and has been demolished. The Site is located on 12th Street, which serves as the primary commercial corridor for the community of Alkali Flat and is one of the main routes into Sacramento's downtown from the north.

Alkali Flat/La Valentina Light Rail Station

The neighborhood is well-served by public transportation with a light rail station and buses running along 12th Street. The Site is directly adjacent to the Alkali Flat/La Valentina Light Rail Station, which is operated by the Sacramento Regional Transit District (RT). This station is well-used and ranks in the top one-third of the 24 stops on RT's Blue Line in terms of passenger volume. RT's Blue Line connects the Meadowview (south) and the I-80/Watt (north) stations.

Current Concept Design

The proposed La Valentina project (Project) will consist of the construction of a mixed-use, transit-oriented development on eight Agency-owned parcels. The Agency-owned property is located on two adjacent sites separated by D Street along the east side of the 12th Street corridor in the Alkali Flat Redevelopment Area. The south site, (located between D and E Streets), will be a mixed-use property adjacent to the Alkali Flat/La Valentina Light Rail Station which will include a 1,300 square foot café, 5,000 square feet of commercial/retail space, a 2,000 square foot community room, a property management office, a play area for resident children, and parking on the ground floor. There will be 63 affordable rental units located on the second, third, and fourth floors. The north site, (located between the C Street Alley and D Street), will consist of 18 affordable split-level townhome-style rental units. The entire project will consist of a total of 12 studios, 24 one-bedroom units, 21 two-bedroom units, and 24 three-bedroom units.

The Project has been designed as a sustainable development, incorporating principles from transit-oriented development and Leadership in Energy and Environmental Design (LEED). The Project will have many green features, including energy efficient systems, rooftop photovoltaic solar panels, solar hot water heating systems, a green eco-roof featuring rooftop plantings, and a bio-swale infiltration system which filters water runoff through plantings before entering the City's water system. The south site property is split into two distinct buildings connected by an open-air bridge and share elevator service. The perimeter will consist of painted stucco and paneling in alternating hardiplank material. The balconies on the southern building will be made of corten metal. The north site townhomes are located within six three-story, wood-framed buildings with painted fiber-cement panels, split-faced concrete block, and concrete tile roof.

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Project EvolutionRequest for Qualifications

Since 1986 the Agency has entertained and worked with several different development teams and concepts for the Site, which included commercial/retail, day care, and single family homes. For multiple reasons these concepts did not come to fruition. In November 2006 the Agency issued a Request for Qualifications (RFQ) to develop the Site. Four development teams responded, and Domus Development, LLC (Domus) was unanimously chosen as the most qualified team by a project selection team. The project selection team included a member of the Alkali Flat Redevelopment Advisory Committee (RAC) and the Alkali Flat/Mansion Flat Neighborhood Association. The Agency entered into an Exclusive Right to Negotiate with Domus for the development of the La Valentina Development Project (Project) in June 2007, and the ERN was subsequently extended. In April 2009 the Agency entered into a revised ERN for the Project.

Community Process

Over the last 18 months the project concept has undergone several concept iterations resulting from adjustments to local zoning standards, Sacramento Regional Transit (RT) requirements, market conditions, and local community input. Since the Agency first entered into an ERN with Domus, their staff have participated in ten public meetings, including seven presentations to the Alkali Flat Redevelopment Area Committee (RAC). The RAC has been eager for development of this site, which lies along the most highly visible corridor in the redevelopment area, and to date the RAC has been supportive of the project.

Development Plan Changes

The July 2008 ERN called for the development of a mixed-use, mixed-income, transit-oriented project on the six Agency-owned lots between D Street and E Street. The developer has completed many of the milestones outlined in the ERN, which included submitting design concepts, developing preliminary budgets for the project, working on entitlements and environmental review, and participating in public meetings. Despite efforts from Domus' staff, the complexity of the design and financing of the project contributed to delays. Changes in the financial markets caused the original project financing structure to be infeasible, prompting modification in design and financial structure. In January 2008 Agency staff directed the developer to include development of the eight parcels that were included in the original RFQ. Domus incurred many expenses related to the design of the north site and the redesign of the south site. In March 2009 the City Council approved a predevelopment loan which will help finance these costs through the remainder of the predevelopment process.

In addition to restructuring the project design, the developer had to restructure the funding of the project costs. The area market rents are low, and therefore a market-rate or mixed-income project could not support the amount of debt required to fund the project, either through conventional bank financing or tax-exempt mortgage revenue bond funding.

All units, with the exception of the manager's unit, will be rent-restricted. However, the low-income rents Domus proposes are at or near current market rate rents for the area. Because of these affordability restrictions, this project can be funded primarily through

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tax credit equity and grants rather than financing, as detailed in the section below. Once the tax credit equity and state grant funding in this report has been secured, the Agency will enter into a Disposition and Development Agreement (DDA). This will occur prior to the expiration of the ERN on December 31, 2009.

Proposed Project Funding Sources

Over the course of the development period the developer has shown resilience, devising a financing strategy that is feasible and fiscally sensible. Domus will fund the project costs with 9% Low Income Housing Tax Credit (LIHTC) equity through the California Tax Credit Allocation Committee (TCAC); Transit Oriented Housing Program (TOD) grant funds from the California State Housing and Community Development Department; Cal-Reuse Remediation Program grant funds through the California Pollution Control Financing Authority; bank loans; and developer equity. Despite the market downturn there is still limited demand for 9% LIHTCs and Domus is confident that they will be able to secure the tax credit equity needed to proceed. If a gap in the project results from a drop in equity value or the lack of commitment of TOD funds, the developer plans to take advantage of the federal stimulus funds being allocated by TCAC.

The Project will be built on parcels which are considered "brownfields." The existing soil contamination will require environmental remediation. In November 2008 the Agency was awarded \$218,150 in grant funds from the Cal-Reuse Remediation Program of the California Pollution Control Financing Authority (CPCFA) for soil remediation on the parcels south of D Street. In April 2009 Agency staff submitted a request for an additional \$412,850 for the clean up of the parcels north of D Street.

Even if Domus is able to secure the aforementioned funds, there remains a gap in the total funds required to complete the project. This staff report proposes an Agency loan comprised of State Housing Trust Funds, Alkali Flat Project Area Tax Increment and Aggregated Housing Set Aside Tax Increment funds. This Agency loan will leverage a combination of public and private funds in order to finance the project development.

Both the LIHTC funds and the TOD funds are awarded through competitive processes. The TOD application was submitted on April 2, 2009 and will be awarded in June 2009. Once TOD funds have been secured, the developer will submit an application for award of LIHTCs, which are due on June 9, 2009. The scoring of the project will be increased by a DDA between the Agency and the developer which demonstrates Domus' site control. Once Domus has secured all public and private funding sources, construction will begin on this project. The developer anticipates starting construction on the project in early 2010. Project funds will be disbursed to the developer as reimbursement for construction completed.

Development and Management Team

Developer

Domus Development, LLC is a developer of affordable rental housing focusing on the acquisition and rehabilitation of rental housing communities using tax-exempt bonds and low-income housing tax credits. The principals of Domus have completed rehabilitation and construction of several affordable housing projects in northern California, including Northland Village and Southcrest Apartments in Sacramento.

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Property Management

Property management will be performed by Domus Management Company, LLC (DMC). DMC was established in 2007 by principals and executives who have extensive experience in affordable housing property management. The primary manager's experience includes supervision of over 5,500 units of affordable housing including both senior and multifamily projects. The principals have worked with projects financed through a variety of sources, including LIHTC's, the Multi Family Housing Program (MHP), the Home Investment Partnership Program (HOME), the California Department of Housing and Community Development (HCD), and the U.S. Department of Housing and Urban Development (HUD).

Resident Services Plan

Resident Services will be provided by LifeSTEPS, a nonprofit 501(c)(3) corporation. LifeSTEPS proposes to offer a minimum of 15 hours per week of services and programs. LifeSTEPS provides resident services at 85 properties throughout the state of California, including 11 properties in Sacramento.

Security

The Agency requires installation of a security camera system approved by the Agency and lighting adequate to properly illuminate the parking area and all common spaces. In addition, the Agency requires that Developer budget for security patrol for the property if the situation is warranted.

**La Valentina
Project Summary**

| | | | | |
|---------------------------------------|--|-------------------|------------------|--------------|
| Address | 12th Street between C Street Alley and E Street | | | |
| Number of Units | 81 | | | |
| Year Built | New Construction | | | |
| Acreage | 1.23 acres | | | |
| Affordability | 24 units at or below 30% of Area Median Income (AMI) 40 units at or below 50% of AMI 16 units at or below 60% of AMI 1 Manager's Units unrestricted | | | |
| Unit Mix and Rents | (30% AMI) | (50% AMI) | (60% AMI) | Manager Unit |
| Studio | 4 | 6 | 2 | 0 |
| 1 Bedroom | 7 | 12 | 5 | 0 |
| 2 Bedroom | 6 | 10 | 5 | 1 |
| 3 Bedroom | 7 | 12 | 4 | 0 |
| | 24 | 40 | 16 | 1 |
| Square Footage | <i>Residential</i> | <i>Commercial</i> | <i>Community</i> | <i>Total</i> |
| Total | 75,100 | 5,000 | 2,000 | 82,100 |
| Studio | 600 | | | in sq ft |
| 1 Bedroom | 900 | | | |
| 2 Bedroom | 1000 | | | |
| 3 Bedroom | 1100 | | | |
| Resident Facilities | This is a mixed-use, transit-oriented development adjacent to a light rail station. The project features a community room, laundry facilities, property management office, a green roof, and 5,000 square feet of ground floor commercial space. | | | |
| Permanent Sources | <i>Total</i> | <i>Per Unit</i> | <i>Per Sq Ft</i> | |
| Tax Credit Equity | \$ 17,547,000 | \$ 216,630 | \$ 213.73 | |
| TOD Grant | \$ 4,035,000 | \$ 49,815 | \$ 49.15 | |
| Agency Loan | \$ 3,000,000 | \$ 37,037 | \$ 36.54 | |
| Environmental Grant | \$ 631,000 | \$ 7,790 | \$ 7.69 | |
| Community Development Block Grants | \$ 221,000 | \$ 2,728 | \$ 2.69 | |
| Energy Efficiency Block Grants | \$ 586,000 | \$ 7,235 | \$ 7.14 | |
| Bank Loan | \$ 1,030,000 | \$ 12,716 | \$ 12.55 | |
| Fee Waivers | \$ 120,000 | \$ 1,481 | \$ 1.46 | |
| Deferred Developer Fee Note | \$ 375,000 | \$ 4,630 | \$ 4.57 | |
| TOTAL SOURCES | \$ 27,545,000 | \$ 340,062 | \$ 335.51 | |
| Permanent Uses | | | | |
| Acquisition Costs | \$ - | \$ - | \$ - | |
| Off-site and Land Improvements | \$ 1,033,000 | \$ 12,753 | \$ 12.58 | |
| Construction | \$ 18,057,000 | \$ 222,926 | \$ 219.94 | |
| Development Impact Fees/Permits | \$ 1,050,000 | \$ 12,963 | \$ 12.79 | |
| Architecture, Engineering, Survey | \$ 1,065,000 | \$ 13,148 | \$ 12.97 | |
| Contingency | \$ 1,700,000 | \$ 20,988 | \$ 20.71 | |
| Financing Costs | \$ 1,245,000 | \$ 15,370 | \$ 15.16 | |
| Reserves | \$ 225,000 | \$ 2,778 | \$ 2.74 | |
| Legal Fees | \$ 90,000 | \$ 1,111 | \$ 1.10 | |
| Developer Fee | \$ 2,000,000 | \$ 24,691 | \$ 24.36 | |
| Third Party Reports, Marketing, Other | \$ 1,080,000 | \$ 13,333 | \$ 13.15 | |
| TOTAL USES | \$ 27,545,000 | \$ 340,062 | \$ 335.51 | |
| Management / Operations | | | | |
| Proposed Developer: | Domus Development, LLC | | | |
| Property Management Company: | Domus Management Company | | | |
| Operations Budget: | \$351,176 | | \$4,336 per unit | |
| Replacement Reserves: | \$24,300 | | \$300 per unit | |

