RESOLUTION NO. 2010-024

Adopted by the Redevelopment Agency
of the City of Sacramento

June 10, 2010

7TH AND H SINGLE ROOM OCCUPANCY (SRO) PROJECT: AUTHORIZATION FOR EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT WITH MERCY HOUSING CALIFORNIA 47, L.P., OR RELATED ENTITY REGARDING AGENCY-OWNED PROPERTY WITHIN THE RAILYARD REDEVELOPMENT PROJECT AREA; CEQA APPROVAL AND RELATED AUTHORIZATIONS

BACKGROUND

A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Railyards Redevelopment Plan ("Redevelopment Plan") and an "Implementation Plan" for the Railyards Redevelopment Project Area ("Project Area").

B. The Agency owns certain real property ("Property"), in the Project area acquired with Project Area tax increment funds, which is generally described as five vacant parcels at the northwest corner of 7th and H Streets, Sacramento, California, more particularly described in Exhibit A.

C. The Agency and Mercy Housing California 47, L.P., ("Developer") desire to enter into a Disposition and Development Agreement ("DDA"), a copy of which accompanies this resolution as Exhibit B and is on file with the Agency Clerk, which DDA would convey fee interest in the Property, as more specifically described in the DDA, and which would require the improvements within the Property, as further described in the DDA (collectively, "Project");

D. The 7th and H Single Room Occupancy (SRO) project was analyzed by the City of Sacramento in accordance with CEQA Guidelines and a Class 32 Categorical Exemption was prepared and executed on April 28, 2010. The proposed actions, associated with sale of the property, approval of the DDA and budget amendments and allocations, do not constitute a new project or substantive changes or modifications to project as previously analyzed. Because there is neither any new information of substantial importance nor any substantial changes with respect to the circumstances under which the project will be undertaken that would require preparation of supplemental environmental documentation, the recommended actions do not require further environmental review per CEQA Guidelines Sections 15162 or 15163.

E. These specific actions are exempt under National Environmental Policy Act (NEPA) regulations at 24 CFR Section 58.34(a) (2) and (3), which exempt information and financial services and administrative and management activities respectively. Environmental review for the 7th and H Single Room Occupancy (SRO) project 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.

F. A report under Health and Safety Code 33433 has been prepared, filed with the Agency Clerk and duly made available for public review, a copy of which report ("33433 Report") is attached as Exhibit C and incorporated in this resolution by this reference. Proper notice has been given and a 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 above recitals are found to be true and correct and the Agency hereby approves and adopts the environmental determination in Recitals D and E, above.

Section 2. The statements and findings of the 33433 Report set forth in Exhibit C, are true and correct and are hereby adopted. The Project will assist in the elimination of blight as stated in the 33433 Report. The Project is consistent with the goals and objectives of the Redevelopment Plan and the Implementation Plan. Goals of the Redevelopment Plan, as stated in the Implementation Plan, are to 1) strengthen the economic and employment base of the Project Area and the community by removing impediments to and encouraging new residential and commercial development and other private investment; 2) encourage the cooperation and participation of private development partners, residents, businesses, public agencies and community organizations in the redevelopment and revitalization of the Railyards Area; and 3) increase the community's supply of housing available to extremely low, very low, low and moderate income persons and families and housing for all income levels in proximity to the Central City employment center. The DDA shall be deemed an implementing document approved in furtherance of the Redevelopment Plan, the Implementation Plan for the Project Area and all applicable land use plan, studies, and strategies.

Section 3. The Property is to be granted to the Developer, or a related entity, conditional on satisfactory completion of the Project. The consideration given for the interest conveyed under the DDA is $0.

Section 4. The DDA is approved and the Executive Director, or her designee, is authorized to execute the DDA with the Developer and to take such actions, execute such instruments and amend the budget as may be necessary to effectuate and implement this resolution and the DDA.

Table of Contents:

Exhibit A - Legal Description
Exhibit B - Disposition and Development Agreement
Exhibit C – 33433 Report

Adopted by the Redevelopment Agency of the City of Sacramento on June 10, 2010 by the following vote:

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

Noes: None.

Abstain: None.

Absent: Councilmember Hammond.

