



**REPORT TO COUNCIL
REDEVELOPMENT AGENCY AND
HOUSING AUTHORITY 22**

City of Sacramento

915 I Street, Sacramento, CA 95814-2671

www.CityofSacramento.org

Public Hearing

December 7, 2010

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

**Title: Property Transfer Agreement and Funding Agreement for the Morrison
Creek Estates Project**

Location/Council District: Morrison Creek Estates, Sacramento / Council District 8

Recommendation: Conduct a joint public hearing as required under Health and Safety Code § 33433 for the conveyance of Redevelopment Agency-owned real estate and upon completion, adopt a: **1) City Council Resolution** approving the report prepared pursuant to California Health and Safety Code section 33433; **2) a Redevelopment Agency Resolution** a) authorizing the Executive Director or her designee to execute a Memorandum of Understanding conveying properties located within the Morrison Creek Estates Project Area to the Housing Authority of the City of Sacramento (Housing Authority); b) authorizing the Executive Director or her designee to execute a Master Project Agreement entering into a loan agreement for \$984,472 of Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Housing Authority and; **3) Housing Authority Resolution** a) authorizing the Executive Director or her designee to execute a Master Project Agreement to enter into a forgivable loan agreement for \$984,472 of Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds from the Redevelopment Agency and; b) authorizing the Executive Director or her designee to execute a Memorandum of Understanding accepting Morrison Creek Estates Properties from the Redevelopment Agency; c) authorizing the Executive Director or her designee to purchase properties located in the Morrison Creek Estate Project Area consistent with the terms of the Master Project Agreement (MPA) for not more than just compensation; and d) authorizing the Executive Director or her designee to amend the Housing Authority budget to accept up to \$984,472 in Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds.

Contact: Chris Pahule, Assistant Director, Housing and Community Development, 440-1350; La Shelle Dozier, Executive Director, 440-1319

Presenters: Chris Pahule, Assistant Director, Housing and Community Development

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: Prior to 2009, the Housing Authority was actively working to acquire properties in the Morrison Creek Estates Project Area. The long-term strategy in the Morrison Creek Estates Project Area is to acquire a controlling interest in the area to stabilize the neighborhood. In order to control over 50% of the properties, the Housing Authority will need to acquire 118 of the 236 units in Morrison Creek. The Housing Authority has purchased 62 properties in Morrison Creek. In February 2009, the City Council approved \$4 million in Neighborhood Stabilization Program (NSP) funding through the "Block Strategy" which authorized the Housing Authority to acquire and rehabilitate foreclosed properties in the Morrison Creek Estates Project Area with the goal of assisting 46 properties. Unfortunately, due to a foreclosure slowdown in Morrison Creek Estates, significant competition for short sales and foreclosed properties, and the restrictive NSP regulations, only five units were acquired with the original \$4 million NSP allocation.

On March 10, 2010, the City Council authorized transferring \$3.5 million of NSP funds from the Morrison Creek Estates Project Area to the NSP Vacant Properties Program and Property Recycling Program. Additionally, the Redevelopment Agency of the City of Sacramento approved the allocation of \$1.5 million of Franklin Boulevard Low/Moderate Funds to continue the acquisition and rehabilitation efforts initiated with the NSP funding. The less restrictive Redevelopment funding would enable SHRA staff to be more aggressive with acquisitions.

To date, the Redevelopment Agency has acquired 13 Morrison Creek Estates properties with Franklin Boulevard Low/Moderate Funds and is in contract for three additional properties, bringing the total number of properties to 16. Staff estimates that an additional eight properties could be acquired and rehabilitated with remaining funding for the project.

The State of California only allows Redevelopment Agencies to temporarily own and manage rental housing properties purchased with Tax Increment funds until a long-term management solution is identified. The execution of a Memorandum of Understanding will convey 13 existing Redevelopment Agency-owned properties to the Housing Authority which will allow the units to remain affordable and responsibly managed for the long term. The execution of a Master Project Agreement will transfer the remaining balance of \$984,472 of Franklin Boulevard Low/Moderate Funds to the Housing Authority to continue the purchase and rehabilitation of properties located within the Morrison Creek Estates Project Area.

Policy Considerations: This project is consistent with the Redevelopment Agency's strategy of expending affordable housing resources in neighborhoods that have proximity to the redevelopment area with the goal of expanding the supply of affordable housing throughout the City.

The proposed financing for the Morrison Creek Estates Project is generally consistent with the Sacramento Housing and Redevelopment Agency's Multifamily Lending and Mortgage Revenue Bond Policies.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Morrison Creek Estates Block Strategy was previously analyzed along with the Mid-Year Update to the 2010 One-Year Action Plan. The acquisition, rehabilitation, and demolition of properties were found to be categorically exempt pursuant to CEQA Guidelines Section 15301 and 15310. The currently proposed actions to allocate funding to this previously approved project and to transfer properties from the Redevelopment Agency to the Housing Authority do not constitute a new project as defined by CEQA Guidelines Section 15378, nor do they impact the prior CEQA findings. Therefore, no further environmental review is required.

National Environmental Policy Act (NEPA): The Morrison Creek Estates Block Strategy was previously analyzed along with the Mid-Year Update to the 2010 One-Year Action Plan. The acquisition, rehabilitation, and demolition of properties were found to be categorically excluded under NEPA pursuant to 24 CFR 58.35(a)(5) and 24 DFR 58.35(a)(3). The currently proposed actions allocating funding do not propose the use of any federal funding, and would not be subject to additional review under NEPA. The proposed actions for the transfer of properties purchased with federal funding are categorically excluded under NEPA pursuant to 24 CFR 58.35 (a)(5).

Sustainability Considerations: The contents of this staff report are consistent with the goals, policies, and targets of the 2030 General Plan. If approved, this action will advance energy independence by improving energy efficiency and replacing or renovating obsolete energy or resources, inefficient infrastructure (buildings, facilities, systems, etc.) and assist in fostering public involvement and personal responsibility.

Committee/Commission Action: *The Sacramento Housing and Redevelopment Commission:* At its meeting on November 17, 2010, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Fowler, Gore, Johnson, Morgan, Otto, Rosa, Shah, Stivers

NOES: None

ABSENT: Morton

Rationale for Recommendation: The Redevelopment Agency has purchased 13 properties located within the Morrison Creek Estate Project Area. The Housing Authority anticipates that an additional eight units will be acquired and rehabilitated with the remaining funds of \$984,472. To date, the Housing Authority has acquired 62 properties in the Morrison Creek Estates Project Area. With the approval of the recommendations in this report, it is anticipated that the Housing Authority will own and manage 83 properties in the Morrison Creek Estates Project Area. Similar to the strategy in Phoenix Park, the Housing Authority's goal is to own a controlling majority of properties to stabilize the neighborhood, which would require 118 of the 236 units to be owned and managed by the Housing Authority.

The report recommends the execution of a Master Project Agreement to allocate \$984,472 in Franklin Boulevard Redevelopment Low/Moderate funds to the continued purchase and rehabilitation of properties in the Morrison Creek Estates Project Area. Additionally, the execution of a Memorandum of Understanding will convey 13 Redevelopment Agency properties to the Housing Authority. The Redevelopment Agency is in escrow for three additional properties, bringing the total of properties potentially conveyed to the Housing Authority to 16 in the Morrison Creek Estates Project Area. The Housing Authority will manage the properties. The properties purchased in the Morrison Creek Estate Project Area with Franklin Boulevard Redevelopment Low/Moderate Funds will be regulated for 55 years at Low or Moderate Area Median Income Levels.

Financial Considerations: This report recommends the execution of a Master Project Agreement to loan \$984,472 of Franklin Boulevard Redevelopment Low/Moderate funds to the Housing Authority for the continued acquisition, renovation, and permanent financing of the Morrison Creek Estates Project. If conditions of the MPA and MOU are met, the loan to the Housing Authority is fully forgivable over 10 years.

M/WBE Considerations: The activities recommended in this report do not involve federal funding; therefore, there are no M/WBE requirements.