**La Valentina
Project Cash Flow Proforma**

| Unit Type | Number | Square Feet | Total Sq Feet | Gross Rent | Utility Allowance | Net Rent | Rent per Sq Foot | Total Mo. Rent | Annual Rent |
|---------------------|-----------|-------------|---------------|------------|-------------------|----------|------------------|------------------|-------------------|
| Studio @ 30% AMI | 4 | 600 | 2,400 | \$ 382 | \$ 52 | \$ 330 | \$ 0.55 | \$ 1,320 | \$ 15,840 |
| Studio @ 50% AMI | 6 | 600 | 3,600 | \$ 637 | \$ 52 | \$ 585 | \$ 0.98 | \$ 3,510 | \$ 42,120 |
| Studio @ 60% AMI | 2 | 600 | 1,200 | \$ 765 | \$ 52 | \$ 713 | \$ 1.19 | \$ 1,426 | \$ 17,112 |
| 1 BD @ 30% AMI | 7 | 900 | 6,300 | \$ 409 | \$ 59 | \$ 350 | \$ 0.39 | \$ 2,450 | \$ 29,400 |
| 1 BD @ 50% AMI | 12 | 900 | 10,800 | \$ 682 | \$ 59 | \$ 623 | \$ 0.69 | \$ 7,476 | \$ 89,712 |
| 1 BD @ 60% AMI | 5 | 900 | 4,500 | \$ 819 | \$ 59 | \$ 760 | \$ 0.84 | \$ 3,800 | \$ 45,600 |
| 2 BD @ 30% AMI | 6 | 1100 | 6,600 | \$ 491 | \$ 75 | \$ 416 | \$ 0.38 | \$ 2,496 | \$ 29,952 |
| 2 BD @ 50% AMI | 10 | 1100 | 11,000 | \$ 818 | \$ 75 | \$ 743 | \$ 0.68 | \$ 7,430 | \$ 89,160 |
| 2 BD @ 60% AMI | 5 | 1100 | 5,500 | \$ 982 | \$ 75 | \$ 907 | \$ 0.82 | \$ 4,535 | \$ 54,420 |
| 3 BD @ 30% AMI | 7 | 1250 | 8,750 | \$ 567 | \$ 98 | \$ 469 | \$ 0.38 | \$ 3,283 | \$ 39,396 |
| 3 BD @ 50% AMI | 12 | 1250 | 15,000 | \$ 946 | \$ 98 | \$ 848 | \$ 0.68 | \$ 10,176 | \$ 122,112 |
| 3 BD @ 60% AMI | 4 | 1250 | 5,000 | \$ 1,135 | \$ 98 | \$ 1,037 | \$ 0.83 | \$ 4,148 | \$ 49,776 |
| 2 BD Manager's Unit | 1 | 1100 | 1,100 | \$ 982 | \$ | \$ 982 | \$ 0.89 | \$ 982 | \$ 11,784 |
| Totals | 81 | | 80,650 | | | | | \$ 52,050 | \$ 624,600 |

| | rate | annual increase | per unit | 2011 Year 1 | 2012 Year 2 | 2013 Year 3 | 2014 Year 4 | 2015 Year 5 | 2020 Year 10 | 2030 Year 20 | 2040 Year 30 | 2050 Year 40 |
|------------------------------------|-------|-------------------|--------------|------------------|------------------|------------------|------------------|------------------|------------------|--------------------|--------------------|--------------------|
| <u>Income</u> | | | | | | | | | | | | |
| Potential Gross Income | | 2.50% | | 624,600 | 640,215 | 656,220 | 672,626 | 689,442 | 780,040 | 998,517 | 1,278,186 | 1,636,186 |
| Commercial Income | | 2.50% | | 64,800 | 66,420 | 68,081 | 69,783 | 71,527 | 80,926 | 103,593 | 132,607 | 169,748 |
| Other Income | | 2.50% | | 7,750 | 7,944 | 8,142 | 8,346 | 8,555 | 9,679 | 12,390 | 15,860 | 20,302 |
| Less Commercial Vacancy | 20% | (50% in Yr 1 & 2) | | 32,400 | 33,210 | 13,616 | 13,957 | 14,305 | 16,185 | 20,719 | 26,521 | 33,950 |
| Less Residential and Other Vacancy | 5.00% | | | 31,230 | 32,011 | 32,811 | 33,631 | 34,472 | 39,002 | 49,926 | 63,909 | 6,790 |
| Effective Gross Income | | | | \$633,520 | \$649,358 | \$686,016 | \$703,167 | \$720,746 | \$815,458 | \$1,043,855 | \$1,336,222 | \$1,785,497 |
| <u>Operating Expenses</u> | | | | | | | | | | | | |
| Operating Expenses | | 3.50% | 4,336 | 351,176 | 363,467 | 376,189 | 389,355 | 402,983 | 478,617 | 675,136 | 952,346 | 1,343,379 |
| Assessments | | 2.00% | 105 | 8,500 | 8,670 | 8,843 | 9,020 | 9,201 | 10,158 | 12,383 | 15,095 | 18,400 |
| Property Management | | 3.50% | 474 | 38,400 | 39,744 | 41,135 | 42,575 | 44,065 | 52,335 | 73,824 | 104,136 | 146,894 |
| Social Services | | 2.00% | 296 | 24,000 | 24,480 | 24,970 | 25,469 | 25,978 | 28,682 | 34,963 | 42,620 | 51,954 |
| Safety | | 2.00% | 185 | 15,000 | 15,300 | 15,606 | 15,918 | 16,236 | 17,926 | 21,852 | 26,638 | 32,471 |
| Replacement Reserves | | 0.00% | 300 | 24,300 | 24,300 | 24,300 | 24,300 | 24,300 | 24,300 | 24,300 | 24,300 | 24,300 |
| Total Expenses | | | 5,696 | \$461,376 | \$475,961 | \$491,043 | \$506,637 | \$522,763 | \$612,019 | \$842,459 | \$1,165,135 | \$1,617,398 |
| Net Operating Income | | | | \$172,144 | \$173,397 | \$194,974 | \$196,529 | \$197,983 | \$203,439 | \$201,396 | \$171,087 | \$168,098 |

| | amount | rate | amort | | | | | | | | | |
|------------------------------|-------------|-------|-------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------|
| <u>Debt Service</u> | | | | | | | | | | | | |
| Bank Loan | \$1,030,000 | 7.50% | 30 | 86,423 | 86,423 | 86,423 | 86,423 | 86,423 | 86,423 | 86,423 | 86,423 | 0 |
| Debt Service Subtotal | | | | \$86,423 | \$0 |

| <u>Priority Distributions</u> | | | | | | | | | | | | |
|--|--|-------|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|----------------|
| Asset Management Fee (GP) | | 0.00% | | 7,500 | 7,500 | 7,500 | 7,500 | 7,500 | 7,500 | 7,500 | 7,500 | 7,500 |
| Partnership Management Fee (LP) | | 0.00% | | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 | 25,000 | 0 | 0 | 0 |
| Priority Distributions Subtotal | | | | \$32,500 | \$32,500 | \$32,500 | \$32,500 | \$32,500 | \$32,500 | \$7,500 | \$7,500 | \$7,500 |

| | | | | | | | | | | | | |
|--|--|--|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|-----------------|------------------|
| Net Cash after Priority Distributions | | | | \$53,221 | \$54,474 | \$76,051 | \$77,606 | \$79,060 | \$84,516 | \$107,473 | \$77,164 | \$160,598 |
|--|--|--|--|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|-----------------|------------------|

| <u>Deferred Developer Fee</u> | | | | | | | | | | | | |
|-------------------------------|-----------|-------|--|------------------|------------------|------------------|------------------|-----------------|------------|------------|------------|------------|
| Principal Balance | \$375,000 | 4.00% | | 375,000 | 336,779 | 295,776 | 231,557 | 163,212 | 0 | 0 | 0 | 0 |
| Accumulated Interest | | | | 15,000 | 13,471 | 11,831 | 9,262 | 6,528 | 0 | 0 | 0 | 0 |
| Payment | | | | 53,221 | 54,474 | 76,051 | 77,606 | 79,060 | 0 | 0 | 0 | 0 |
| Balance | | | | \$336,779 | \$295,776 | \$231,557 | \$163,212 | \$90,681 | \$0 | \$0 | \$0 | \$0 |

| | | | | | | | | | | | | |
|--|--|--|--|------------|------------|------------|------------|------------|-----------------|------------------|-----------------|------------------|
| Net Cash after Deferred Developer Fee | | | | \$0 | \$0 | \$0 | \$0 | \$0 | \$84,516 | \$107,473 | \$77,164 | \$160,598 |
|--|--|--|--|------------|------------|------------|------------|------------|-----------------|------------------|-----------------|------------------|

| <u>Agency Loan</u> | | | | | | | | | | | | |
|----------------------|-------------|-------|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------|
| Principal Balance | \$3,000,000 | 4.00% | | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 | 3,000,000 |
| Accumulated Interest | | | | 120,000 | 240,000 | 360,000 | 480,000 | 600,000 | 968,786 | 1,330,938 | 1,805,460 | 1,418,944 |
| Payment | | | | 0 | 0 | 0 | 0 | 0 | 83,109 | 81,407 | 56,150 | 4,418,944 |
| Balance | | | | \$3,120,000 | \$3,240,000 | \$3,360,000 | \$3,480,000 | \$3,600,000 | \$3,885,677 | \$4,249,531 | \$4,749,310 | \$0 |

| | | | | | | | | | | | | |
|--------------------------------------|--|--|--|------------|------------|------------|------------|------------|----------------|-----------------|-----------------|--|
| Net Cash After Loan Repayment | | | | \$0 | \$0 | \$0 | \$0 | \$0 | \$1,406 | \$26,066 | \$21,014 | |
|--------------------------------------|--|--|--|------------|------------|------------|------------|------------|----------------|-----------------|-----------------|--|

MAXIMUM RENT AND INCOME LEVELS 2009
(Rents @ 30%, 50%, and 60% of AMI where applicable)

| Maximum Income Limits: | | | |
|--|-------------------------|-----------------------|-------------------------|
| Family Size | Max Income 30% AMI | Max Income 50% AMI | Max Income 60% AMI |
| 1 person | \$15,300 | \$25,500 | \$30,600 |
| 2 person | \$17,500 | \$29,100 | \$34,920 |
| 3 person | \$19,650 | \$32,750 | \$39,300 |
| 4 person | \$21,850 | \$36,400 | \$43,680 |
| Maximum Rent Limits: Alkali Flat Project Area Tax Increment Funds | | | |
| Unit Size | Gross Rent 30% AMI | Gross Rent 50% AMI | Gross Rent 60% AMI |
| Studio | \$382.00 | \$637.50 | \$765.00 |
| 1 Bedroom | \$437.50 | \$727.50 | \$873.00 |
| 2 Bedroom | \$491.25 | \$818.75 | \$982.50 |
| 3 Bedroom | \$546.25 | \$910.00 | \$1,092.00 |
| Maximum Rent Limits: 9% Low-Income Housing Tax Credit Program | | | |
| Unit Size | Gross Rent 30% AMI | Gross Rent 50% AMI | Gross Rent 60% AMI |
| Studio | \$382.00 | \$637.00 | \$765.00 |
| 1 Bedroom | \$409.00 | \$682.00 | \$819.00 |
| 2 Bedroom | \$491.00 | \$818.00 | \$982.00 |
| 3 Bedroom | \$567.00 | \$946.00 | \$1,135.00 |
| Maximum Rent Limits: HOME Program | | | |
| Unit Size | Gross Rent @ 50% AMI | | Gross Rent @ 60% AMI |
| Studio | \$637.00 | | \$737.00 |
| 1 Bedroom | \$682.00 | | \$838.00 |
| 2 Bedroom | \$818.00 | | \$1,022.00 |
| 3 Bedroom | \$946.00 | | \$1,196.00 |

June 2, 2009

Approval of Disposition and Development Agreement and Loan for La Valentina

Attachment 7

May 20, 2009

Meea Kang
Domus Development, LLC
594 Howard Street, Suite 204
San Francisco, CA 94105

RE: Conditional Funding Commitment, La Valentina

Dear Ms. Kang,

On behalf of the Sacramento Housing and Redevelopment Agency and the Redevelopment Agency of the City of Sacramento (collectively "Agency"), we are pleased to advise you of its commitment of construction and permanent loan funds ("Loan") from the Alkali Flat Project Area Tax Increment Funds ("TI"), City Home Investment Partnership Program ("HOME"), and City Housing Trust Fund ("HTF") for the purpose of financing the development of that certain real property located on the east side of 12th Street between the C Street Alley and E Street in Sacramento, California ("Property"). Agency's decision is based on your application, and all representations and information supplied by you to it. If these representations and information change in a material manner without written approval of Agency, this commitment is void. Agency's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the Agency.