Chair Kevin Johnson

Attest:

Shirley Concolino

Shirley Concolino, Secretary

Exhibit 1

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO , COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel No. One:

Lot 5 and the East one-half of Lot 6 in the block bounded by "G" and "H" Streets and 6th and 7th Streets of the City of Sacramento according to the official map or plat of said city.

Parcel No. Two:

The West 1/2 of Lot 6 in the block bounded by 6th and 7th and "G" and "H" Streets of the City of Sacramento according to the City of Sacramento to the official map or plat of said city.

Excepting therefrom the West 10 feet.

APN: 002-0141-001-0000, 002-0141-002-0000, 002-0141-003-0000, 002-0141-004-0000, 002-0141-007-0000

EXHIBIT B

NO FEE DOCUMENT:
Entitled to free recording
per Government Code 27383.
When recorded, return to:
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
801 12th Street
Sacramento, CA 95814
Attention: Richard Marsh

DISPOSITION AND DEVELOPMENT AGREEMENT

716 7TH STREET, 631 H STREET AND 625 H STREET SACRAMENTO, CALIFORNIA

RAILYARDS REDEVELOPMENT PROJECT AREA

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

MERCY HOUSING CALIFORNIA 47, A CALIFORNIA LIMITED PARTNERSHIP

Effective Date

DISPOSITION AND DEVELOPMENT AGREEMENT

716 7th Street; 631 H Street and 625 H Street Sacramento, California
Railyards Redevelopment Project Area

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and MERCY HOUSING CALIFORNIA 47, A CALIFORNIA LIMITED PARTNERSHIP also called Agency and Developer, respectively, enter into this Disposition and Development Agreement, also called DDA, as of _____, 2010. 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 716 7th Street, 631 H Street and 625 H Street in the City of Sacramento, State of California, more particularly described in **Exhibit 1: Property Description.**

B. The Property is located in the Railyards 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) Strengthens the economic and employment base of the Project Area and the community by removing impediments to and encouraging new residential and commercial development and other private investment; 2) Encourages the cooperation and participation of private development partners, residents, businesses, public agencies and community organizations in the redevelopment and revitalization of the Railyards Area; and 3) Increases the community's supply of housing available to extremely low, very low, and low and moderate income persons and families and housing for all income levels in proximity to the Central City employment center.

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 and low property values. 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 in **Exhibit 2: 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 as described in **Exhibit 3: Scope of Development**. The Project shall be the following: new construction of a 150-unit residential SRO (single room occupancy) complex consisting of 28 one-bedroom apartments and 122 studio apartments. This Project is to include 75 units set aside for formerly homeless individuals. The Project will also include limited retail space and a health clinic operated by The Effort.

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.** Agency agrees to grant the land and project interests to Developer as described in the Financing Plan attached to and incorporated herein as **Exhibit 4: Financing Plan**. The land is valued at $3,000,000 and the project interests are valued at $142,509 as enumerated in **Exhibit 5: Project Interests**.

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 AND 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 has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are in violation of any applicable laws regarding Hazardous Substances, or informing Agency that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property.

b) Agency has caused a Phase I and a Phase II environmental study to be performed for the Property. Agency has provided Developer with a copy of said study and Developer agrees that as to this study, Developer acquires no rights against either the Agency or those

individuals or firms who prepared the study. To the extent, if any, that Developer relies on the study, Developer does so at Developer's own risk.

c) 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.

d) 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.

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.

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 proposed operation, development, or condition of the Property.

e) Developer has or will have the financial capacity, the equity and the financing necessary to fulfill its obligations under this DDA and acquire the Property as required by the Financing Plan. 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 the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin 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 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.

f) 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

3.6.2. **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 City of Sacramento Economic Development Department, which is staff to the Agency for Project Area at the address for notices and shall have clearly marked on its exterior "URGENT: 7th & H Streets Development 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.

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.

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

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

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

h) 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, if required by the Agency, 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. If so required by the Agency, 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.** 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 has made its own independent determinations of the applicability of prevailing wage laws and has 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 race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability.

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 during normal business hours 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 less 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 development and construction of the Project.