Respectfully Submitted by: 
LASHELLE DOZIER
Executive Director

Recommendation Approved:


GUS VINA
Interim City Manager

Approved as to form:


Agency Counsel

APPROVED AS TO FORM:

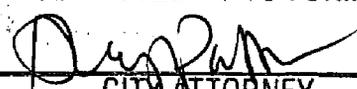
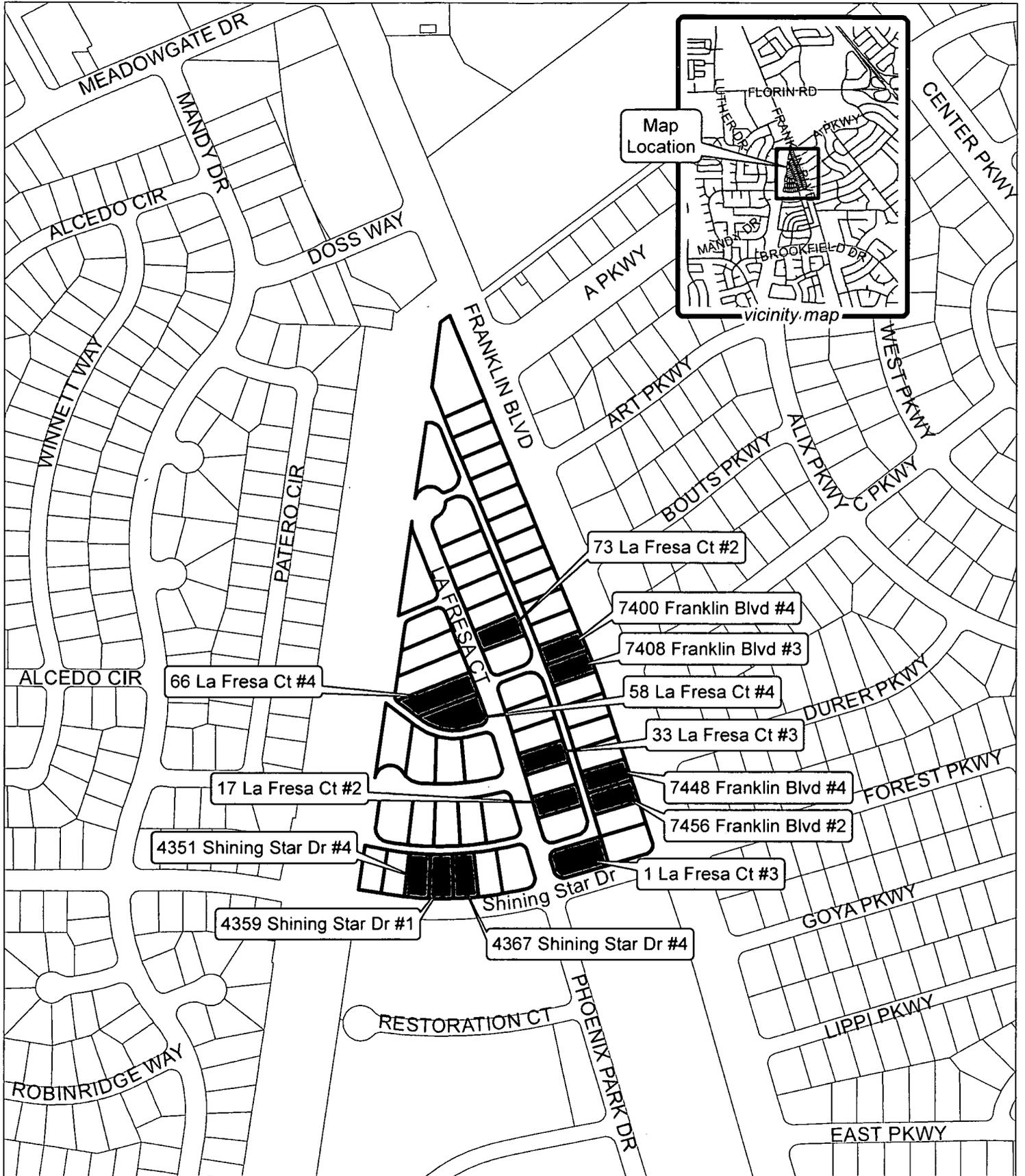

CITY ATTORNEY

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Property Transfer Agreement and Funding Agreement for the Morrison Creek Estates Project



Morrison Creek Estates
 Purchase with TI Funds

0 400 800 Feet

SHRA GIS
 October 26, 2010

RESOLUTION NO. 2010 -

Adopted by the Sacramento City Council

on date of

APPROVAL AND ADOPTION OF 33433 REPORT FOR PROPERTIES PURCHASED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO LOCATED WITHIN MORRISON CREEK ESTATES

BACKGROUND

- A. On October 21, 2008, the Sacramento City Council approved a substantial amendment to the 2008 – 2012 Consolidated Plan containing the Neighborhood Stabilization Plan (NSP) (Resolution – 2008-691).
- B. On February 24, 2009, the City Council approved Amendments to the 2009 One-Year Action Plan containing the implementation guidelines for the NSP, to include the allocation of \$4,000,000 of NSP Funds for the implementation of the Block Acquisition and Rehabilitation Strategy for Morrison Creek Estates (Resolution -2008-114).
- C. On March 9, 2010, the Sacramento City Council approved mid-year amendments to the 2010 One-Year Action Plan which included reallocation of \$3,500,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program (Resolution – 2010-129).
- D. The Redevelopment Agency of the City of Sacramento (Agency) approved amending the budget to allocate \$1,500,000 of Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Morrison Creek Estates Project to purchase and rehabilitate vacant and foreclosed properties.
- E. On August 24, 2010, the Sacramento City Council approved the reallocation of \$270,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program.
- F. The Agency has purchased 13 properties located within the Morrison Creek Estate Project with Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds for the purpose of rehabilitation and long-term rental for affordable housing that will be managed by the Housing Authority of the City of Sacramento (Project).
- G. A report under Health and Safety Code 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 A and incorporated in this resolution by this



reference, and, proper notice having been given, a hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

- H. The Project was analyzed in accordance with the California Environmental Quality Act (CEQA) Section 15301(d), which exempts the rehabilitation of deteriorated structures to meet current standards of health and safety; and Guidelines Section 15310, which exempts loans for the acquisition of existing structures.

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

- Section 1. The proposed action is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(d) and 15310.
- Section 2. After due consideration of the report filed with the Agency Clerk, made available to the public pursuant to California Health and Safety Code Section 33433 and attached hereto as Exhibit A, it is determined that the transfer of the Properties and construction of the Project will remove blighting conditions at the Properties and result in the preservation and improvement of affordable housing that will benefit residents in the Morrison Creek Estates Area and the adjacent Franklin Boulevard Redevelopment Project Area. The statements and findings of the 33433 Report are true and correct and are hereby adopted.
- Section 3. After due consideration of the 33433 Report and Section 33442 of the Health & Safety Code, it is determined that the Housing Authority's acceptance of the properties for the purposes of a public housing project with the covenants and conditions and development costs authorized by the transfer agreement provides sufficient consideration for this transaction.

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Exhibit A – Report under Health and Safety Code Section 33433



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

I. Agreement

A copy of the Purchase and Sale or Lease Agreement ("Agreement") disposing of an interest in Agency real property is attached to this Report.

II. Summary of Terms of Disposition

AGENCY'S COST OF ACQUIRING THE LAND	
Purchase Price (or Lease Payments Payable During Agreement)	\$345,301
Commissions	0
Closing Costs	14,049
Relocation Costs	0
Land Clearance Costs	0
Financing Costs	0
Improvement Costs (e.g. utilities or foundations added)	0
Other Costs	0
TOTAL	\$359,350

ESTIMATED VALUE OF INTEREST CONVEYED	
Value of the property determined at its highest and best use under the redevelopment plan	\$345,301

ESTIMATED REUSE VALUE OF INTEREST CONVEYED	
Value of property determined with consideration of the restrictions and development costs imposed by the Agreement	\$0
The reuse value under this agreement is consistent with Health & Safety Code Section 33442 which allows the Redevelopment Agencies to discount or donate property to a Housing Authority.	