The Loan shall be made on standard Agency loan documents. No loan terms not in this funding commitment and the attached loan document forms shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the loan documents, the terms stated in the loan commitment letter shall be deemed to be terms of this commitment.

Unless otherwise agreed in writing by the Agency in exercise of its absolute discretion, the following shall be considered conditions to Agency approval of a financing commitment. The Agency may, in exercise of its absolute discretion, modify its requirements upon written notice to Borrower given at least sixty days prior to close of escrow for the Property.

This commitment is subject to approval by the Sacramento City Council.

This commitment will expire on June 1, 2010.

Approval of Disposition and Development Agreement and Loan for La Valentina

1. PROJECT DESCRIPTION: The project is the new construction of mixed-use, transit-oriented development. The property is located on two sites along the east side of 12th Street between the C Street Alley and E Street, at assessor's parcel numbers 002-0082-016, 002-0082-024, 002-0121-027, 002-0121-032, 002-0121-034, 002-0121-036, 002-0121-038. The south site, located between D Street and E Street, will contain a community room and at least 5,000 square feet of commercial space on the ground floor and 63 units of affordable rental housing on the second, third, and fourth floors. The north site, located between the C Street Alley and D Street, will contain 18 units of townhome-style rental units. Between the two sites, at least sixty (60) units will be affordable to families earning less than 50 percent of the area median income and all of the remaining units, with the exception of the unrestricted manager's unit, will be affordable to families earning less than 60 percent of the area median income.
2. BORROWER: The name of the Borrower for the Loan is Domus Development, LLC, or a related entity.
3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of construction and permanent financing, or for such other purposes as Agency expressly agrees to in the loan agreement for the Loan, and such other agreements as may be generally required by the Agency for the use of the funding source for the Loan.
4. PRINCIPAL AMOUNT: The combined principal amount of the Loan will be the lesser of (a) Three Million Dollars (\$3,000,000); or (b) an amount to be determined prior to close of the Loan based on a project budget approved by Agency. However, the combined indebtedness of the Property must not exceed ninety percent of the appraised value.
5. TERM OF LOAN: The Loan shall mature 40 years from the date of the first disbursement.
6. INTEREST RATE: The Loan shall bear simple interest at Four Percent (4%) per annum. Interest shall be calculated on the basis of a 365-day year and actual days elapsed.
7. AMORTIZATION: Loan shall amortize as permitted by monthly payments.
8. MONTHLY PAYMENT: Monthly payments shall be applied first to outstanding interest accrued and unpaid and then to principal. Interest and principal payments shall be deferred from the date of the loan for the first 168 months. Beginning in month 169, monthly installments shall be made according to the following schedule:

| | |
|----------------|------------------|
| Months 169-180 | \$ 3,047 monthly |
| Months 181-192 | \$ 2,922 monthly |
| Months 193-204 | \$ 2,777 monthly |
| Months 205-216 | \$ 2,609 monthly |
| Months 217-228 | \$ 2,418 monthly |
| Months 229-240 | \$ 2,202 monthly |

Approval of Disposition and Development Agreement and Loan for La Valentina

| | |
|----------------|--|
| Months 241-252 | \$ 1,960 monthly |
| Months 253-264 | \$ 1,691 monthly |
| Months 265-276 | \$ 1,393 monthly |
| Months 277-288 | \$ 1,065 monthly |
| Months 289-300 | \$ 705 monthly |
| Months 301-312 | \$ 312 monthly |
| Months 313-479 | residual receipts payments |
| Month 480 | All outstanding principal and interest due and payable |

9. ANNUAL PAYMENT: In addition to monthly payments, the Developer will pay the Agency annual payments equal to 50% of the net income from commercial rents.

10. SOURCE OF LOAN FUNDS: Agency is making the Loan from the following sources of funds, and the Loan is subject to all requirements related to the use of such, whether Agency requirements or otherwise: \$1,600,000 in TI, \$700,000 in HOME, and \$700,000 in HTF. This Loan is conditioned upon Borrower's acceptance of Agency's requirements and conditions related to such lending programs and funding sources, including among others, the required forms of agreements for the Loan; the requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements.

Borrower acknowledges that, as a condition of the Agency's making of the Loan, the Property will be subject to restrictions on future sales and rentals which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.

_____ (Borrower Initial)

Borrower acknowledges that every contract for new construction or rehabilitation construction of housing that includes 12 or more units assisted with HOME funds will contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety standards Act (40 U.S.C. 327-332). (24 C.F.R. 92.354). Borrower also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.

_____ (Borrower Initial)

10. ACCELERATION: Agency shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property except as specifically provided for in the Loan documents.

Approval of Disposition and Development Agreement and Loan for La Valentina

11. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the fee and/or leasehold interest in the Property and Improvements, which shall be a first lien upon the Property and Improvements subject only to other items as the Agency may approve in writing. The Loan shall also be secured by security agreements. The Agency may subordinate said deeds of trust in order to accommodate completion of construction of the Property.

12. LAND DONATION: Agency shall donate to Borrower the eight parcels of land valued at approximately \$800,000 identified in Section 1 of this commitment letter. This land donation is conditioned upon Borrower's acceptance of Agency's requirements and conditions, including among others, execution of the Disposition and Development Agreement.

13. LEASE AND RENTAL SCHEDULE: All leases of the Property and Improvements shall be subject to Agency's approval prior to execution. Borrower shall not deviate from the rental schedule presented in Borrower's application for the Loan without Agency's prior written approval.

14. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements in the amount of no less than \$17,547,000 in Low Income Housing Tax Credit Equity and no less than \$375,000 in deferred developer fee.

15. OTHER FINANCING: Borrower, as a requirement of the Loan, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior or subordinate to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:
 - (a) As a condition precedent to disbursement of the remainder of the Agency loan, construction financing from a private lender(s) in an amount(s) sufficient to complete construction of the Property according to a scope of work as approved by Agency and made for a term not less than that specified in the Schedule of Performances for completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.

 - (b) Commitments for permanent financing sufficient to "take out" all liens senior to the Agency's lien.

 - (c) Such commitments for financing shall not require modification of Agency loan documents, or any term of this commitment letter.

 - (d) Such commitments shall not be based upon sources and uses of Project funds that are different from those approved by Agency for the project or be subject to conditions which require amendment of the DDA, OPA or other agreements.

Approval of Disposition and Development Agreement and Loan for La Valentina

16. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project in accordance with the Agency's requirements. Borrower's evidence of available funds must include only one or more of the following: a) Borrower equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its reasonable discretion; and c) Agency's contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
17. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance". The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders are sufficient, in the sole judgment of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the Loan is not "in balance", the Agency may declare the Loan to be in default.
18. PLANS AND SPECIFICATIONS: Final plans and specifications for the project must be in accord with the proposal approved as part of the Loan application. Final plans and specifications will be subject to Agency's final approval prior to the disbursal of Agency Loan funds. Borrower must obtain Agency's prior written consent to any change in the approved plans and specifications or any material deviation in construction of the project.
19. ARCHITECTURAL AGREEMENT: The architectural agreement ("Agreement") for the preparation of the plans and specifications and other services shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Agreement as security for the Loan.
20. CONSTRUCTION CONTRACT: The construction contract ("Contract"), and any change orders issued thereunder, and the contractor ("Contractor") to be retained by Borrower to construct the Improvements shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Contract as security for the Loan.
21. RETENTION AMOUNT: The Agency shall retain ten percent (10%) as retention from each disbursement, not to exceed a total of ten percent (10%) of the total amount of the Loan.
22. COST BREAKDOWN: Borrower shall deliver to Agency for Agency's approval prior to commencement of work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the project plans and specification and the budget approved with this commitment. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements. If required by the Agency Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed contracts and subcontracts with acceptable bidders.

Approval of Disposition and Development Agreement and Loan for La Valentina

All contracts, subcontracts, contractors, and subcontractors shall be subject to Agency's approval prior to close of the Loan. Agency also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable to Agency.

Agency shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories. Agency shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds, including proof of work done and actual expenditure. Agency shall conduct inspections of the Property to assure that the work was done before making a disbursement.

23. ENVIRONMENTAL REVIEW: HOME funds shall not be disbursed prior to the completion of environmental review pursuant to the National Environmental Policy Act.
24. COST SAVINGS: At completion of construction, borrower shall submit to Agency a cost certification prepared by a qualified, independent auditor acceptable to Agency, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown and shall indicate the projected final sources of funding. If there is an aggregate savings, net of any increases or decreases in sources of funding, in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the Agency, the Agency shall withhold for itself as loan repayment, one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld. The Agency, in its sole discretion, shall determine any reduction and/or repayment of the Agency loan based upon this cost certification, the projected final sources of funding, and the original approved budget for the project.
25. START OF CONSTRUCTION: Borrower shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than June 1, 2010.
26. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements no later than June 1, 2012.
27. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance or in lieu such insurance, Builder's Risk completed value insurance in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).

Approval of Disposition and Development Agreement and Loan for La Valentina

28. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower must procure and maintain public liability and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: Bodily injury liability of \$1,000,000 each occurrence and \$5,000,000 Aggregate, Products and Completed Operations; Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$5,000,000 aggregate; Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$5,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
29. TITLE INSURANCE: Borrower must procure and deliver to Agency a 1970 or 1987 ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as Agency may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of the Loan, that Agency's Deeds of Trust constitutes a third lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.
30. ORGANIZATIONAL AGREEMENTS: Borrower must submit to Agency certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as Agency may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
31. PURCHASE OF PROPERTY: Borrower shall provide Agency with copies of all documents relating to Borrower's purchase of the Property.
32. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to Agency within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower

Approval of Disposition and Development Agreement and Loan for La Valentina

- must deliver to Agency a monthly rent-roll including household composition information, and operating statements with respect to the Property and Improvements, as Agency may request.
33. MANAGEMENT AGREEMENT: Prior to execution, Borrower must submit to Agency any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to Agency Approval.
 34. LOW INCOME HOUSING TAX CREDITS("LIHTC"): Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
 35. SECURITY AND LIGHTING: Project shall include a security camera system approved by the Agency and lighting adequate to properly illuminate the parking area and all common spaces. In addition, project will include security patrol if necessary.
 36. SOCIAL SERVICES PLAN: Borrower shall provide Agency with a detailed social services plan including, but not limited to, the following information: 1) identification of all entities responsible for providing social services to Project tenants and each entity's role in the provision of those services; 2) the services will be provided for a minimum of 15 hours per week, including a minimum of 8 hours per week of afterschool activities; 3) a description of the programs to be offered, and; 4) a proforma social services budget.
 37. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower must promptly deliver to Agency any further documentation that may be required by Agency.
 38. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply, in all respects, with this commitment letter.
 39. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
 40. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's acceptance.

June 2, 2009

Approval of Disposition and Development Agreement and Loan for La Valentina

Yours truly,

LaShelle Dozier
Executive Director

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

LaShelle Dozier
Executive Director

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

The undersigned acknowledges and accepts the foregoing Commitment and its terms and conditions.

Dated:

BORROWER:
Domus Development, LLC

By: _____
Meea Kang

RESOLUTION NO. 2009 –

Adopted by the Sacramento City Council

on date of

LA VALENTINA: AUTHORIZING A LOAN AGREEMENT FOR CONSTRUCTION AND PERMANENT FINANCING WITH DOMUS DEVELOPMENT, LLC FOR AGENCY-OWNED PROPERTY LOCATED ON 12TH STREET

BACKGROUND

- A. The La Valentina project (Project) qualifies for City Home Investment Partnership Funds (HOME) under Sacramento Housing and Redevelopment Agency (Agency) guidelines and would be an appropriate use of these funds,
- B. The Developer has applied for an allocation of Seven Hundred Thousand Dollars (\$700,000) in HOME Funds to assist in funding the construction and permanent financing of the Project,
- C. The Developer has applied for an allocation of Seven Hundred Thousand Dollars (\$700,000) in Housing Trust Funds to assist in funding the construction and permanent financing of the Project,
- D. On March 31, 2009, the Sacramento City Redevelopment Agency and City Council approved a \$3,000,000 loan to assist in funding the costs of construction and permanent financing of the Project and authorized the Agency to execute and transmit a loan commitment to Domus Development, LLC (Developer).