6.14.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional fifteen (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the 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 as such date may be extended for force majeure or otherwise, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning with the calendar month following said completion date, a construction period extension fee of One Hundred Dollars and No Cents ($ 100.00) 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 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.** Agency has obtained the following hazardous substances reports prepared by Nichols Consulting Engineers, Chtd and has delivered them to Developer: (1) Phase 1 Environmental Site Assessment, dated April 10, 2007; (2) Limited Phase II Investigation – Soil and Groundwater Sampling, dated January 21, 2008; and (3) quarterly Groundwater Monitoring Reports. 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. If Hazardous Substances are known to be on the Property, Developer shall remediate such 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. 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. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer and the cost to remediate such Hazardous Substances is reasonably estimated to exceed Twenty-Five Thousand Dollars ($25,000), 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. Developer shall bear Ten percent of the costs related to such remediation and Agency shall bear the remainder of the costs.

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 Non-responsibility" 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.

6.22. **RELOCATION.** The Property is vacant and the improvements thereon have been demolished. Relocation laws are therefore not applicable to the Project.

7. **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.

7.1. **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 7.3); (b) firm and binding loan commitments (as provided in Section 7.2) 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.

7.2. **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.

7.3. **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.

8. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. Developer shall 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 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 of Hazardous Substances not on the Property prior to transfer or discharge of Hazardous Substances by Developer, or its employees, agents or contractors, during Developer's remediation of the Property pursuant to this Section.

Agency shall indemnify, protect and defend Developer, its officers, directors, employees, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims (including without limitation court, mediation or arbitration costs, attorneys' fees, witnesses' fees, and investigation fees) related to Hazardous Substances discharged on the Property during Agency's ownership of the Property or related to the removal or discharge of Hazardous Substances by Agency or its employees, agents or contractors.

9. 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 DDA.

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 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 which shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than $1,000,000, 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, such failure shall be a default under this DDA. The Agency shall have the right, but not the obligation, 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, and Developer's failure to cure the default, then the Agency shall have the right to re-enter and take possession of the Property, or any part of the Property conveyed to Developer, and to terminate and revest in the Agency the estate so conveyed, which right shall terminate upon delivery of a Certificate of Completion. 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 revesting 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 has 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 revesting 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 revesting); 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 revesting 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 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 COMMITED 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 RECOVERDAMAGES 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. No

director, officer or employee of Developer shall be personally liable under this DDA to Agency, or any successor in interest, in the event of any default or breach by Developer or for any amount which may become due to Agency 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 predevelopment or 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 public agency, 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 **Mercy Housing California 47, a California limited partnership** ("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 and Developer's limited partner 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 or limited partner 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 Developer and Lender of such default, and none of those parties has cured 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 and 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. Notwithstanding anything to the contrary contained in this Section 12.10, the admission of an investor limited partner to the Developer or the transfer by the investor limited partner of its interest in Developer shall not require the written consent of the Agency. The removal of the general partner(s) of the Developer for a default under the Developer's partnership agreement shall not require the written consent of the Agency, provided that any replacement general partner shall require the written consent of the Agency which shall not be unreasonably withheld.

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. **NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** Nothing contained in this DDA or in any other document executed in connection with this DDA shall be construed as creating a joint venture or partnership between Agency and Developer. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Agency and Developer other than that of a governmental entity regulating the development of private property, and the owner of such private property.

13.9. **NO THIRD PARTIES BENEFITED.** This DDA 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 the Property.

13.10. **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.

13.11. **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.

13.12. **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:

13.12.1. Addresses for notices are as follows:

a) Agency: Redevelopment Agency of the City of Sacramento, 801 12th Street, Sacramento, California 95814, Attention: Richard Marsh.

b) Developer: Mercy Housing California 47, a California limited partnership, 3120 Freeboard Drive, Suite 202, West Sacramento, California 95691, Attention: Vice President.

13.12.2. 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.

13.13. **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 801 12th 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 Mercy Housing California 47, a California limited partnership. The principal office of the Developer is located at 3120 Freeboard Drive, Suite 202, West Sacramento, California 95691. The principals of Developer are Rural California Housing Corporation and Mercy Housing Calwest.

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. "Financing Plan" is the plan for financing the Project and is attached as **Exhibit 4: Financing Plan.**

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

14.15. "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.

14.16. "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.

14.17. "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.

14.18. "Plans" are the Project designs and elevations, prepared by the Project architect Mogavero Notestine Associates and dated _____, 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.

14.19. "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.

14.20. "Project Area" is the Rail Yards Redevelopment Project Area, as defined in the Redevelopment Plan.