VALUE RECEIVED ON DISPOSITION

33433 Report

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The purchase price or the total of the lease payments due to the Agency under the Agreement.	\$0
The total payment under this agreement is consistent with Health & Safety Code Section 33442 which allows the Redevelopment Agencies to discount or donate property to a Housing Authority.	

III. Explanation of Disposition for Less than Full Value

The 13 properties located within the Morrison Creek Project Area were acquired by the Redevelopment Agency with the intent to provide long term affordable housing opportunities. The Housing Authority will own and manage the units long term as affordable housing at Low or Moderate Area Median Income Levels for 55 years. The Redevelopment Agency is conveying the properties to the Housing Authority at no cost pursuant to Health & Safety Code Section 33442. The Housing Authority is responsible for the long term maintenance obligation of the properties. In order to assure the long term financial feasibility of the operation of the units as affordable housing, the units are being disposed of for less than the market value.

IV. Elimination of Blight

Morrison Creek Estates Area has had a long history of issues as it relates to crime, code and blight. The City of Sacramento, Redevelopment Agency and Housing Authority have invested significant resources in the area to combat these issues. The goal is to eliminate the blighted conditions of the substandard housing in the area, by acquiring, rehabilitation and renting units to low and moderate income families. Currently the Housing Authority owns 62 properties in Morrison Creek Estates and these properties will further consolidate ownership to allow more units to come under effective property management. In order to gain majority control in Morrison Creek Estate Project Area, the Housing Authority must purchased 118 of 236 total units.

The transfer of the Redevelopment Agency owned 13 Morrison Creek Estates properties is consistent with the Redevelopment Agency's strategy of expending affordable housing resources in neighborhoods that have proximity to the redevelopment area with the goal of expanding the supply of affordable housing throughout the City.

RESOLUTION NO. 2010 -

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

**MORRISON CREEK ESTATES PROJECT AREA:
APPROVAL OF A MEMORANDUM OF UNDERSTANDING, A MASTER PROJECT
AGREEMENT; APPROVAL OF A LOAN OF UP TO \$984,472 OF FRANKLIN
BOULEVARD REDEVELOPMENT TAX INCREMENT FUNDS; AND RELATED
BUDGET AMENDMENT**

BACKGROUND

- A. On October 21, 2008, the Sacramento City Council approved a substantial amendment to the 2008 – 2012 Consolidated Plan containing a Neighborhood Stabilization Plan (NSP) (Resolution – 2008-691).
- B. On February 24, 2009, the City Council approved Amendments to the 2009 One-Year Action Plan containing the implementation guidelines for the NSP, to include the allocation of \$4,000,000 of NSP Funds for the implementation of the Block Acquisition and Rehabilitation Strategy for Morrison Creek Estates (Resolution -2008-114).
- C. On March 9, 2010, the Sacramento City Council approved mid year amendments to the 2010 One-Year Action Plan which included reallocation of \$3,500,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program (Resolution – 2010-129).
- D. The Redevelopment Agency of the City of Sacramento (Agency) approved amending the budget to allocate \$1,500,000 of Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Morrison Creek Estates project to purchase and rehabilitate vacant and foreclosed properties (Resolution – 2010-014).
- E. On August 24, 2010, the Sacramento City Council approved the reallocation of \$270,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program (Resolution – 2010-514).
- F. The Agency has purchased 13 properties located within the Morrison Creek Estate Project with Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds for the purpose of rehabilitation and long-term rental for affordable housing that will be managed by the Housing Authority of the City of Sacramento (the "Project"). Additionally, the Agency is in escrow for three



additional properties, bringing the total of properties to 16 in the Morrison Creek Estates Project Area.

- G. A report under Health and Safety Code has been prepared, filed with the Agency Clerk and duly made available for public review and proper notice having been given, a hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433. The Agency is further authorized to transfer these properties to the Housing Authority pursuant to Health and Safety Code Section 33442.

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

- Section 1. The proposed action is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(d) and 15310.
- Section 2. The statements and findings of the 33433 Report are true and correct and are hereby adopted. The Project will assist in the preservation and improvement of affordable housing as provided in the 33433 Report and will benefit residents in the Morrison Creek Estates Area (Morrison Creek) and the adjacent Franklin Boulevard Redevelopment Project Area.
- Section 3. The Executive Director is authorized to execute a Memorandum of Understanding (MOU) attached hereto as Exhibit A, which would convey fee interest in the Agency-owned properties located within Morrison Creek to the Housing Authority of the City of Sacramento (Housing Authority), as more specifically described in the MOU, and which would require the improvements to Properties, as further described in the MOU.
- Section 4. The Properties to be conveyed from the Redevelopment Agency to the Housing Authority pursuant to the execution of the MOU are located in Morrison Creek Estates. Conveyance of the following properties is approved:
- 66 La Fresa Ct #4 (049 0282 005 0004); 17 La Fresa Ct #2 (049 0281 024 0002); 7456 Franklin Blvd #2 (049 0281 019 0002); 7408 Franklin Blvd #3 (049 0281 013 0003); 4359 Shining Star Dr 1 (049 0283 005 0001); 1 La Fresa Ct #3 (049-0281-022-0003); 58 La Fresa Ct #3 (049-0282-006-0003); 7400 Franklin #4 (049-0281-012-0004); 4367 Shining Star #4 (049-0283-004-0004); 73 La Fresa #2 (049-0281-031-0002); 4351 Shining Star #4 (049-0283-006-0004); 7448 Franklin Blvd. #4 (049-0281-018-0004); 33 La Fresa Ct #3 (049-0281-026-0003); 7440 Franklin Blvd. #4 (049-0281-017-0004); 9 La Fresa Ct #2 (049-0281-023-0002); 34 La Fresa Ct #2 (049-0281-023-0002).
- Section 5. The Executive Director is authorized to amend the Agency budget to allocate up to Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars (\$984,472) in Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Project.

- Section 6. The Executive Director is authorized to execute a Master Project Agreement (MPA) attached hereto as Exhibit B with the Housing Authority regarding a programmatic agreement to loan up to Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars (\$984,472) in Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to assist in funding the acquisition and rehabilitation of Properties located in the Morrison Creek Estate Project Area.
- Section 7. Subject to the satisfaction of conditions in the MPA, the Executive Director is authorized to execute any and all documents required for the making of the loans, (including without limitation the documents necessary for the use of the allocated funds and the documents necessary to make and reasonably administer the loan); provided, however, that the loans shall be made on the terms set out in the MPA. As stated in the MPA, the loans in aggregate shall not exceed Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars (\$984,472).
- Section 8. The Executive Director, or designee, is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of this resolution, the MOU, and the MPA that accompany this resolution, in accordance with their respective terms, and to ensure proper repayment or forgiveness of the Agency funds including without limitation, subordination, extensions, and restructuring of such a loan.
- Section 9. The Executive Director, or designee, is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the MPA and MOU, with Agency policy, with this resolution and with good legal practices for making of such a loan.

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Exhibit A – Memorandum of Understanding

Exhibit B – Master Project Agreement



MEMORANDUM OF UNDERSTANDING FOR MORRISON CREEK ESTATES PROPERTY TRANSFER

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is made and entered into this ____ day of _____ 2010, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**, a public body, corporate and politic, hereinafter referred to as "Agency," and the **HOUSING AUTHORITY OF THE CITY OF SACRAMENTO**, a public body, corporate and politic, hereinafter referred to as "Housing Authority".

RECITALS

WHEREAS, the Agency has allocated low and moderate income housing tax increment funds for the purchase and rehabilitation of units within Morrison Creek Estates for the eventual operation as affordable housing; and

WHEREAS, the Agency has purchased that certain real property located in the City of Sacramento, County of Sacramento, State of California, legally described in Exhibit “A”, a copy of which is attached and incorporated by this reference, (“Property”); and

WHEREAS, the Housing Authority desires to acquire the Property in order to operate the units as affordable housing; and

WHEREAS, the Agency has an obligation to ensure the redevelopment and operation of the housing consistent with the Community Redevelopment Laws.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

The purpose of this MOU is to set forth the terms of transfer of the Property from the Agency to the Housing Authority and to set forth the scope of work and schedule of performances for the rehabilitation and operation of the Property by the Housing Authority.