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The proposed action meets the requirements of the California Environmental Quality Act ("CEQA"). The "La Valentina Station: Rezone, Plan Review, Special Permit, and Variances," which includes the Mitigated Negative Declaration and mitigation measures for this project, as adopted by the City on March 24, 2009, is adequate and sufficient for the environmental review. There is no substantial evidence of the project having a significant effect on the environment beyond that which was evaluated in the previous Mitigated Negative Declaration. The availability of federal funds for use in the Project is contingent upon the Federal Department of Housing and Urban Development's consent to the Agency's request for release of funds.

Approval of Disposition and Development Agreement and Loan for La Valentina

- Section 2. The Agency budget is amended to transfer up to \$700,000 in HOME Funds and up to \$700,000 in Housing Trust Funds to the Project.
- Section 3. The Loan Agreement, attached to and incorporated in this resolution by this reference, for financing the Project with \$700,000 in City Home Investment Partnership Program (HOME) Funds and \$700,000 in Housing Trust Funds (for a total of loan commitment of up to \$3,000,000 including \$1,600,000 in Alkali Flat Tax Increment Funds), is approved, and the Agency is authorized to execute and transmit the Loan Agreement to the Developer.
- Section 4. The Agency is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of the Loan Agreement that accompanies this resolution, in accordance with its terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions and restructuring of such a loan.
- Section 5. The Agency is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Loan Commitment, with Agency policy, with this resolution, and with good legal practices for making of such a loan and are consistent with the facts as set forth in the background.

Table of Contents

Exhibit A – Loan Agreement

Approval of Disposition and Development Agreement and Loan for La Valentina

Exhibit A

CONSTRUCTION AND PERMANENT LOAN AGREEMENT LA VALENTINA

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" | June 5, 2009 | 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 | Domus Development, LLC | |
| Legal Status | limited liability company | |
| Principal Address | 9 Cushing, Suite 200, Irvine, CA 92618 | |
| "LOAN" | The Loan made by this Loan Agreement. | |
| "LOAN COMMITMENT" | Lender's loan commitment, made by letter dated as of | March 31, 2009 |
| "LOAN PROGRAM" | Lender's Loan Program, commonly known as | Alkali Flat Project Area Tax Increment, HOME and City Housing Trust Fund |
| "LOAN AMOUNT" | Three Million Dollars and No Cents (\$3,000,000.00) | |
| "INTEREST RATE" | The interest rate is 4% per year, simple interest. | |
| "PAYMENT START DATE" | The first day of the 169th calendar month following the Effective Date. | |
| "MATURITY DATE" | The first day of the 480th calendar month following the Effective Date. | |
| "PAYMENT SCHEDULE" | <p>Payable monthly, in monthly installments commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the Maturity Date.</p> <p>At completion of construction, Borrower shall submit to Lender a cost certification prepared by a qualified, independent auditor acceptable to Lender, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original Budget approved by the Lender, the Lender shall withhold for itself as loan repayment, one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld. The Lender, in its sole discretion, shall determine any reduction and/or repayment of the Loan based upon this cost certification and the original approved Budget for the Project.</p> | |
| "BORROWER EQUITY" | Seventeen Million Dollars and No Cents (\$17,547,000.00) | 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. |
| | Three Hundred Seventy-Five Thousand Dollars and No Cents (\$375,000.00) | Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees). |
| "SPECIAL TERMS" | NA | |

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| | | |
|-----------|---|---|
| "PROJECT" | Which is the Project to be developed on the Property with the Loan funds, described as: | New construction of a mixed-use, transit oriented development on 12th Street in the Alkali Flat Redevelopment Project Area. |
|-----------|---|---|

| 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 | 317 12th Street, 331 12th Street, 1210 D Street, 1209 E Street, 417 12th Street, 429 12th Street, and 415 12th Street | |
| Assessor's Parcel Number | 002-0082-016, 002-0082-024, 002-0121-002, 002-0121-027, 002-0121-032, 002-0121-027, 002-0121-032, 002-0121-034, 002-0121-036, 002-0121-038 | |
| "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" | Chicago Title Company | 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: Scope of Development</u> | "Scope of Development" |
| <u>Exhibit 3: Note Form</u> | "Note" |
| <u>Exhibit 4: Trust Deed Form</u> | "Trust Deed" |
| <u>Exhibit 5: Regulatory Agreement</u> | "Regulatory Agreement" |
| <u>Exhibit 6: Escrow Instructions</u> | "Escrow Instructions" |
| <u>Exhibit 7: Federal Requirements</u> | "Federal Requirements" |

| 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 |

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| G. "CONSTRUCTION INFORMATION": | | | |
|--------------------------------|---|--|-------------------|
| "Completion Date" | June 1, 2012 | Which is the date on or before which the Completion of the Project must occur. | |
| "General Contractor" | To be determined | Which is the general contractor for construction of the Project. | |
| "Project Architect" | YHLA Architects and David Baker and Partners | 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 Loan is made pursuant to the Disposition and Development Agreement between the Parties, made concurrently with this Loan Agreement ("DDA"). This Loan Agreement is subject to the DDA 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 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. | |
| 1. Domus Management Company 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.

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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.

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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.

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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 entry 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

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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) Lender has received environmental clearance for the use of HOME Funds from the Department of Housing and Urban Development; (d) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (e) 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 (f) 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. 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.

7.3. BORROWER AS RELOCATION AGENT. With the approval of Lender, Borrower may act as Lender's agent in accomplishing such relocation. Lender and Borrower by memorandum in writing shall establish their respective duties related to such relocation. If Lender and Borrower agree that Borrower will act as Lender's agent for purposes of this Loan, Borrower may enter into agreements for the provision of relocation services, or Borrower may perform such services directly. Borrower shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services: (a) shall comply with all applicable law; (b) shall fully inform Lender of all relocation activities; (c) shall make all requests for direction or clarification to Lender; and (d) shall respond to and follow the Lender's instruction and direction.

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.

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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. PAYMENT AND PERFORMANCE BONDS. As a condition precedent to beginning construction of the Project, the Borrower shall provide the Lender a performance bond and a labor and material payment bond obtained by Borrower or its general contractor in favor of the Borrower and Lender as named dual obligees, in form and amount as approved by the Lender and securing, respectively, completion of the work and payment of all labor and material suppliers and subcontractors for the work as stated in the construction contract for the Project. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties. Borrower shall assure compliance with all requirements of the surety. Borrower shall permit no changes in the work to be performed by the general contractor and shall make no advance payments to the general contractor without prior written notice to the surety and the Lender, if such change or payment could release the surety of its obligations under the bonds.

8.6. 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.

8.7. 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

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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.

8.7.1. 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.

8.7.2. 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

8.8. 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.

8.9. PREVAILING WAGES. Unless stated otherwise above, Lender advises Borrower that the Project is subject to the payment of prevailing wages under California law. Borrower shall inform the General Contractor and shall require the General Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Lender's determination of the applicability of California prevailing wage requirements. Borrower and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Borrower and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. 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. 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.

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.

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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. Borrower has obtained and Lender has approved a loan approval from a financial institution or other lender approved by Lender in its sole discretion, to make the permanent financing obtained by Borrower, or has obtained commitments to issue bonds, which repays after completion of the Project all construction and other loans secured by the Project and which is secured by a senior lien against the Property. Such permanent financing approval must provide: (a) that it is subject only to those conditions that are usual and customary in the industry and that can be satisfied by the proposed closing date of the permanent financing; (b) that it is in full force with no default by any party; and (c) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults.

9.2.4. Borrower has provided proof of all insurance required by the Loan Documents.

9.2.5. The construction lender's commitment to make a construction loan is in full force, has not been modified and no event has occurred that with notice or the passage of time or both could result in the termination of it. Nothing in the permanent loan commitment, or submissions and approvals made under it, conflicts with this Loan Agreement. Borrower has done all things necessary to keep unimpaired its rights under the loan commitment for the construction lender's construction loan.

9.2.6. 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.

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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. That Borrower has provided to Lender an inventory showing make, model, value, cost, and location of all furniture, fixtures, and equipment and other personal property of a value in excess of \$1,000 and used in the management, maintenance, and operation of the Project, that are included in the collateral for the Loan.

9.3.7. 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.

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

9.3.9. Borrower has submitted to Lender a final cost certification prepared by a CPA.

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 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

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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

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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:

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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.

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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, provided that the senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement, and that the senior loan does 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 lender including obligations or liabilities between Lender and the senior lender.

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

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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

Approval of Disposition and Development Agreement and Loan for La Valentina

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.

Approval of Disposition and Development Agreement and Loan for La Valentina

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.

Approval of Disposition and Development Agreement and Loan for La Valentina

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 :
DOMUS DEVELOPMENT, LLC

By: _____
Meea Kang
President

Date: _____

Approved as to form:

Borrower Counsel

LENDER:
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
LaShelle Dozier, Executive Director

Date: _____

Approved as to form:

Lender Counsel

RESOLUTION NO. 2009 -

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

LA VALENTINA: AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT AND A LOAN AGREEMENT WITH DOMUS DEVELOPMENT, LLC FOR AGENCY-OWNED PROPERTY LOCATED ON 12TH STREET

BACKGROUND

- A. The Agency owns certain real property that includes eight tax parcels in the Project Area generally described as being located on the east side of 12th Street from the C Street Alley to E Street. The property is adjacent to the La Valentina Light Rail Station. APN Numbers: 002-0082-016 and -024; 002-0121-002, -027, -032, -034, -036, and -038 ("Property").
- B. The Agency is seeking redevelopment of the Property for a transit-oriented development that would have a mix of commercial and residential uses, with the residential units appealing to a range of household income levels.
- C. A Selection Committee has evaluated the credentials of four teams that responded to a Request for Qualifications and has recommended a development team led by Domus Development, LLC (Developer) to engage in pre-development activities intended to result in a specific project proposal for the Property and to negotiate terms of a Disposition and Development Agreement.
- D. The Agency is seeking authorization to execute a Disposition and Development Agreement (DDA) to transfer ownership of the property to the Developer with the purpose of developing the Property.
- E. The Project has been identified as a brownfield and requires environmental remediation before construction can begin.
- F. The Agency has applied for an award of Six Hundred Thirty One Thousand Dollars (\$631,000) in grant funds from the Cal-Reuse Remediation Program of the California Pollution Control Financing Authority (CPCFA) for the purpose of environmental remediation and related expenses.
- G. Use of Alkali Flat Project Area Tax Increment Funds (Alkali Flat TI) for the development of the Property will benefit the Project Area by providing high quality affordable housing to downtown workers and residents and add an attractive

Approval of Disposition and Development Agreement and Loan for La Valentina

building on the 12th Street Corridor which will include commercial opportunities on a previously inactive site.

- H. A report under Health and Safety Code Section 33433 has been prepared and is attached hereto as Exhibit A filed with the Agency Clerk, and made available for public review pursuant to Section 33433.
- I. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

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

- Section 1. The proposed action meets the requirements of the California Environmental Quality Act ("CEQA"). The "La Valentina Station: Rezone, Plan Review, Special Permit, and Variances," which includes the negative declaration and mitigation measures for this project, as adopted by the City of Sacramento on March 24, 2009, is adequate and sufficient for the environmental review. The availability of federal funds for use in the Project is contingent upon the Federal Department of Housing and Urban Development's consent to the Agency's request for release of funds.
- Section 2. The Executive Director is authorized to accept up to \$631,000 in grant funds from the Cal-Reuse Remediation Program of the California Pollution Control Financing Authority.
- Section 3. The Executive Director, or her designee, is authorized to use the Cal-Reuse Remediation Program funds for the environmental remediation of the La Valentina property, or to reimburse the Developer for the cost of environmental remediation of the La Valentina property.
- Section 4. The Agency budget is amended to transfer up to \$1,600,000 in Alkali Flat TI to the Project.
- Section 5. The Agency's disposition of the Property for construction of the Project is consistent with the Alkali Flat Implementation Plan goal to develop a mixed-use/transit-oriented development which will eliminate factors hindering economically viable use and eliminate an underutilized blighted parcel. The disposition of the Property will assist in the elimination of blight as stated in the 33433 Report.
- Section 6. The consideration for the Agency's conveyance of the Property to Developer is the Developer obligations under the DDA, and the fair reuse value of the Property with the covenants, conditions, restrictions required by the DDA, which fair reuses value is approximately One Million Six Hundred Ten Thousand Dollars, as established in the 33433 Report.