14.21. "Project Interests" are the interests in the Property being conveyed with the real estate and are attached as **Exhibit 5: Project Interests**.

14.22. "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.

14.23. "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.**

14.24. "Purchase Price" is the purchase price for the Property as set out in Section 3.1.

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

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

14.27. "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.**

14.28. "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**.

14.29. "Title Company" is Fidelity National Title Company. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 8950 Cal Center Drive, Bldg.3, Suite 100, Sacramento, California 95826.

14.30. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, 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 : MERCY HOUSING CALIFORNIA 47, A CALIFORNIA LIMITED PARTNERSHIP

By: Rural California Housing Corporation, a California nonprofit public benefit corporation

Its Managing General Partner

By:_____

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

Its Co-General Partner

By:_____

Date:_____

Approved as to form:

_____
Developer Counsel

[NOTARIZED ACKNOWLEDGEMENTS]

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

_____
LaShelle Dozier, Executive Director

Date: _____

Approved as to form:

_____
Agency Counsel

EXHIBIT 1

Property Description

EXHIBIT 2

SCHEDULE OF PERFORMANCES

Tentative Dates	Activity
June 2010	City Council, City Redevelopment Agency and Sacramento City Financing Authority approve Disposition and Development Agreement and Financing Plan
July 2010	Developer submits application for 9% Low Income Housing Tax Credits (LIHTC's) to the California Tax Credit Allocation Committee (TCAC)
September 2010	TCAC allocates 9% LIHTC's for the project
February 2011	Developer closes on construction financing
February 2011	Construction begins
December 2012	Construction completed
January 2013	Project units placed in service

If unsuccessful in 2010, Developer shall reapply for LIHTC's in the first and second rounds of 2011 as described in Exhibit 4 – Financing Plan. If Developer is allocated LIHTC's in the first or second rounds of 2011, the following Schedule of Performances shall apply (all deadlines measured from Application Date):

Application Date	Developer submits application for 9% Low Income Housing Tax Credits (LIHTC's) to the California Tax Credit Allocation Committee (TCAC)
Within 90 days	TCAC allocates 9% LIHTC's for the project
Within 240 days	Developer closes on construction financing
Within 240 days	Construction begins

Project units to be placed in service according the deadlines required by TCAC.

EXHIBIT 3

SCOPE OF DEVELOPMENT

New construction of an affordable housing project according to plans and specifications approved by Sacramento Housing and Redevelopment Agency.

The Project is to be a signature eight-story affordable housing community that will include 150 units including 28 one-bedroom apartments and 122 studios, each self-contained with a full bathroom and kitchen to facilitate independent living. There will be extensive common space including an entrance lobby staffed 24 hours per day, a computer room, a large community room with adjacent full kitchen, conference and meeting rooms, lounges, patios, laundry facilities, and second floor rooftop decks with plantings. The project will include retail space and a health clinic on the ground floor.

EXHIBIT 4

FINANCING PLAN

Purpose

The purpose of this financing plan is to detail how the 7th & H project will be financed and specify the steps necessary to achieve project feasibility.

Affordability Restrictions

Under the proposed financing plan, all units excluding the one manager units will remain affordable to those earning up to 30 percent, 40 percent, and 50 percent of the Area Median Income (AMI). The following charts display the proposed income targeting of the project.

Income Targeting for the Project

% AMI	# of Units	% Total
30%	75	50%
40%	35	23%
50%	40	27%
Total	**150**	**100%**

Agency Financing

Acquisition and development financing has been structured to leverage financing for tax credit competitive purposes and to minimize Agency assistance. The table below summarizes the financing plan structure:

Agency Financing	**Type**	**Uses**
$3,000,000	Grant	Acquisition - Land
$142,509	Grant	Acquisition - Interests
$3,142,509		
$455,000	Loan	Predevelopment Costs
$1,530,000	Loan	Predevelopment Costs
$6,670,000	Loan	Construction and Permanent (A total permanent loan of $8,655,000 including refinance of the Predevelopment Loans)
$6,859,695	Grant	Construction and Permanent
$3,750,000	Grant	Operating Reserve
$19,264,695		