2. SCOPE OF WORK

The Housing Authority shall rehabilitate the Property, if necessary, to standards required by the Sacramento Housing and Redevelopment Agency construction guidelines. The Housing Authority shall maintain and operate the Property as affordable housing consistent with the Regulatory Agreement for the Property, a copy of which is attached as Exhibit “B” and incorporated by this reference (“Regulatory Agreement”). The Regulatory Agreement and the Notice of Affordability Covenants, a copy of which is attached as Exhibit “C” and incorporated by this reference, shall be recorded concurrently with the Grant Deeds.

3. SCHEDULE OF PERFORMANCES

Rehabilitation shall take place no later than December 2011. Until such time as rehabilitations are complete, the parcels shall be adequately maintained by the Housing Authority. The Property shall be rented out to qualified families no later than June 2012.

4. MODIFICATION

No waiver, alteration, modification, or termination of this MOU shall be valid unless made in writing and signed by the authorized parties hereof.

5. TERMINATION

This Agreement shall terminate upon completion of all obligations of the parties.

IN WITNESS WHEREOF, the parties entered into this MOU on the day and year first hereinabove appearing.

**REDEVELOPMENT AGENCY OF
THE CITY OF SACRAMENTO**

**HOUSING AUTHORITY OF
THE CITY OF SACRAMENTO**

By: _____
Lisa Bates
Deputy Executive Director

By: _____
LaShelle Dozier,
Executive Director

Approved as to Legal Form:

Approved as to Legal Form:

By: _____
Agency Counsel

By: _____
Agency Counsel

EXHIBIT A
Legal Description of the Property

EXHIBIT B
Regulatory Agreement

NO FEE DOCUMENT:

Entitled to free recording
per Government Code 27383.

When recorded, return to:

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY
801 12th Street
Sacramento, CA 95814

**REGULATORY AGREEMENT FOR RESIDENTIAL RENTAL PROPERTY
CONTAINING COVENANTS AFFECTING REAL PROPERTY**

PROJECT NAME:	Morrison Creek Estates
PROJECT ADDRESSES:	66 La Fresa Ct #4; 17 La Fresa Ct #2; 7456 Franklin Blvd #2; 7408 Franklin Blvd #3; 4359 Shining Star Dr #1; 1 La Fresa Ct #3; 58 La Fresa Ct #3; 7400 Franklin #4; 4367 Shining Star #4; 73 La Fresa #2; 4351 Shining Star #4; 7448 Franklin Blvd. #4; 33 La Fresa Ct #3; 7440 Franklin Blvd. #4; 9 La Fresa Ct #2; 34 La Fresa Ct #2.
APNs:	(049 0282 005 0004); (049 0281 024 0002); (049 0281 019 0002); (049 0281 013 0003); (049 0283 005 0001); (049-0281-022-0003); (049-0282-006-0003); (049-0281-012-0004); (049-0283-004-0004); (049-0281-031-0002); (049-0283-006-0004); (049-0281-018-0004); (049-0281-026-0003); (049-0281-017-0004); (049-0281-023-0002); (049-0281-023-0002).

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS ACKNOWLEDGED, AGENCY AND OWNER HAVE ENTERED THIS REGULATORY AGREEMENT AS OF THE EFFECTIVE DATE.

- 1. GENERAL.** This Regulatory Agreement, includes the Exhibits listed below which are attached to and incorporated in this Regulatory Agreement by this reference.
- 2. DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in the following table and in the body of the Regulatory Agreement as the context indicates.. (Terms being defined are indicated by quotation marks.)

TERM	DEFINITION
"Effective Date"	This Regulatory Agreement shall be effective as of the following date:
"Agency"	Redevelopment Agency of the City of Sacramento The Agency is a public body, corporate and politic.
"Owner"	Housing Authority of the City of Sacramento
"Agency Address"	Agency's business address is 801 12th Street, Sacramento, California 95814
"Owner Address"	Owner's business address is as follows: 801 12th Street, Sacramento, CA 95814
"Jurisdiction"	City of Sacramento

“Property”	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as Exhibit 1 – Legal Description of the Property and incorporated in this Regulatory Agreement by this reference		
“Funding Agreement”	The Funding Agreement between Agency and Owner as follows:	Titled:	Memorandum of Understanding for Morrison Creek Estates Property Transfer
		Dated:	
“Agency Funding”	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property		
“Agency Funding Amount”	The amount of the Agency Funding, as follows:		\$984,472
“Proportionate Agency Assistance”	The percentage of the Project cost, including without limitation, land, predevelopment and development costs, that is attributable to the Agency Funding. For rehabilitation projects, the percentage that the Agency Funding bears to the total of the fair market value of the Property before rehabilitation and the total costs of rehabilitation.		One Hundred (100%)
“Funding Requirements”	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in Exhibit 2 – Funding Requirements .		
“Approved Use”	The only permitted use of the Property, which is as residential property available for rent by the general public and containing not less than the following number of units:		16 Units

3. **RESTRICTED PARCELS; APPROVAL OF LEASES.** In order to assure that the proper number and types of units have been rented in accordance with this Regulatory Agreement, Owner is prohibited from leasing any Unit within the Project until either the parties have recorded against the Property a list of the Restricted Units or the Agency has approved the individual lease or lease form for the Restricted Units. The following numbers of Units are restricted for each respective funding source. The initial rents for the respective units shall be the following; provided, however, that upon the request of Owner, Owner and Agency may agree to a schedule for the Restricted Units that complies with the following affordability requirements as of the date when the Project is available for occupancy. In any event the rents for the respective units may be adjusted not more often than annually. The rents shall include allowance for utilities and costs reasonably related to the rental of the units, as may be required in determining the rents for the applicable funding sources. Only units indicated under Agency Funding Source are assisted by the Agency. Nevertheless, Owner shall assure the affordability of all of the following units at the named affordability levels.

Agency Funding Source:	Other Funding Source:	Affordability Level:	Number of Units:	Restricted Units:	Initial Rent per Unit per Month:
Tax Increment Housing Set-Aside Fund		Moderate Income	-16-	2 Bedroom	\$1,809.50 (less appropriate utility allowance)

4. **MANAGEMENT AGREEMENT.** Borrower shall obtain and maintain a property management agreement with a duly accredited real estate property management company for the management of the Property. Owner shall not change the management company without the prior written approval of the Agency. If Agency has approved an initial property manager for the Project, the company shall be listed immediately below. The term of such agreement shall be the longer of the term of the Funding Agreement or the longest term of the Funding Restrictions

Approved Management Company
John Stewart Management Company

5. SPECIAL PROVISIONS. Owner shall also comply with the following special provisions.

Provision	Term

6. REPRESENTATIONS. Agency has provided Agency Funding to Owner to develop the Property, subject to the terms of the Funding Agreement. This Regulatory Agreement is a substantial part of the consideration to Agency for making the Agency Funding. [For purposes of this Article II, "Property" shall mean Property or Restricted Unit as the context may indicate.] The funds used by Agency under the Funding Agreement are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made the Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. Therefore, Agency has made the Agency Funding conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

7. COVENANTS. Owner makes the following covenants. Unless Owner has received the prior written consent or Agency approval otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Funding Requirements.

- a. Owner shall use and permit others to use the Property only for the Approved Use.
- b. Owner shall assure full compliance with the Funding Requirements.
- c. Owner shall not transfer or encumber any of the Property or permit the conveyance, transfer, or encumbrance of the Property unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of this Regulatory Agreement.
- d. Owner shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Funding Agreement.
- e. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable housing quality standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible.
- f. Owner shall not cause and shall not permit discrimination on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.
- g. Owner shall assure compliance with the obligations imposed by the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act) as amended by California Welfare and Institutions Code Section 17851, which restrict the Agency funding of federal, state or local benefits to persons who are not citizens or qualified aliens as defined in such act.

8. NATURE OF COVENANTS. The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and

equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

9. **TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. Notwithstanding the term in the Funding Requirements, the term of this Regulatory Agreement shall be fifty-five (55) years from the Effective Date.