Approval of Disposition and Development Agreement and Loan for La Valentina

- Section 7. The Executive Director, or her designee, is authorized to enter into a Development Disposition Agreement (DDA) in the name of the Redevelopment Agency of the City of Sacramento to transfer ownership of the property and execute the documents related to the DDA with Domus Development, LLC, each in a form approved by Agency Counsel.
- Section 8. The Loan Agreement for construction and permanent financing, attached to and incorporated in this resolution by this reference, for financing the Project with Alkali Flat TI in the amount of up to \$1,600,000, (for a total of loan commitment of up to \$3,000,000 including \$700,000 in State Housing Trust Funds and \$700,000 in City Home Investment Partnership Program Funds), is approved, and the Executive Director, or her designee, is authorized to execute and transmit the Loan Agreement and related documents to the Developer.
- Section 9. The Executive Director, or her designee, is authorized to enter into and execute other documents and perform other actions consistent with the findings as set forth in the background and necessary to fulfill the intent of the Loan Agreement that accompanies this resolution, in accordance with its terms and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions and restructuring of such a loan.
- Section 10. The Executive Director, or her designee, is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Loan Commitment, with Agency policy, with this resolution, with good legal practices for making of such a loan.

TABLE OF CONTENTS:

Exhibit A. Development & Disposition Agreement

Exhibit B: Loan Agreement

Exhibit C: Report under Health and Safety Code Section 33433

June 2, 2009

Approval of Disposition and Development Agreement and Loan for La Valentina

Exhibit A

NO FEE DOCUMENT:

Entitled to free recording
per Government Code 6103.

When recorded, return to:

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

630 "I" Street

Sacramento, CA 95814

DISPOSITION AND DEVELOPMENT AGREEMENT

317 12TH STREET, 331 12TH STREET, 1210 D STREET, 1209 E STREET, 417 12TH STREET, 429
12TH STREET, 415 12TH STREET

ALKALI FLAT NEIGHBORHOOD REDEVELOPMENT PROJECT AREA

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

DOMUS DEVELOPMENT, LLC

June 5, 2009

DISPOSITION AND DEVELOPMENT AGREEMENT

317 12th Street, 331 12th Street, 1210 D Street, 1209 E Street, 417 12th Street, 429 12th Street,
415 12th Street
Alkali Flat Neighborhood

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and DOMUS DEVELOPMENT, LLC also called Agency and Developer, respectively, enter into this Disposition and Development Agreement, also called DDA, as of June 5, 2009. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 14.

RECITALS

- A. Agency is the owner of real property located at 317 12th Street, 331 12th Street, 1210 D Street, 1209 E Street, 417 12th Street, 429 12th Street, and 415 12th Street in the City of Sacramento, State of California, more particularly described in the Property Description.
- B. The Property is located in the Alkali Flat Neighborhood Redevelopment Project Area and is subject to the redevelopment plan for the Project Area. Further, Developer acknowledges that Developer is purchasing the Property from Agency which is a Redevelopment Agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*) and that this document is governed by the Community Redevelopment Law. This DDA is consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it meets the following implementation plan goals: (1) the provision of safe, decent, adequate and sanitary housing through the development and rehabilitation of a mixture of housing types for all income groups; (2) the creation of additional employment opportunities for Project Area residents, particularly by area businesses and industry by assisting in the creation of an economically viable commercial and industrial area; and (3) the maximization of private participation and investment in the redevelopment effort.
- C. The primary purpose of this DDA is the elimination of the following blighting influences: low values and impaired investment, high vacancy rates and vacant parcels, low property values, low lease rates, improper parcelization and hazardous materials. In order to accomplish such purpose, the DDA provides that the Agency will transfer the Agency's interests in the Property to Developer upon the express condition that Developer will redevelop the Property for the uses described in this DDA. This DDA is intended to assure that the Developer will redevelop the Property and that the Developer is not merely speculating in land.
- D. Developer desires to purchase and develop the Property, and Agency desires to sell the Property for development, on the terms and conditions in this DDA.

AGREEMENT

NOW THEREFORE, the parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and 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. **PERFORMANCE.** The parties shall perform their obligations at the times and in the manner specified in this DDA. The time for performance is stated in this DDA and in the Schedule of Performances; provided, however that such times shall be extended for periods of Unavoidable Delay.

2. **PROJECT DESCRIPTION.** Agency is entering into this DDA and conveying the Property to Developer solely for the purposes of developing the Project. The Project shall be the following: New construction of a mixed-use, transit oriented development on 12th Street in the Alkali Flat Redevelopment Project Area.

3. **PURCHASE AND SALE.** Agency agrees to sell and Developer agrees to purchase the Property subject to the terms and conditions in this DDA. This DDA, if executed by Developer only, constitutes Developer's offer to purchase the Property on the terms and conditions contained in this DDA and subject to the covenants, conditions and restrictions contained in the Regulatory Agreement to be executed by the Agency and Developer and recorded on the Property upon conveyance of the Property to Developer.

3.1. **PURCHASE PRICE.** The Purchase Price for the Property shall be No Dollars and No Cents (\$ 0.00).

3.2. **ESCROW.** Developer and Agency have opened, or within ten (10) days after the Effective Date, shall open, the Escrow account subject to the provisions of the Escrow Instructions. Agency and Developer shall execute and deliver the Escrow Instructions to Title Company within ten (10) days after the Effective Date.

3.3. **CONDITIONS TO AGENCY'S PERFORMANCE.** Agency's obligation to perform under this DDA is subject to all of the following conditions:

3.3.1. Developer has performed all of the obligations that it is required to perform pursuant to this DDA, including without limitation, obtaining all required approvals of the Plans; obtaining building permits sufficient to commence Project construction; providing all required budgets, reports and evidence of funding and insurance; and providing required construction contracts.

3.3.2. The closing conditions as defined in the Escrow Instructions are fulfilled as of Close of Escrow.

3.3.3. Developer's representations and warranties in this DDA are true and correct as of the date of this DDA and as of the Close of Escrow.

3.3.4. The DDA is in full force and effect, no default on the part of Developer having occurred under the DDA, and no event having occurred, which, with the giving of notice or the passage of time, will constitute default by Developer under the DDA.

3.4. CONDITIONS TO DEVELOPER'S PERFORMANCE. Developer's obligation to perform under this DDA is subject to satisfaction of all of the following conditions:

3.4.1. Agency has performed all of the obligations that it is required to perform pursuant to this DDA.

3.4.2. The closing conditions as defined in the Escrow Instructions are fulfilled as of Close of Escrow.

3.4.3. Agency's representations and warranties in this DDA are true and correct as of the date of this DDA and as of the Close of Escrow.

3.4.4. The DDA is in full force and effect, no default on the part of Agency having occurred under the DDA, and no event having occurred, which, with the giving of notice or the passage of time, will constitute default by Agency under the DDA.

3.5. GENERAL COVENANTS, REPRESENTATIONS AND WARRANTIES: The parties make the following covenants, representations and warranties regarding the Property and the Project.

3.5.1. AGENCY'S REPRESENTATIONS AND WARRANTIES. Agency represents and warrants to Developer that as of the date of this DDA and as of the Close of Escrow, the date for which is set forth on the Schedule of Performances, to the knowledge of Agency's legal department, its Executive Director, and its staff with responsibility for development of the Property:

a) Agency knows of the following Phase I or Phase II environmental studies performed for the Property: (1) Phase II Environmental Site Assessment prepared by Nichols Consulting Engineers on August 4th, 2008; (2) Phase I Environmental Site Assessment performed by Secor International, Inc. on September 1, 2005; (3) Phase II Environmental Site Assessment performed by Secor International, Inc. on November 14, 2005; and (4) Level I Environmental Site Assessment prepared by Lush Geosciences, Inc. on September 6, 2000. Agency has provided Developer with a copy of said studies and Developer agrees that as to these studies, Developer acquires no rights against either the Agency or those individuals or firms who prepared the studies. To the extent, if any, that Developer relies on the studies, Developer does so at Developer's own risk

b) To the best of Agency's knowledge, there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property or with respect to Agency that would affect the Property.

c) This DDA and all other documents delivered for the Close of Escrow have been duly authorized, executed, and delivered by Agency; are binding obligations of Agency; and do not violate the provisions of any agreements to which Agency is a party.

d) Except as described in the environmental studies listed in subsection (a), to the best of Agency's knowledge, no Hazardous Substances are present in, on or under the Property, and there is no present release or threatened release of any Hazardous Substances in, on or under the Property.

3.5.2. AGENCY'S COVENANTS. Commencing with the full execution of this DDA by both parties and until the Close of Escrow:

a) Agency shall promptly notify Developer of any facts that would cause any of the representations contained in this DDA to be untrue as of the Close of Escrow.

b) Agency shall not permit any liens, encumbrances, or easements to be placed on the Property, other than the approved exceptions named as acceptable in the Escrow Instructions or as identified and approved in this DDA.

c) Agency shall not, without Developer's written consent, enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Developer or the Property after the Close of Escrow without the prior written consent of Developer, except as otherwise agreed in this DDA.

d) Agency shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, other than ordinary wear and tear.

e) Agency shall convey the Property to Developer pursuant to the terms and conditions contained in this DDA.

3.5.3. DEVELOPER'S REPRESENTATIONS AND WARRANTIES. Developer, for itself and its principals, represents and warrants to Agency that as of the date of this DDA and as of the Close of Escrow:

a) Developer has reviewed the condition of the Property, including without limitation, the physical condition of the Property (above and below the surface) and issues regarding land use and development of the Property, and if Developer closes Escrow for the acquisition of the Property, Developer shall be deemed to be satisfied that the Property is suitable in all respects for its intended development and uses.

b) Developer's agreement to close the Escrow for the acquisition of the Property serves as Developer's representation that Developer has obtained all additional information regarding the Property that Developer considers necessary for its due diligence in acquiring the Property.

c) To the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other legal or governmental action with respect to Developer which would affect its ability to fulfill its obligations under this DDA and acquire the Property or which may constitute a lien against Developer's equity or Developer's interests in the Property, now or in the future.

d) Any information that Developer has delivered to Agency, either directly or through Developer's agents, is, to the best of Developer's knowledge, accurate, and Developer has disclosed all material facts concerning the operation, development, or condition of the Property.

e) Developer has the financial capacity, the equity and the financing necessary to fulfill its obligations under this DDA and acquire the Property. Developer represents that any equity and funding commitments represented by Developer to Agency as available to the Project are unencumbered and that Developer has not represented to any other party that it will use such funds for any purpose other than the Project (and covenants that it will not use them for any other purpose) without prior written Agency consent.

f) This DDA and all other documents delivered for the Close of Escrow have been duly authorized, executed, and delivered by Developer; are binding obligations of Developer; and do not violate the provisions of any agreements to which Developer is a party.

3.5.4. DEVELOPER'S COVENANTS: Commencing with the full execution of this DDA by both parties and until the Close of Escrow:

a) Developer covenants by and for itself and assigns, and all persons claiming under or through it, that it shall not discriminate on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease or rental or in the use or occupancy of the Property and the Project.

b) Developer shall promptly notify Agency of any facts that would cause any of the representations contained in this DDA to be untrue as of the Close of Escrow.

c) Developer shall not cause any liens, encumbrances, or easements to be placed on the Property prior to Close of Escrow, except as otherwise permitted by this DDA or approved in writing by Agency.

d) Developer shall not cause any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear.

e) Developer shall be solely responsible for the cost and acquisition of the remaining parcels of the Project Site.

f) Developer shall complete the development of the Project at Developer's cost and without requesting or receiving additional Agency or City contributions to the Project other than as provided in this DDA.

g) Developer shall comply with all provisions of the Regulatory Agreement, and cause any subsequent purchaser of the property to so comply.

3.8.5. CLOSE OF ESCROW. The Escrow shall not close, and the Property shall not be conveyed to Developer unless the preceding conditions have been satisfied together with all other conditions stated in the Escrow Instructions for Close of Escrow. The Escrow shall close on or about the date shown on the Schedule of Performances.

3.6. DAMAGE, DESTRUCTION AND CONDEMNATION BEFORE CLOSE OF ESCROW. If, prior to the Close of Escrow: (a) damage occurs to any portion of the Property by earthquake, mudslide, fire, release of or exposure to any Hazardous Substances, or any other casualty (other than any damage caused by Developer or its employees, agents, Contractor or subcontractors) resulting in repairs or remediation costs that will exceed twenty percent (20%) of the Purchase Price; or (b) any portion of the Property is taken by eminent domain or otherwise, or is the subject of a threatened or pending taking action resulting in a twenty percent (20%) or more decrease in the after-taking value of the Property, Agency shall notify Developer in writing of the damage, destruction or condemnation. Developer may, within fifteen (15) days after such notice, elect to terminate this DDA by written notice to Agency.