The Agency's Loan and Grant commitments are as follows:

a) **$3,142,509** grant of land and project interests from the Redevelopment Agency of the City of Sacramento. No repayment is required conditional upon satisfactory completion of the Project.
b) **$1,530,000** loan to be disbursed for additional predevelopment costs from Sacramento Housing and Redevelopment Agency. Loan to bear interest at 1% annually with principal and interest due at the closing of the Agency's construction and permanent financing for the Project.
c) **$8,655,000** construction and permanent loan from Sacramento Housing and Redevelopment Agency to include the following:
    a. Refinance of $455,000 loan previously disbursed to Rural California Housing Corporation for predevelopment costs. Loan currently bears interest at 3% annually with principal and interest due at the closing of the Agency's construction and permanent financing for the Project or on December 31, 2011, whichever occurs first.
    b. Refinance of $1,530,000 loan to be disbursed for additional predevelopment costs with terms as described in (b) above.
    c. $6,670,000 loan to be disbursed for construction and permanent financing in addition to predevelopment loans.

    The construction and permanent loan for the Project in the total amount of $8,655,000 shall bear deferred interest at the rate of 1% annually with principal and all accrued interest due 660 months following closing.
d) **$6,859,695** grant from the Redevelopment Agency of the City of Sacramento to be disbursed for acquisition, construction, and permanent financing. No repayment is required conditional upon satisfactory completion of the project.
e) **$3,750,000** grant from the Redevelopment Agency of the City of Sacramento to capitalize an operating reserve that will fund operating deficits associated with 113 of the units in the Project for a 15 year period, starting from the Project's placed in service date. The funds will be disbursed subject to Agency review and approval. No repayment is required conditional upon satisfactory completion of the project.

Permanent Financing

The 7th & H project will be primarily financed using equity raised from 9% Low Income Housing Tax Credits (LIHTC), Agency funds, MHSA and AHP funds, and County Fee Waivers. A nine percent tax credit application to the Tax Credit Allocation Committee (TCAC) will be submitted in July 2010. The TCAC is scheduled to announce tax credit awards in September 2010. The chart below summarizes the permanent sources of financing for the project.

Permanent Sources of Funds	Uses
Tax Credit Equity	$18,750,000
MHSA	$1,800,000
AHP	$1,000,000
Fee Waivers	$327,000
Agency Loan	$8,655,000
Agency Grants	$10,609,695
Agency Grant of Land and Interests	$3,142,509
Deferred Developer Fee	$600,000
Total	**$44,884,204**

Ownership/Limited Partnership Structure
The ownership structure of 7th & H is a limited partnership, Mercy Housing California 47, a California limited partnership, formed especially for this Project. It has a managing general partner and a limited partner. The role of the managing general partner is to oversee the development and management of the project. Rural California Housing Corporation (RCHC) will be a general partner.

Site Control & Property Disposition
State regulations require that a project owner must show evidence of site control when submitting a tax credit application. Currently, the Redevelopment Agency of the City of Sacramento owns the 7th & H site. The Agency must indicate its intent to dispose of its interest in the property by executing a Disposition and Development Agreement (DDA) to transfer ownership of the land and all other Agency development interests in the project to the limited partnership. The DDA is contingent upon an award of nine percent tax credits.

Low Income Housing Tax Credits (LIHTC)
The financial feasibility of this project is dependent and contingent upon receipt of an allocation of 9 Percent LIHTC from TCAC for the project.

Developer and Agency agree to the following conditions relating to the Developer's application for tax credits from TCAC:

1. Developer shall apply for 9% LIHTC in the 2nd (July) application round of 2010 in the Non-Profit Set-Aside and, if not funded, may be considered under the Special Needs/SRO Set-Aside. In the event the project is not successful in either the Non-Profit Set-Aside or the Special Needs/SRO Set-Aside, the Developer shall not allow the Project to be considered under the Geographic Apportionment.

2. If the Project is not successful in obtaining an allocation in the 2nd application round of 2010, Developer shall apply for 9% tax credits in the 1st round of 2011, and in the 2nd round if not successful in the 1st round, under the same conditions described in 1 above.

EXHIBIT 5

PROJECT INTERESTS

Project Interest	**Total**
Environmental Services	$13,377
Site Clean-Up Services	$4,833
Building Demolition	$110,724
Site Improvements	$6,261
Engineering and Architectural	$3,748
Permits and Fees	$756
Title and Escrow Fees	$2,810
Total Project Interests	**$142,509**