10. **REVIVAL OF COVENANTS AFTER FORECLOSURE.** The affordability restrictions shall be revived after foreclosure, or deed in lieu of foreclosure according to the original terms if, during the original term of this Regulatory Agreement, if the Owner, who was owner of record before the termination event, or a party related to the Owner obtains an ownership interest in the Property or Restricted Unit, as the case may be. For purposes of this provision, a related party is anyone with whom the Owner has or had family or business ties; provided that such interest would not be considered a "remote interest" in the usual and customary use of the term.

11. **MULTIPLE FUNDING REQUIREMENTS.** If more than one form of Funding Requirements is attached, each Restricted Unit shall be subject to the Funding Requirements for every Funding Source applied to the respective Restricted Unit. If the terms of the Funding Requirements shall conflict as to any Restricted Unit, the Funding Requirements shall be construed so as to meet all applicable requirements for the respective Restricted Unit, including without limitation the use of the most restrictive requirements and the use of the "Recapture" formula that results in the greatest repayment to the Agency.

12. **RECORDKEEPING AND REPORTING.** Upon request of Agency, Owner shall promptly provide any additional information or documentation requested in writing by the Agency to verify Owner's compliance with the provisions of this Regulatory Agreement. At the written request of the Agency, Owner shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operations, and condition of the property and the status of the Deeds of Trust.

13. **AUDIT AND INSPECTION.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related papers shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles. Owner shall provide Agency access to the Property and its tenants during reasonable hours for the purpose of reviewing Owner's compliance with this Regulatory Agreement.

14. **INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS.** Owner shall indemnify and hold Agency, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to comply with the covenants, conditions and restrictions contained in this Regulatory Agreement or to comply with all other laws, rules, regulations and restrictions related to the use of Agency Funding. Without limitation, such indemnity shall include repayment to the appropriate parties of rents or sales proceeds in excess of amounts authorized to be charged and repayment to the Agency of the costs of funds and the value of lost opportunities resulting from the required repayment by Agency to the funding source of funds improperly used.

15. **CHANGES WITHOUT CONSENT OF TENANTS, LESSEES, OR OTHERS.** Only Agency and its successors and assigns, and Owner (subject to the reasonable approval of Owner's lender in accordance with its rights under its loan terms) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Agreement without the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site.

16. DEFAULT. Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. If such violation is not corrected to the satisfaction of Agency within sixty (60) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, for money damages or for such other relief as may be appropriate, since the injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

17. BINDING SUCCESSORS IN INTEREST. This Regulatory Agreement shall bind and the benefits shall inure to the Owner, its successors in interest and assigns, and to the Agency and its successors for the term of this Regulatory Agreement.

18. CONTRADICTORY AGREEMENTS. Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory of or in opposition to, the provisions of this Regulatory Agreement, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict with this Regulatory Agreement.

19. ATTORNEYS' FEES. If the services of any attorney are required by any party to secure the performance of this Regulatory Agreement or otherwise upon the breach of default of another party, or if any judicial remedy or mediation is necessary to enforce or interpret any provision of this Regulatory Agreement or the rights and duties of any person in relation to this Regulatory Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of this Regulatory Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law. The prevailing party shall mean the party receiving an award in arbitration or a judgment in its favor, unless the award or judgment is less favorable than the best settlement offered in writing in a reasonable manner by the other party, in which case the prevailing party is the other party.

20. SEVERABILITY. The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions.

21. ELECTION OF REMEDIES. To the extent applicable, in the event of any breach of the covenants, conditions and restrictions contained in this Regulatory Agreement, the Agency shall reasonably endeavor to remedy such breach by conference and conciliation. If, in the opinion of Agency, the Agency and Owner are unable mutually to agree upon a suitable remedy or the circumstances so warrant, such breach may be enjoined or abated by appropriate proceedings brought by the Agency.

Agency may institute or prosecute in its own name, any suit Agency may consider advisable in order to compel performance of any obligation of any owner to develop and maintain the subject property in conformity with this Regulatory Agreement and to remedy any default of this Regulatory Agreement. Agency may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for uses not permitted under this Regulatory Agreement and which improvements are unsuitable only for uses not permitted under this Regulatory Agreement.

The remedies of the Agency under this Regulatory Agreement are cumulative, and the exercise of one or more of such remedies, including, without limitation, remedies under the Funding Agreement shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

22. **NO WAIVER.** No waiver by the Agency of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default.

23. **NOTICES.** Written notices and other written communications by and between the parties shall be addressed to the Owner at the Owner Address and to the Agency at the Agency Address or such other address as each respective party has designated by written notice to the other party.

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

OWNER : HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
LaShelle Dozier
Executive Director

By: _____
Lisa Bates
Deputy Executive Director

Date: _____

Date: _____

Approved as to form: _____
Agency Counsel

Approved as to form: _____
Agency Counsel

[NOTARIZED ACKNOWLEDGEMENTS]

EXHIBIT C
Notice of Affordability Covenants



**MASTER PROJECT AGREEMENT
MORRISON CREEK ESTATES**

BY AND BETWEEN

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

AND

THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

NOVEMBER __, 2010

MASTER PROJECT AGREEMENT MORRISON CREEK ESTATES

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO AND THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO, also called Agency and Housing Authority, respectively, enter into this Master Project Agreement, also called MPA, as of November __, 2010. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 13.

RECITALS

A. Agency is entering into this MPA because this MPA is consistent with and benefits the Project Areas contributing to the Franklin Boulevard Redevelopment Tax Increment Housing Set-Aside Fund ("Project Area"). Further, Housing Authority acknowledges that Housing Authority is purchasing the Property from Agency which exercises certain powers of 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 Plans and the "Implementation Plans" adopted for the Project Area in that it meets the following implementation plan goals: development of low to moderate income housing in the City. Although the Project is not located in any of the Project Areas, the Project will benefit the Project Areas in that workers in the Project Areas live in the area which includes the Project.

B. The primary purpose of this MPA is to improve and expand the Community's supply of housing. In order to accomplish such purpose, the MPA provides that Agency will fund Housing Authority's acquisition and rehabilitation of the Property upon the express condition that Housing Authority will redevelop the Property for the uses described in this MPA. This DDA is intended to assure that Housing Authority will redevelop the Property and operate the Property as affordable housing and that Housing Authority is not merely speculating in land.

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. **PROJECT PURPOSE.** Agency is entering into this MPA to delineate the responsibilities of Agency and Housing Authority with regard to the Morrison Creek Estates Project and effectuate the rehabilitation and operation of affordable housing for low and moderate income families by providing for the acquisition and rehabilitation of units within Morrison Creek Estates by Housing Authority.
2. **PURCHASE AND SALE.** No specific property or properties are transferred by this MPA. Agency agrees to fund Housing Authority's acquisition and rehabilitation of real property subject to the terms

and conditions of individual Acquisition, Construction and Permanent Loan Agreements (“Loan Agreement”).

3. **MAXIMUM FUNDING AVAILABLE.** Agency has Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars and No Cents (\$984,472.00) available for Housing Authority’s participation in the Morrison Creek Estates Program. This funding is the total funding available for Housing Authority’s acquisition and rehabilitation of the units.

4. **REHABILITATION OF UNITS.** Housing Authority shall rehabilitate each selected unit in accordance with: (1) the approved scope of rehabilitation and rehabilitation budget in the Loan Agreement; (2) all applicable federal, state, and local laws; and (3) the plans and specifications, if any, approved in writing by Agency. Any violations of the applicable building code, including illegal room additions and all health and safety concerns such as hazardous material and pest inspections, shall be remedied by the rehabilitation and the work necessary to remedy such conditions shall be included in the scope of rehabilitation and the rehabilitation budget. Housing Authority shall use reasonable, good faith efforts to incorporate rehabilitation work into the scope of rehabilitation for each unit that will increase the energy efficiency of the unit. Housing Authority shall obtain required building permits prior to commencing any rehabilitation work for which a permit is required.

4.1.1. **REHABILITATION STANDARDS.** Housing Authority agrees to build, rebuild or rehabilitate the units to Agency’s construction standards in effect at the time of Agency’s approval of the scope of rehabilitation and rehabilitation budget in the Loan Agreement.