~~3.6.1. If this DDA is to continue in full force and effect after any such damage or destruction, Agency shall do one of the following:~~

a) Agency shall pay or assign to Developer any amount due from or paid by any insurance company or any other party as a result of the damage; and the amount of any deductible under Agency's insurance policy; or

b) Agency shall pay to Developer through credit in Escrow against the cash portion of the Purchase Price for the cost of repairing or correcting such damage not covered by insurance, provided, however, that the amount of any payment of such credit against the Purchase Price pursuant to this clause shall not exceed thirty percent (30%) of the Purchase Price. If this DDA is to continue in full force and effect after such condemnation action, Agency shall pay any amounts received on account of, and assign to Developer all of Agency's rights regarding, any awards for such taking.

3.7. COMMISSIONS. Agency is not responsible, by this DDA or otherwise, to pay commissions on this transaction or any related transaction

4. AGENCY FUNDING. The Agency shall provide funding for the Project as provided in the Funding Agreement. All terms regarding Agency funding are in the Funding Agreement, including without limitation, the source and use of funds.

5. PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS. The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this DDA. Based upon such review the Agency shall have the right to approve or reject the Plans for reasonable cause.

5.1. EXTENT AND CHARACTER OF PLAN REVIEW. 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 neither a representation of nor 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 Plans; and (c) to assure that Agency's purposes are fulfilled and any Agency funds which may be obligated under this DDA are used as intended by the Agency. This DDA is a financing document and not a land use or planning document. Approval of the Project and Plans under this DDA is only an approval by Agency of the Project design "concept" as presented in this DDA. Such approval by Agency is not and shall not be considered an approval of land use entitlements, structural design of the Project, or the aesthetic design of the Project. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of its respective jurisdiction, including without limitation, departments, staff, boards and commissions of the City.

5.2. CONCURRENT REVIEW. Agency agrees that its review of the Final Plans shall occur before or concurrently with City's review of such plans, so as not to delay the commencement and progress of Project development.

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

5.4. 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 this DDA, including without limitation, Plans and the Scope of Development. To the extent that the DDA has insufficient detail or is unclear, the DDA shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable laws, regulations, zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this DDA. The Final Plans shall incorporate all related mitigation measures required for compliance with approvals under CEQA and any conditions of City approval of the project, unless otherwise fulfilled. Developer agrees that it will comply with the requirements of the City of Sacramento Design Review/Preservation Board to the extent of its jurisdiction.

5.5. 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 Agency

Clerk at the address for notices and shall have clearly marked on its exterior "URGENT: LA VALENTINA PROJECT PLAN REVIEW" or the equivalent.

5.5.1. DEEMED APPROVAL. If duly marked and delivered, the Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within thirty (30) days after their proper delivery to Agency.

5.5.2. 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 that the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with this DDA, including without limitation, the Plans, the Final Plans, the Scope of Development and with any items previously approved in accordance with this DDA. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this DDA 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.

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

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

5.7.1. 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:

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

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

c) Any change that reduces the effectiveness of any mitigation measure required for CEQA approval of the Project.

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

e) Material changes in the type, location, visibility, accessibility, size, design or artist for any artwork shown in the Final Plans or otherwise accepted by the Agency under the Art in Public Places Program.

f) Material changes in quality of project or landscaping materials.

g) Any change in public amenities specified in the Final Plans.

h) Any changes requiring approval of, or any change required by, any city, county or state board, body, commission or officer.

i) Any change that would preclude or materially reduce the ability to use the Project as intended by this DDA.

5.7.2. 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.

6. DEVELOPMENT PROVISIONS. As stated in detail in this Section 6, Developer shall construct and manage the Project according to the requirements established in this DDA, 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 DDA, 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.

6.1. NOTICE TO PROCEED. Developer shall not enter the Property or begin work on the Project until the Agency has issued to Developer a written notice to proceed with the work. Agency will issue a notice to proceed after Agency approval of the Final Plans, City's issuance of a building permit for substantially more than the Project foundations, Developer's compliance with all governmental requirements for start of construction, Developer's provision of required policies of insurance, and Developer's provision of proof of construction financing in an amount adequate to begin the Project work.

6.2. CONSTRUCTION CONTRACTS. Developer shall submit to Agency the construction contract or contracts for the Project. Agency's review of the construction contract shall be only for determining its compliance with this DDA. 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 DDA. If the property is revested in the Agency pursuant to Section 11.1, Developer shall assign all rights under the construction contracts to Agency.

6.3. GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this DDA, 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. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this DDA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the City's Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable. Conditions to the project imposed by the City shall be considered obligations of the Developer under this DDA. 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.

6.4. ART IN PUBLIC PLACES WAIVER. The Project improves and increases the stock of affordable housing in the community. Imposition of the Art in Public Places Program would increase the cost of the Project substantially and reduce either the number of affordable units available in the Project or the affordability of those units. Therefore, the Agency waives its Aesthetic Improvement Policy requirements.

6.5. PAYMENT AND PERFORMANCE BONDS. As a condition precedent to beginning construction of the Project, the Developer shall provide the Agency a copy of a performance bond obtained by Developer or Contractor in favor of the Developer as a named obligee, in form and amount as approved by the Agency insuring the faithful completion of Developer's obligations to develop the Project under the DDA, and a copy of a payment bond obtained by Developer or Contractor in favor of the Developer as a named obligee, in form and amount as approved by the Agency securing payment of all labor and material suppliers and subcontractors for the work as stated in the construction contract for the Project. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties. Developer shall assure compliance with all requirements of the surety. Developer shall permit no changes in the work to be performed by the Contractor and shall make no advance payments to the Contractor without prior written notice to the surety and the Agency, if such change or payment could release the surety of its obligations under the bonds.

6.6. 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 Section 5.7, without Agency approval of such changes as provided in Section 5.7.

6.7. 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. 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. Agency shall cooperate in securing certifications and permits which require consent of the owner of the property. 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.

6.8. PREVAILING WAGES. Unless stated otherwise above, Agency advises Developer that the Project is subject to the payment of prevailing wages under California law. Developer shall inform the Contractor and shall require the Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Agency's determination of the applicability of California prevailing wage requirements. Developer and Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. 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.

6.9. 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.

6.10. NO DISCRIMINATION DURING CONSTRUCTION. Developer for itself, the general contractor and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the construction of the Project.

6.10.1. EMPLOYMENT. Developer shall not discriminate against any employee or applicant for employment because of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. 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.

6.10.2. 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 sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.

6.10.3. **MONITORING PROVISIONS.** Developer, Contractor and subcontractors shall comply with the requirements of the Agency for monitoring the anti-discrimination and all applicable labor requirements.

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

6.12. **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 DDA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

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

6.14. **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 DDA, the Agency will furnish the Developer with the Certificate of Completion certifying such completion. The Agency's issuance of the Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDA with respect to the obligations of the Developer to construct the Project as of the Completion Date specified in the Schedules of Performances, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute the Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

6.14.1. The Certificate of Completion 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. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any provision of this DDA that is not related to construction of the Project.

6.14.2. If the Agency declines 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 DDA, 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.

6.15. CONSTRUCTION PERIOD EXTENSION FEE. If Developer does not complete the construction of the Project on or before the completion date set forth 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 said completion date, a construction period extension fee of Twenty-Five Dollars and No Cents (\$25.00) for each day by which the completion of construction is delayed beyond said completion date. Such construction period extension fee 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. The number of days used in computation of the construction period extension fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay such construction period extension fee when due is a material default of this DDA. 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 DDA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to such unpaid construction extension fee and to declare Developer in material default of this DDA. In any event, such construction extension fees shall not be accepted for a time period greater than six (6) months excluding any period of Unavoidable Delay, at which time Developer shall be deemed in material default of this DDA.

6.16. 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.

6.17. NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS. Developer shall assure notification of the Project contractors, architects and engineers for the Project of the requirements of this DDA. Developer shall include, where applicable, the provisions of this DDA in construction contracts, subcontracts, materials and supplies contracts and services and consulting contracts for the Project, and Developer shall undertake the enforcement of such provisions.

6.18. PROPERTY CONDITION. Developer, at Developer's expense, shall conduct any Property investigation beyond those provided by Agency under this DDA and which Developer may consider necessary to determine the condition of the Property for the development of the Project. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of such investigations. Except as provided in this DDA, 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. Agency shall not be responsible for removing any surface or subsurface obstructions, or structures of any kind on or under the Property.

6.19. 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 DDA.

6.20. HAZARDOUS SUBSTANCES.

6.20.1. Agency has obtained Phase II Hazardous Substances assessments, as described in Section 3.5.1(d), and has delivered them to Developer. In any event, Developer shall obtain such Hazardous Substances assessments as Developer deems reasonably necessary to assure the development of the Project in accordance with all applicable laws, rules and regulations; provided, however that such assessments are prepared by a qualified environmental specialist in accordance with nationally recognized standards to determine the existence of and to quantify the extent of Hazardous Substances on the Property. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of any Hazardous Substances investigations obtained by Developer.

6.20.2. Developer shall remediate all Hazardous Substances known to be on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer, Developer shall remediate all Hazardous Substances on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation.

6.20.3. Developer shall bear One Hundred percent of the costs related to remediation of Hazardous Substances on the Property. If the cost to remediate Hazardous Substances on the Property is reasonably estimated to exceed Five Hundred Thousand Dollars (\$500,000), Developer may elect to terminate this DDA, upon reconveyance of the Property to Agency and return of all monies and properties delivered pursuant to or in furtherance of this DDA.

6.21. DEVELOPER ACCESS TO PROPERTY. Prior to the conveyance of the Property by Agency to Developer, the Agency shall permit representatives of Developer to have access, without charge, to the Property, at all reasonable times for the purpose of obtaining data and making various tests necessary to carry out Developer's obligations under the DDA; provided, however, that Developer shall not enter the Property except (a) after execution by Developer and Agency of Agency's standard "Permit for Entry" and (b) after Developer has obtained insurance coverage then required by Agency. No work shall be performed on the Property until a "Notice of Nonresponsibility" has been recorded and posted in accordance with applicable laws, assuring that Agency interest in the Property shall not be subject to mechanic's liens related to such work. Developer shall not commence any work on the Property without Agency's written approval of the work to be done, and in any event, Developer shall not commence any work which might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

7. RELOCATION. Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Developer

shall comply fully with all relocation laws that are the obligation of Agency or are otherwise applicable to the Project. Developer's compliance with the relocation requirements as stated in this Section 7 is a material element of this DDA. Developer's failure to comply with the relocation requirements as stated in this Section 7 is an Event of Default, subject to Developer's opportunity to cure in accordance with applicable law.

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

7.2. COOPERATION AND ACCESS. Developer shall cooperate fully with Agency in complying with such relocation laws, including without limitation, providing Agency 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, Developer shall meet with Agency to establish reasonable protections for tenants and related reporting requirements for Developer.

7.3. DEVELOPER AS RELOCATION AGENT. With the approval of Agency, Developer may act as Agency's agent in accomplishing such relocation. Agency and Developer by memorandum in writing shall establish their respective duties related to such relocation. If Agency and Developer agree that Developer will act as Agency's agent for purposes of this DDA, Developer may enter into agreements for the provision of relocation services, or Developer may perform such services directly. Developer shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services: (a) complies with all applicable laws; (b) fully informs Agency of all relocation activities; (c) makes all requests for direction or clarification to Agency; and (d) responds to and follow the Agency's instruction and direction.

8. DEVELOPMENT FINANCING. Except as specifically provided in this DDA, Developer shall be responsible for and shall pay all costs of developing the Project in accordance with this DDA. As a condition precedent to Agency's conveyance of the site to Developer, 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 DDA 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 DDA, no party shall have the right of reimbursement for any funds expended by them for the Project, whether prior to execution of this DDA or otherwise. Agency is not obligated by this DDA or otherwise to make any contribution beyond its obligations stated in this DDA.

8.1. EVIDENCE OF AVAILABLE FUNDS. Unless otherwise approved by the Agency, Developer's evidence of available funds, as required in the preceding section, must include only the following: (a) Developer equity (as provided in Section 8.3); (b) firm and binding loan commitments (as provided in Section 8.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this DDA. 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.

8.2. COMMITMENT AND LOAN REQUIREMENTS. As a material obligation under this DDA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this DDA. 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 a construction loan 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 DDA, that require amendment of this DDA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

8.3. EVIDENCE OF DEVELOPER EQUITY. Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity in the amount of No Dollars and No Cents (\$0.00) by any one of the following actions: (a) deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely and proper completion; or (c) Developer's provision of financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) of the amount of the required equity. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

9. RELEASE AND INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. Developer shall release, indemnify, protect and defend Agency, its officers, directors, council members and supervisors, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, fines, penalties and claims (including without limitation court, mediation or arbitration costs, attorneys' fees, witnesses' fees, and investigation fees) related to (a) the existence of Hazardous Substances identified in the Phase II environmental studies identified in Section 3.5.1(a); or (b) the existence of Hazardous Substances on the Property that were not on the Property prior to Agency's transfer of possession of the Property to Developer or that were

related to the removal or discharge of Hazardous Substances by Developer, or its employees, agents or contractors, during Developer's remediation of the Property pursuant to this Section.

10. 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.

10. LIABILITY INSURANCE. With regard to this DDA, the Developer shall obtain and maintain for the life of the Regulatory Agreements, and require the 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 Developer, 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 DDA.

10.1. LIABILITY INSURANCE POLICY LIMITS. Developer 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 Agency, and for limits of liability which shall not be less than the following:

10.2. WORKER'S COMPENSATION. Developer 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, or statutory limits, whichever are greater.

10.3. COMMERCIAL GENERAL LIABILITY. Developer 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.

10.4. COMPREHENSIVE AUTOMOBILE LIABILITY. Developer 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. PROPERTY INSURANCE. For the duration of the Regulatory Agreements, Developer 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 Agency 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, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

10.6. INSURANCE PROVISIONS. Each policy of insurance required under this DDA 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 Agency's legal counsel. Each policy shall contain the following provisions as applicable, unless otherwise approved by Agency's legal counsel in writing in advance:

10.6.1. ADDITIONAL INSURED. Developer shall obtain a policy in ISO form CG 20 33 or better, naming Agency as additional insured under the Commercial General Liability Policy.

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

10.6.3. CERTIFIED POLICY COPY. Developer shall provide Agency with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Developer shall provide Agency with a Certificate 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."

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

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

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

11. DEFAULTS AND REMEDIES. Except as otherwise provided in the DDA, if either party defaults in its obligations under this DDA, 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 DDA, a failure or delay by a party to perform any term or provision of this DDA constitutes a default of this DDA. As a condition precedent to termination of the DDA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party, other than funds properly retained as liquidated damages. After such return of property and funds and termination of the DDA, neither Agency nor Developer shall have any further rights against or liability to the other under the DDA except as expressly set forth in this DDA to the contrary.

11.1. REVESTING TITLE IN AGENCY. Notwithstanding any other provisions of this DDA and in addition to any other rights and remedies of the Agency, after conveyance of any part of the Property to Developer and prior to issuance of Certificate of Completion, if Developer defaults in its obligations related to the Project development, abandons or unreasonably suspends Project construction work, permits any unauthorized encumbrance or lien (including tax liens) and fails to discharge any such unauthorized lien or encumbrance, or permits any transfer of all or any part of the Property, then the Agency shall have, for a period of ten years following the Completion Date, the right to re-enter and take possession of the Property, or any part of the Property conveyed to Developer, and to terminate and re-vest in the Agency the estate so conveyed. It is the intent of this DDA that the conveyance of the Property to Developer shall be made upon, and that the Grant Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Developer specified in this Section, failure on the part of Developer to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in the DDA, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the rights and interest in the Property conveyed by the Grant Deed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interest to and in the Property, shall revert to the Agency. Such condition subsequent and any such re-vesting of title in the Agency shall always be subject to and limited by the lien or security interest authorized by the DDA, and any rights or interests provided in the DDA for the protection of the Lenders; and shall not apply to individual parts or parcels of the Property on which the Project have been completed in accordance with the DDA and for which a Certificate of Completion issued as provided in the DDA. Such condition subsequent shall conform to the provisions of Civil Code Sections 885.010 through 885.070.

11.1.1. RESALE OF REACQUIRED PROPERTY. Upon the re-vesting of title of the Property in the Agency, Agency shall use its best efforts to resell the Property, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the Redevelopment Plan and the Community Redevelopment Law, to a qualified and responsible party, as determined by the Agency, who will assume the obligation of completing the Project or such other improvements in their stead as shall be satisfactory to the Agency. Upon such resale of the Property, the resale proceeds (after repayment of any liens and encumbrances which have previously been approved by Agency in writing) shall be applied as follows:

11.1.2. AGENCY REIMBURSEMENT. Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Property (but less any net income derived by Agency from the Property after such re-vesting); all taxes, assessments, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have been payable if the Property were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Property at the time of such re-vesting or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to completion of the Project; and any amounts otherwise owing the Agency by the Developer.

11.1.3. **DEVELOPER REIMBURSEMENT.** After payment to Agency of the sum specified herein, said proceeds shall be paid to Developer to reimburse Developer in an amount not to exceed: (1) the sum of the purchase price paid by Developer for the Property and the cash actually expended by it in actual construction of any of the Project (including without limitation fees and expenses paid to any governmental agency on account of the Project, mitigation or development fees, the costs and expenses of all third-party architects, engineers, or similar design professionals, hard and soft costs of construction expended in construction of the Project, and Lender's interest, loan fees and other fees and charges on account of the Loan); less (2) any gains or income withdrawn or made by it from the DDA or the Property and any amounts, including interest on loans, then due from Developer to Agency.

11.1.4. **BALANCE TO AGENCY.** Any balance remaining after such reimbursements shall be retained by the Agency as its property.

11.2. **LIQUIDATED DAMAGES.** IF DEVELOPER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF DEVELOPER, AGENCY SHALL BE RELEASED FROM AGENCY'S OBLIGATION TO SELL THE PROPERTY TO DEVELOPER, AND AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW. IF THE PROPERTY HAS BEEN CONVEYED TO DEVELOPER, DEVELOPER HAS COMMITTED A DEFAULT SUFFICIENT FOR REVESTMENT OF THE PROPERTY UNDER SECTION 11.1, AND DEVELOPER HAS NOT VOLUNTARILY RECONVEYED THE PROPERTY TO AGENCY, AGENCY MAY REVEST THE PROPERTY OR TAKE ANY AVAILABLE ACTION TO RECONVEY THE PROPERTY TO THE AGENCY. IN SUCH EVENT, AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION, DEVELOPER AND AGENCY AGREE THAT IN THE EVENT THAT DEVELOPER FAILS TO PURCHASE THE PROPERTY: (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES RELATED TO THE FAILURE TO PURCHASE THE PROPERTY; COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY TO AGENCY; (B) AN AMOUNT EQUAL TO THE DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO AGENCY ON ACCOUNT OF THE FAILURE TO PURCHASE THE PROPERTY AND FOR AGENCY COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY (WITHOUT LIMITING AGENCY'S RIGHTS TO RECOVERY DAMAGES OR SEEK ANY OTHER REMEDY FOR ANY OTHER DEFAULT UNDER THIS DDA OR ITS CONSTITUENT DOCUMENTS); (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO AGENCY SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF AGENCY FOR THE FAILURE OF DEVELOPER TO PURCHASE THE PROPERTY; (D) AGENCY MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO AGENCY 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 AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

Developer's Initials

Agency's Initials

11.3. **OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default not subject to the preceding liquidated damages provision, 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 DDA as allowed under this DDA, at law or in equity.

11.4. NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES. No member, official or employee of Agency shall be personally liable under this DDA 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 DDA.

11.5. FEES AND COSTS ARISING FROM DISPUTE. If an action is commenced between the parties, the Prevailing Party in that action shall be entitled to recover from the nonprevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; 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.

12. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS. Before issuance of a Certificate of Completion, if Developer has obtained Agency's prior written approval, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this DDA, the Developer may 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. 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. 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 DDA in making the Loan and that Agency's obligations under this DDA are inducements to Lender's making of the Loan.

12.1. NOTICES. If the Agency gives any notice of default to Developer under this DDA, 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 such 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 Disposition and Development Agreement dated _____ between the Redevelopment Agency of the City of Sacramento and **Domus**

Development, LLC ("DDA"). Lender requests, in accordance with the DDA, that if any default notice shall be given to Developer under the DDA, 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 Lender's 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 DDA. 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 DDA, Lender shall not be obligated by the provisions of the DDA to construct or complete the Project. Nothing in this Section or any other provision of the DDA 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 DDA.

12.4. LENDER'S OPTION TO CURE DEFAULTS. After any default of Developer's obligations under the DDA, 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 DDA. Any Lender who properly completes the Project as provided in the DDA shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency in a manner provided in the DDA. 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 DDA 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 DDA unless and until the Agency has given notice to Lender of such default, and Lender has failed to cure such default.

12.5.1. 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 DDA) shall be tolled if and so long as, all of the following are true: (a) Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this DDA, 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; (b) 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; (c) 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 (d) upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default in accordance with this DDA.

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

12.7. **MODIFICATIONS.** No modification or amendment to the DDA 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 DDA 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 DDA 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 DDA is in full force and effect and a binding obligation of the parties; (ii) this DDA has not been amended or modified, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this DDA, 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 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 DDA 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 shall not relieve Developer, or any other party bound in any way by the DDA, from any of its obligations under the DDA. With respect to this provision, the Developer and the parties signing the DDA 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 DDA shall be interpreted in accordance with the following rules.

13.1. **ENTIRE DDA; SEVERABILITY.** This DDA 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 DDA shall, to any extent, be held invalid or unenforceable, the remainder of this DDA shall not be affected; provided that the intent of the DDA may then be reasonably fulfilled.

13.2. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this DDA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this DDA 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.

13.3. **CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this DDA are for the convenience of the parties to this DDA. 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 DDA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

13.4. **DRAFTER.** This DDA 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 DDA. All exhibits referred to in this DDA are attached to it and incorporated in it by this reference.

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

13.6. **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 DDA, 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.

13.7. **GOVERNING LAW.** This DDA shall be governed and construed in accordance with California law.

13.8. **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 DDA.

13.9. **OWNERSHIP OF DATA.** If this DDA 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.

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

13.10.1. Addresses for notices are as follows:

a) Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Bernadette Austin.

b) Developer: Domus Development, LLC, 9 Cushing, Suite 200, Irving, CA 92618, Attention: Meea Kang.

13.10.2. Notices may be delivered by one 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 or facsimile, 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.

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

14. **DEFINITIONS.** The following definitions shall apply for the purposes of this DDA:

14.1. "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 DDA 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.

14.2. "Art in Public Places Program" is the commonly used name for the program implementing Agency's Aesthetic Improvement Policy. Aesthetic Improvement Policy is Agency's policy for the creation and display of artwork in public areas. The policy was adopted by Agency Resolution Number 2865, October 16, 1979. The policy as implemented is known as the Art in Public Places Program.

14.3. "Certificate of Completion" is the certificate issued by the Agency certifying Developer's completion of the Project and termination of the revestment provisions.

14.4. "City" is the City of Sacramento in the State of California.

14.5. "Close of Escrow" is the time for the close of the Escrow as provided in the Escrow Instructions.

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

14.7. "Completion Date" is the date for completion of construction of the Project to the satisfaction of the Agency, which date shall be not sooner than the issuance of a certificate of

occupancy for the entire Project. The Completion Date is stated in the Schedule of Performances.

14.8. "DDA" is this Disposition and Development Agreement including the attachments to this DDA consisting of the exhibits named in and attached to this DDA, the Preliminary Plans the Final Plans and any other item expressly incorporated in this DDA, all of which are incorporated in this DDA as if included in full as provisions in the body of this DDA. A default of any of the items incorporated in the DDA by reference is a default of this DDA.

14.9. "Developer" is Domus Development, LLC, limited liability company. The principal office of the Developer is located at 9 Cushing, Suite 200, Irving, CA 92618. The principals of Developer Meea Kang, Jong Limb, Monique Hastings.

14.10. "Escrow" is the escrow for the transfer of the Property and for all requirements related to the transfer. The Title Company is the holder of the Escrow.

14.11. "Escrow Instructions" are the escrow instructions for the close of the Escrow for this DDA.