4.1.2. Housing Authority is responsible for paying any and all rehabilitation costs incurred in connection with the rehabilitation of each unit pursuant to the Morrison Creek Estates Program, including costs for contractor and subcontractor profit and/or overhead and change orders. Housing Authority may obtain an individual loan from Agency for the approved Acquisition price and the Rehabilitation Budget plus a fifteen percent (15%) contingency. Repayment will be forgiven over a ten year time period if Housing Authority complies with the Regulatory Agreement recorded against the unit.

5. **AGENCY FUNDING.** Agency funding for acquisition and rehabilitation is available, subject to limitations and qualifications pursuant to this MPA and under a separate Loan Agreement for development of the Project as contemplated by this MPA. Agency shall provide Housing Authority with Agency Funding at zero percent interest sufficient to ensure the acquisition of the property and completion of the rehabilitation costs in Section 4 of this Agreement. Housing Authority shall enter into a Loan Agreement with Agency prior to Agency disbursing funds for rehabilitation of the Property. If Housing Authority fails to develop the Project as and when required by this MPA or the Loan Agreement, Housing Authority must repay the Agency Funding as provided in the Loan Agreement.

6. **REGULATORY AGREEMENT.** Housing Authority covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Property shall be maintained, sold and used strictly in accordance with the provisions of the Regulatory Agreement.

6.1. **NONDISCRIMINATION.** Housing Authority covenants by and for itself, its heirs, executors, administrators 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.

7. **PROPERTY MANAGEMENT.** Housing Authority shall be solely responsible for the maintenance and security of each unit from acquisition of the unit until the unit is rehabilitated and rented out to an eligible household. Housing Authority's maintenance obligations shall include (without limitation) keeping each unit free of debris, weeds, graffiti, vermin, vagrants, squatters, and other nuisance conditions. In addition, Housing Authority shall secure each unit to ensure that squatters and the public are unable to enter the unit or obtain access to the back yard or other non-public areas of the unit. Housing Authority shall be solely responsible for all costs incurred to maintain and secure each unit. In no event shall the Agency be liable for any such costs, nor shall Agency be required to reimburse Housing Authority for any such costs incurred to maintain or secure any unit.

8. **DEVELOPMENT PROVISIONS.** As stated in detail in this Section 8, Housing Authority shall construct and manage the Project according to the requirements established in this MPA, which includes, without limitation, the individual Loan Agreement, the Scope of Development, Agency's construction standards, the Schedule of Performances and the Plans, if any. Housing Authority shall promptly begin, diligently prosecute and timely complete the construction of the Project.

8.1. **CONSTRUCTION CONTRACTS.** Housing Authority 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 MPA.

8.1.1. In order to assure the availability of the affordable housing, Housing Authority shall use only licensed contractors, including a licensed general contractor. Housing Authority 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. Housing Authority shall assure that all necessary steps are taken to protect contractors and their employees and the public from the risk of injury arising out of the condition of the Property or Housing Authority's activities in connection with the Property.

8.2. **LOCAL, STATE AND FEDERAL LAWS.** The Housing Authority 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. Housing Authority 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 before commencement of construction or development of any buildings, structures or other work of improvement upon the Property for which such certifications and permits are required. Housing Authority 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.

8.3. **PREVAILING WAGES.** In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Agency's Low and Moderate Income Housing Fund as such terms are defined therein, the Project is not subject to prevailing wages. Housing Authority represents to the Agency that Housing Authority has obtained no other public subsidy for the Project.

8.4. **PUBLIC SAFETY PROTECTIONS.** Housing Authority 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 Housing Authority's activities in connection with the Property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

8.5. NO DISCRIMINATION DURING CONSTRUCTION. Housing Authority 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.

8.5.1. EMPLOYMENT. Housing Authority 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. Housing Authority 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. Housing Authority agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Agency setting forth the provisions of this nondiscrimination clause.

8.5.2. ADVERTISING. Housing Authority will, in all solicitations or advertisements for employees placed by or on behalf of the Housing Authority, 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.

8.5.3. MONITORING PROVISIONS. Housing Authority, Contractor and subcontractors shall comply with the requirements of Agency for monitoring the anti-discrimination and all applicable labor requirements.

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

8.7. RELOCATION. Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Housing Authority shall comply fully with all relocation laws that are the obligation of Agency or are otherwise applicable to the Project. Housing Authority's compliance with the relocation requirements as stated in this Section 8.7 is a material element of this MPA. Housing Authority's failure to comply with the relocation requirements as stated in this Section 8.7 is an Event of Default, subject to Housing Authority's opportunity to cure in accordance with applicable law.

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

8.7.2. COOPERATION AND ACCESS. Housing Authority shall cooperate fully with Agency in complying with such relocation laws, including without limitation, providing Agency access to all

tenants of the Property, to all books and records related to the tenants of the Property and to all properties offered for temporary or permanent relocation. Prior to taking any action with respect to relocation of tenants, Housing Authority shall meet with Agency to establish reasonable protections for tenants and related reporting requirements for Housing Authority.

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

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

9.1.1. AGENCY'S REPRESENTATIONS AND WARRANTIES. Agency represents and warrants to Housing Authority that

a) This MPA and all other related documents 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.

9.1.2. HOUSING AUTHORITY'S REPRESENTATIONS AND WARRANTIES. Housing Authority, for itself and its principals, represents and warrants to Agency that as of the date of this MPA and until the termination of this Agreement:

a) Housing Authority has the financial capacity, the equity and the financing necessary to fulfill its obligations under this MPA. Housing Authority represents that any equity and funding commitments represented by Housing Authority to Agency as available to the Project are unencumbered and that Housing Authority 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.

b) This MPA and all other related documents have been duly authorized, executed, and delivered by Housing Authority; are binding obligations of Housing Authority; and do not violate the provisions of any agreements to which Housing Authority is a party.

9.1.3. COVENANTS. Commencing with the full execution of this MPA by both parties and until the termination of this Agreement:

a) Housing Authority 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.

10. INDEMNIFICATION. Housing Authority 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 Housing Authority, 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 Housing Authority 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 Housing Authority 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 Housing Authority.

This indemnification provision shall survive the termination of this Agreement.

10. LIABILITY INSURANCE. With regard to this MPA, Housing Authority shall obtain and maintain for the life of the MPA, and require the Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of Housing Authority, 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 Housing Authority, 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 Housing Authority's obligations under this MPA.

10.1. LIABILITY INSURANCE POLICY LIMITS. Housing Authority shall obtain all insurance under this Section 10 written with a deductible of not more than FIFTY THOUSAND DOLLARS (\$50,000) or an amount approved by Agency, and for limits of liability which shall not be less than the following:

10.2. WORKER'S COMPENSATION. Housing Authority shall obtain and maintain worker's compensation coverage shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than \$2,000,000, or statutory limits, whichever are greater.

10.3. COMMERCIAL GENERAL LIABILITY. Housing Authority 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; \$2,000,000 general aggregate limit, and \$2,000,000 products and completed operations aggregate limit, all per location of the Project.

10.4. COMPREHENSIVE AUTOMOBILE LIABILITY. Housing Authority 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 each individual Loan Agreement, Housing Authority 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 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, Housing Authority 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 MPA 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. Housing Authority 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. Housing Authority shall not provide insurance coverages that are considered in aggregate with other Projects which Housing Authority or its Contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Housing Authority 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, Housing Authority 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. Housing Authority shall provide Agency with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Housing Authority 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 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 Housing Authority fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this MPA, Agency shall have the right to purchase the insurance on Housing Authority's behalf, and Housing Authority shall promptly reimburse the full cost of such insurance to Agency. If Housing Authority 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. Housing Authority'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 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 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 MPA, if either party defaults in its obligations under this MPA, 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 MPA, a failure or delay by a party to perform any term or provision of this MPA constitutes a default of this MPA.

11.1. FAILURE TO PERFORM. Failure to perform pursuant to the terms and conditions of the Loan Agreement is an event of default under this MPA.