14.12. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under this DDA. The Final Plans 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 DDA. The Final Plans shall incorporate all applicable mitigation measures which may be required for compliance with approvals under the California Environmental Quality Act (commencing at Public Resources Code Section 21000) and the rules and regulations promulgated under such act. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this DDA. 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 DDA.

14.13. "Funding Agreement" is the document that states the terms of Agency Funding.

14.14. "Grant Deed" is the grant deed for the transfer of the Property to Developer under this DDA. The Grant Deed contains covenants that run with the land, easements and a reverter provision.

14.15. "Hazardous Substances" as used in this DDA 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 rules and regulations promulgated pursuant to said laws.

14.16. "Lender" shall mean all holders of any lien or encumbrance as security for a loan on all or any part of the Property which loan is made in accordance with this DDA or otherwise approved by Agency in writing.

14.17. "Plans" are the Project designs and elevations, prepared by the Project architect YHLA Architects (North Site) and David Baker and Partners (South Site) and dated February 11, 2009 (North Site) and January 21, 2009 (South Site), a portion of which (consisting of various elevations) is attached to the staff report for approval of this DDA. Agency has approved the Plans concurrently with the approval of this DDA.

14.18. "Project" is the development of the Property as described in this DDA for the uses stated in this DDA. The Project includes all improvements rehabilitated and constructed on the Property in accordance with this DDA.

14.19. "Project Area" is the Alkali Flat Neighborhood Area, as defined in the Redevelopment Plan.

14.20. "Property" is the real property to be developed under this DDA by Developer, as more particularly described in the Property Description. The Property includes all improvements contained within the Property.

14.21. "Property Description" is the legal description of the various parcels of real property affected by this DDA. The Property Description is attached as **Exhibit 1: Property Description**.

14.22. "Purchase Price" is the purchase price for the Property as set out in Section 3.

14.23. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time)

14.24. "Regulatory Agreement" is the agreement, which sets out the certain provisions of this DDA that shall survive the completion of the Project.

14.25. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this DDA must be performed and on which conditions must be satisfied. The Schedule of Performances is attached as **Exhibit 2: Schedule of Performances**.

14.26. "Scope of Development" is the detailed description of the construction parameters for the Project. The Scope of Development is attached as **Exhibit 3: Scope of Development**.

14.27. "Title Company" is Chicago Title Company. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 2320 East Bidwell Street, Suite 110, Folsom, CA 95630.

14.28. "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 the parties shall be extended for the period of the enforced delay, as determined by the Agency, 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.

THE PARTIES HAVE EXECUTED THIS DDA in Sacramento, California, on the following dates, effective as of the date first written above.

DEVELOPER : DOMUS DEVELOPMENT, LLC

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

By: _____
Meea Kang
President

By: _____
LaShelle Dozier
Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

Approval of Disposition and Development Agreement and Loan for La Valentina

Exhibit B

**CONSTRUCTION AND PERMANENT LOAN AGREEMENT
LA VALENTINA**

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

- 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.
- 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" | June 5, 2009 | 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 | Domus Development, LLC | |
| Legal Status | limited liability company | |
| Principal Address | 9 Cushing, Suite 200, Irvine, CA 92618 | |
| "LOAN" | The Loan made by this Loan Agreement. | |
| "LOAN COMMITMENT" | Lender's loan commitment, made by letter dated as of | March 31, 2009 |
| "LOAN PROGRAM" | Lender's Loan Program, commonly known as | Alkali Flat Project Area Tax Increment, HOME and City Housing Trust Fund |
| "LOAN AMOUNT" | Three Million Dollars and No Cents (\$3,000,000.00) | |
| "INTEREST RATE" | The interest rate is 4% per year, simple interest. | |
| "PAYMENT START DATE" | The first day of the 169th calendar month following the Effective Date. | |
| "MATURITY DATE" | The first day of the 480th calendar month following the Effective Date. | |
| "PAYMENT SCHEDULE" | <p>Payable monthly, in monthly installments commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the Maturity Date.</p> <p>At completion of construction, Borrower shall submit to Lender a cost certification prepared by a qualified, independent auditor acceptable to Lender, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original Budget approved by the Lender, the Lender shall withhold for itself as loan repayment, one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld. The Lender, in its sole discretion, shall determine any reduction and/or repayment of the Loan based upon this cost certification and the original approved Budget for the Project.</p> | |
| "BORROWER EQUITY" | Seventeen Million Dollars and No Cents (\$17,547,000.00) | 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. |
| | Three Hundred Seventy-Five Thousand Dollars and No Cents (\$375,000.00) | Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees). |
| "SPECIAL TERMS" | NA | |

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| | | |
|-----------|---|---|
| "PROJECT" | Which is the Project to be developed on the Property with the Loan funds, described as: | New construction of a mixed-use, transit oriented development on 12th Street in the Alkali Flat Redevelopment Project Area. |
|-----------|---|---|

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 | 317 12th Street, 331 12th Street, 1210 D Street, 1209 E Street, 417 12th Street, 429 12th Street, and 415 12th Street | |
| Assessor's Parcel Number | 002-0082-016, 002-0082-024, 002-0121-002, 002-0121-027, 002-0121-032, 002-0121-027, 002-0121-032, 002-0121-034, 002-0121-036, 002-0121-038 | |
| "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" | Chicago Title Company | 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: Scope of Development</u> | "Scope of Development" |
| <u>Exhibit 3: Note Form</u> | "Note" |
| <u>Exhibit 4: Trust Deed Form</u> | "Trust Deed" |
| <u>Exhibit 5: Regulatory Agreement</u> | "Regulatory Agreement" |
| <u>Exhibit 6: Escrow Instructions</u> | "Escrow Instructions" |
| <u>Exhibit 7: Federal Requirements</u> | "Federal Requirements" |

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 |

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| G. "CONSTRUCTION INFORMATION": | | | |
|--------------------------------|---|--|-------------------|
| "Completion Date" | June 1, 2012 | Which is the date on or before which the Completion of the Project must occur. | |
| "General Contractor" | To be determined | Which is the general contractor for construction of the Project. | |
| "Project Architect" | YHLA Architects and David Baker and Partners | 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 Loan is made pursuant to the Disposition and Development Agreement between the Parties, made concurrently with this Loan Agreement ("DDA"). This Loan Agreement is subject to the DDA 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 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. | |
| 1. Domus Management Company 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.

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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.

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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.

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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 entry 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

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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) Lender has received environmental clearance for the use of HOME Funds from the Department of Housing and Urban Development; (d) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (e) 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 (f) 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. 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.

7.3. BORROWER AS RELOCATION AGENT. With the approval of Lender, Borrower may act as Lender's agent in accomplishing such relocation. Lender and Borrower by memorandum in writing shall establish their respective duties related to such relocation. If Lender and Borrower agree that Borrower will act as Lender's agent for purposes of this Loan, Borrower may enter into agreements for the provision of relocation services, or Borrower may perform such services directly. Borrower shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services: (a) shall comply with all applicable law; (b) shall fully inform Lender of all relocation activities; (c) shall make all requests for direction or clarification to Lender; and (d) shall respond to and follow the Lender's instruction and direction.

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.

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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. PAYMENT AND PERFORMANCE BONDS. As a condition precedent to beginning construction of the Project, the Borrower shall provide the Lender a performance bond and a labor and material payment bond obtained by Borrower or its general contractor in favor of the Borrower and Lender as named dual obligees, in form and amount as approved by the Lender and securing, respectively, completion of the work and payment of all labor and material suppliers and subcontractors for the work as stated in the construction contract for the Project. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties. Borrower shall assure compliance with all requirements of the surety. Borrower shall permit no changes in the work to be performed by the general contractor and shall make no advance payments to the general contractor without prior written notice to the surety and the Lender, if such change or payment could release the surety of its obligations under the bonds.

8.6. 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.

8.7. 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

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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.

8.7.1. 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.

8.7.2. 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

8.8. 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.

8.9. PREVAILING WAGES. Unless stated otherwise above, Lender advises Borrower that the Project is subject to the payment of prevailing wages under California law. Borrower shall inform the General Contractor and shall require the General Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Lender's determination of the applicability of California prevailing wage requirements. Borrower and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Borrower and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. 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. 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.

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.

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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. Borrower has obtained and Lender has approved a loan approval from a financial institution or other lender approved by Lender in its sole discretion, to make the permanent financing obtained by Borrower, or has obtained commitments to issue bonds, which repays after completion of the Project all construction and other loans secured by the Project and which is secured by a senior lien against the Property. Such permanent financing approval must provide: (a) that it is subject only to those conditions that are usual and customary in the industry and that can be satisfied by the proposed closing date of the permanent financing; (b) that it is in full force with no default by any party; and (c) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults.

9.2.4. Borrower has provided proof of all insurance required by the Loan Documents.

9.2.5. The construction lender's commitment to make a construction loan is in full force, has not been modified and no event has occurred that with notice or the passage of time or both could result in the termination of it. Nothing in the permanent loan commitment, or submissions and approvals made under it, conflicts with this Loan Agreement. Borrower has done all things necessary to keep unimpaired its rights under the loan commitment for the construction lender's construction loan.

9.2.6. 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.

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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. That Borrower has provided to Lender an inventory showing make, model, value, cost, and location of all furniture, fixtures, and equipment and other personal property of a value in excess of \$1,000 and used in the management, maintenance, and operation of the Project, that are included in the collateral for the Loan.

9.3.7. 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.

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

9.3.9. Borrower has submitted to Lender a final cost certification prepared by a CPA.

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 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

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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

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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:

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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.

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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, provided that the senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement, and that the senior loan does 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 lender including obligations or liabilities between Lender and the senior lender.

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

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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

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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.

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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.

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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 :
DOMUS DEVELOPMENT, LLC

By: _____
Meea Kang
President

Date: _____

Approved as to form:

Borrower Counsel

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

By: _____
LaShelle Dozier, Executive Director

Date: _____

Approved as to form:

Lender Counsel

Report Regarding the Disposition of Property Acquired Directly or Indirectly with Tax Increment Funds (Health & Safety Code Section 33433)

I. Agreement(s)

A copy of the Disposition and Development Agreement (DDA) disposing of interest in Agency real property follow as Attachment 8A.

II. Summary of Terms of Disposition

| AGENCY'S COST OF ACQUIRING THE LAND | |
|---|------------------|
| Purchase Price (or Lease Payments Payable During Agreement) | 771,858 |
| Commissions | 0 |
| Closing Costs | -- |
| Relocation Costs | 0 |
| Land Clearance Costs | 0 |
| Financing Costs | -- |
| Improvement Costs (e.g. utilities or foundations added) | -- |
| Other Costs | -- |
| TOTAL | \$771,858 |

| ESTIMATED VALUE OF INTEREST CONVEYED | |
|---|-------------|
| Value of the property determined at its highest and best use under the redevelopment plan | \$1,610,000 |

| ESTIMATED REUSE VALUE OF INTEREST CONVEYED | |
|--|-------------|
| Value of property determined with consideration of the restrictions and development costs imposed by the Agreement | \$1,610,000 |
| VALUE RECEIVED ON DISPOSITION | |
| The purchase price or the total of the lease payments due to the Agency under the Agreement | \$0 |

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III. Explanation of Disposition for Less than Full Value

The Agency acquired the eight parcels of the subject property between 1987 and 2008. The parcels have sat vacant for many years, prompting the Agency to submit a Request for Qualifications (RFQ) in 2006. In accordance with this RFQ, the Agency has agreed to grant the land to the developer for the purpose of developing the project. The land donation decreases the total project costs and increases the competitiveness of the project for oversubscribed sources of state and federal funding sources. These actions facilitate the development of vacant parcels on a major commercial corridor in a blighted neighborhood.

IV. Elimination of Blight

The subject site is located within the boundaries of the Alkali Flat Redevelopment Area. The proposed project is consistent with the Alkali Flat Implementation Plan goal to develop a mixed-use/transit oriented development which will eliminate factors hindering economically viable use and eliminate an underutilized blighted parcel. It also meets the following goals in the Alkali Flat Redevelopment Plan: provide safe, decent, adequate and sanitary housing through the development of a mixture of housing types for all income groups; and maximize private participation and investment in the redevelopment effort. On March 31, 2009, the City Council and the Redevelopment Agency of the City of Sacramento approved the use of tax increment revenues from the Alkali Flat Tax Increment Fund for the purpose of developing this mixed-use, transit-oriented development, which would contribute to the elimination of blighting influences and the lack of affordable housing in the area.