11.2. 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 MPA as allowed under this MPA, at law or in equity.

11.3. NONLIABILITY OF OFFICIALS AND EMPLOYEES. No member, official or employee of either party shall be personally liable under this MPA to the other party, or any successor in interest, in the event of any default or breach by that party or for any amount which may become due to the other party or its successors, or on any obligations under the terms of this MPA.

11.4. 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.

11.5. 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 MPA is in full force and effect and a binding obligation of the parties; (ii) this MPA 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 MPA, 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. Agency's designee shall be authorized to execute any such certificate requested by Housing Authority from Agency.

12. DOCUMENT INTERPRETATION. This MPA shall be interpreted in accordance with the following rules.

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

12.2. MPA AS CONTROLLING DOCUMENT. This MPA is the controlling document between Agency and Housing Authority regarding Housing Authority's participation in the Morrison Creek Estates Program.

12.3. WAIVERS AND AMENDMENTS. All waivers of the provisions of this MPA must be in writing and signed by Agency or Housing Authority, as applicable, and all amendments to this MPA must be in writing and signed by Agency and Housing Authority. 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 Housing Authority under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Housing Authority under this Section or with respect to the particular default except to the extent specifically waived in writing.

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

12.5. DRAFTER. This MPA 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 MPA. All exhibits referred to in this MPA are attached to it and incorporated in it by this reference.

12.6. TIME FOR PERFORMANCE. In determining time for performance, it shall be construed that Agency and Housing Authority shall each do the actions required of them, promptly and when

specified in this MPA, 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.

12.7. GOVERNING LAW. This MPA shall be governed and construed in accordance with California law.

12.8. NO THIRD PARTIES BENEFITED. This MPA 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 any property, benefits or funds at any time on deposit in the Construction Account or the Impound Account, if established.

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

12.9.1. Addresses for notices are as follows:

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

b) Housing Authority, c/o Nick Chhotu, 801 12th Street, Sacramento, California Sacramento, CA 95814.

12.9.2. 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 Housing Authority or Agency may respectively designate by written notice to the other.

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

13. DEFINITIONS. The following definitions shall apply for the purposes of this MPA:

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

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

13.3. "Contractor" is the contractor or contractors with whom Housing Authority has contracted for the construction of the Project.

13.4. "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.

13.5. "County" is the County of Sacramento in the State of California

13.6. "Loan Agreement" means Acquisition, Construction and Permanent Loan Agreement between Agency and Housing Authority for the acquisition, rehabilitation and operation of a unit in Morrison Creek Estates. Each Loan Agreement shall include the contents of the template Loan Agreement, as the same may be amended to meet the requirements of applicable law, or as may otherwise be agreed by the parties. A template of the Loan Agreement is attached as **Exhibit 1: Loan Agreement**.

13.7. "Eligible Households" means one or more persons or family(ies) of low income earning not greater than eighty percent (80%) of the median income in Sacramento County (as determined by the United States Department of Housing and Urban Development) .

13.8. "Hazardous Substances" as used in this MPA 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.

13.9. "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 MPA or otherwise approved by Agency in writing.

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

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

13.12. "Property" is the real property to be redeveloped under this MPA by Housing Authority within the Morrison Creek Estates development. The Property includes all improvements contained within the Property.

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

13.14. "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**.

13.15. "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 MPA in Sacramento, California, on the following dates, effective as of the date first written above.

HOUSING AUTHORITY :
THE HOUSING AUTHORITY OF THE CITY OF
SACRAMENTO

AGENCY: THE REDEVELOPMENT AGENCY
OF THE CITY OF SACRAMENTO

By: _____
LaShelle Dozier, Executive Director

By: _____
Lisa Bates, Deputy Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Agency Counsel

Agency Counsel

[NOTARIZED ACKNOWLEDGEMENTS]

EXHIBIT 1
Loan Agreement

ACQUISITION, CONSTRUCTION AND PERMANENT LOAN AGREEMENT
MORRISON CREEK ESTATES

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

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

"EFFECTIVE DATE"	Being the date as of which this Loan Agreement shall be effective.	
"LENDER"	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	801 12th Street, Sacramento CA 95814	
"BORROWER"	The borrower of the Loan funds whose name, legal status and address are:	
Name	Housing Authority of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	801 12th Street, Sacramento, CA 95814	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of	N/A
"LOAN PROGRAM"	Lender's Loan Program, commonly known as	Tax Increment Housing Set-Aside Fund
"LOAN AMOUNT"		
"INTEREST RATE"	The interest rate is 0% per year, simple interest.	
"PAYMENT START DATE"	The payment shall be in lump sum on the Maturity Date.	
"Maturity Date"	The first day of the 120th calendar month following the Effective Date.	
"PAYMENT SCHEDULE"	<p>The unpaid balance of the Note is due and payable on the Maturity Date, including without limitation all unpaid principal, interest, fees and charges.</p> <p>At completion of construction, Borrower shall submit to Lender a cost certification prepared by a qualified, independent auditor acceptable to Lender, which cost certification shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original Budget approved by the Lender, the loan balance and the retention amount held by the Lender shall each be reduced by half such amount. The Lender, in its sole discretion, shall determine any reduction and/or repayment of the Loan based upon this cost certification and the original approved Budget for the Project.</p>	
"Borrower Equity"	N/A	Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Borrower is investing in the Project.
	N/A	Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees).
"SPECIAL TERMS"	The Loan shall be forgiven in equal installments annually over a 10 year term provided that no default on the part of Borrower has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement, the MPA, or the Regulatory Agreement at the time the installment is forgiven.	

"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	The acquisition and rehabilitation of a unit within Morrison Creek Estates by the Housing Authority for the purposes of operating the unit as decent and sanitary affordable rental housing
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B. "COLLATERAL" The Collateral securing repayment of the Loan, which Collateral consists of the following:

"PROPERTY"	The following described real property, which is security for the Loan and the site of the Project:	
Address		
Assessor's Parcel Number		
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in Exhibit 1: Legal Description attached and incorporated by reference.	
Borrower's Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.	
"ADDITIONAL COLLATERAL"	The Additional Collateral securing repayment of the Loan is any additional security required by Lender under this Loan Agreement, including without limitation the following items, if any	
"PERSONAL PROPERTY"	Borrower's interest in the following personal property, tangible and intangible, and all other such property listed as security in this Loan Agreement:	Materials and supplies for the Project
OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	None

C. "ESCROW INFORMATION":

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

D. "List of Exhibits" (THE FOLLOWING ARE ATTACHED AND INCORPORATED IN THIS LOAN AGREEMENT):

EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Scope of Development</u>	"Scope of Development"
<u>Exhibit 3: Note Form</u>	"Note"
<u>Exhibit 4: Trust Deed Form</u>	"Trust Deed"
<u>Exhibit 5: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 6: Escrow Instructions</u>	"Escrow Instructions"

E. "Approval Documents" BORROWER SHALL SUBMIT THE FOLLOWING DOCUMENTS FOR LENDER APPROVAL:

Construction Agreements for the Project
"Budget" for the Project
Plans and Specifications as defined in this Loan Agreement
Relocation Plan

F. "Assigned Documents" BORROWER SHALL ASSIGN THE FOLLOWING DOCUMENTS TO LENDER:

Construction Contract

G. "Construction Information":			
"Completion Date"		Which is the date on or before which the Completion of the Project must occur.	
"General Contractor"		Which is the general contractor for construction of the Project.	
"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursement:	TEN Percent (10%)
		Percentage of Loan:	TEN Percent (10%)

H. "SPECIAL PROVISIONS" THE FOLLOWING SPECIAL PROVISIONS SHALL BE IN ADDITION TO THE PROVISIONS OF THIS LOAN AGREEMENT:

1. This Loan is made pursuant to the Master Project Agreement between the Parties, entered into on ____, 2010 ("MPA"). This Loan Agreement is subject to the MPA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.
2. Loan funds shall be used solely for actual costs of Property acquisition and for Project construction. No Loan funds shall be used for predevelopment costs, except as provided in an approved Lender budget. Unless otherwise noted in the budget, predevelopment costs are not subject to withholding as Retention.
3. John Stewart Company is approved by the Lender as "Property Manager" for the Property and Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2. **CONDITIONS TO LENDER'S PERFORMANCE.** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to

this Loan Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow; (d) the Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and (e) Lender has approved the Approval Documents.

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

7. RELOCATION. Lender is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Borrower's compliance with the relocation requirements as stated in this Section 8.7 is a material element of this Loan. Borrower's failure to comply with the relocation requirements as stated in this Section 8.7 is an Event of Default, subject to Borrower's opportunity to cure in accordance with applicable law.

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

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

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

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

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

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

contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

8.3. NO DISCRIMINATION DURING CONSTRUCTION. Borrower 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.

8.3.1. EMPLOYMENT. Borrower 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. Borrower 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. Borrower 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.

8.3.2. ADVERTISING. Borrower will, in all solicitations or advertisements for employees placed by or on behalf of the Borrower, 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.

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

8.4. INSPECTION. Lender may, at any time and without notice to Borrower, enter on the Property and inspect the Project; and, during regular business hours, examine the books, records, accounting data, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Project and to make extracts or copies. Borrower shall make all such documents available to Lender promptly on demand. Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Lender and its Lender's designated agent and to permit all appropriate access to the Property and to all relevant books and records. Borrower shall bear the cost of reasonable inspections, except that Lender shall bear its costs of inspection. If however, Lender's inspection discovers issues of a nature that require further third-party review or investigation, Borrower shall bear the costs of such third party review.

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

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

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

8.6. SECURITY INSTRUMENTS. Upon request by Lender and subject to the security interests of lender whose loan is secured by the Property and senior to Lender's security interest in the Property, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower

irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

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

8.8. PREVAILING WAGES. In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Lender's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Borrower represents to the Lender that Borrower has obtained no other public subsidy for the Project. If Borrower obtains other public subsidy, Borrower shall pay prevailing wages for the Project. Therefore, Borrower indemnifies, holds harmless and defends the Lender from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Borrower or General Contractor or both of them.

9. LOAN DISBURSEMENT PROCEDURES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. That the Project has been duly completed in a good and proper manner using sound, new materials;
- b. That the Project complies with the Plans and Specifications, the requirements of all Governmental Authorities and any other party having enforceable rights regarding the construction of the Project; and
- c. That the Project is structurally sound.

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

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

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

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

- a. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;
- b. Borrower has obtained final certificates of occupancy for all of the Project;
- c. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and
- d. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

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

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

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

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

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

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

10. RESIDENTIAL OPERATIONS.

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

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

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

11. DEFAULT.

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

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

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

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

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

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

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

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

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

12. REMEDIES.

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

12.1.1. Terminate its obligation to make disbursements.

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

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

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

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

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

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

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

Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

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

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

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

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

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

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

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

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

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

Borrower shall immediately inform Lender of the change in or addition to any such projects. Nevertheless, Lender may, at any time require that the insurance coverage be provided solely for the Project.

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

a) **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Lender has been given written notice of such intended action at least thirty (30) days prior to its effective date. In the alternative to such endorsement, Borrower will provide the Agency with the cancellation clause and/or any amendatory endorsements that modify or change the policy cancellation clause of the insurance policies in force. It is the Contractor's responsibility to notify the Agency of any notice of cancellation, non-renewal or non-payment of premium in accordance with your policy provisions. In the event insurance is cancelled or not renewed, the Contractor shall notify the Agency within forty eight (48) hours of such cancellation or non-renewal.

_____**Borrower's Initials**

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

13.8. **BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 16 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Lender shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 10 with respect to such insurance shall otherwise be satisfied by such blanket policy.

14. MISCELLANEOUS.

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

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

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

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

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

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

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

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

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

14.8. NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between 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 lender and a borrower.

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

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

- a. Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;
- b. A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;
- c. Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or
- d. Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission

report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Borrower or Lender may respectively designate by written notice to the other.

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

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

14.11. **SIGNS.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project, which sign shall remain for the duration of construction. If Borrower places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and Redevelopment Agency" as a participant in the Project. Lender's name on the sign shall be in letters not less than size of letters used to name any of the other participants.

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

14.13. **ACCELERATION ON TRANSFER OR REFINANCING OF THE PROPERTY; ASSUMPTION.** Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold, transferred or conveyed to any person, or refinanced by Borrower such that additional debt is added to the property or the cash flows change without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note

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

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

damages, losses, or expenses (including attorney fees and expenses) incurred by Lender as a result of any legal action arising out of the use of the proceeds of the Loan. The provisions of this Section will survive the termination of this Loan Agreement and the repayment of the Loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

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

BORROWER :
HOUSING AUTHORITY OF THE CITY OF
SACRAMENTO

LENDER:
REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO

By: _____
LaShelle Dozier
Executive Director

By: _____
Lisa Bates
Deputy Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Borrower Counsel

Lender Counsel

EXHIBIT 2

Schedule of Performances

Each individual property is to be rehabilitated and rented out to an income eligible family within one year of the purchase of the property by the Housing Authority. The specific Schedule of Performances for each property shall be attached to and incorporated in each individual property Loan Agreement.

EXHIBIT 3

Scope of Development

New construction and rehabilitation must meet or exceed all applicable code and permit requirements and to a good and attractive condition that is at the highest level available in the adjacent neighborhood. As a minimum, Housing Quality Standards (HQS) are required. Additionally, the Housing Authority must complete the scope of work checklist which identifies various green building components. Housing Authority will incorporate modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

Housing Authority agrees to rebuild or rehabilitate the units to the Agency's construction standards in effect at the time of Agency's approval of the scope of rehabilitation and rehabilitation budget in the Loan Agreement.

RESOLUTION NO. 2010

Adopted by the Housing Authority of the City of Sacramento

on date of



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**MORRISON CREEK ESTATES PROJECT AREA:
APPROVAL OF A MEMORANDUM OF UNDERSTANDING, A MASTER PROJECT
AGREEMENT; ACCEPTANCE OF A LOAN OF UP TO \$984,472 OF FRANKLIN
BOULEVARD REDEVELOPMENT TAX INCREMENT FUNDS; AUTHORIZING
ACQUISITION OF PROPERTY IN MORRISON CREEK ESTATES FOR JUST
COMPENSATION; AND RELATED BUDGET AMENDMENT**

BACKGROUND

- A. On October 21, 2008, the Sacramento City Council approved a substantial amendment to the 2008 – 2012 Consolidated Plan containing the Neighborhood Stabilization Plan (NSP) (Resolution – 2008-691).
- B. On February 24, 2009, the City Council approved Amendments to the 2009 One-Year Action Plan containing the implementation guidelines for the NSP, to include the allocation of \$4,000,000 of NSP Funds for the implementation of the Block Acquisition and Rehabilitation Strategy for Morrison Creek Estates (Resolution -2008-114).
- C. On March 9, 2010, the Sacramento City Council approved mid year amendments to the 2010 One-Year Action Plan which included reallocation of \$3,500,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program (Resolution – 2010-129).
- D. The Redevelopment Agency of the City of Sacramento (Agency) approved amending the budget to allocate \$1,500,000 of Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Morrison Creek Estates Project to purchase and rehabilitate vacant and foreclosed properties.
- E. On August 24, 2010, the Sacramento City Council approved the reallocation of \$270,000 from NSP Block Program – Morrison Creek Estates Project to the NSP Property Recycling Program and the NSP Vacant Property Program.
- F. The Agency has purchased 13 properties located within the Morrison Creek Estate Project with Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds for the purpose of rehabilitation and long-term rental for affordable housing that will be managed by the Housing Authority of the City of Sacramento. Additionally, the Agency is in escrow for three additional properties, bringing the total of properties to 16 in the Morrison Creek Estates Project Area

additional properties, bringing the total of properties to 16 in the Morrison Creek Estates Project Area.

- G. A report under Health and Safety Code has been prepared, filed with the Agency Clerk and duly made available for public review and proper notice having been given, a hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433. The Agency is further authorized to transfer these properties to the Housing Authority pursuant to Health and Safety Code Section 33442.

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

- Section 1. The proposed action is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301(d) and 15310.
- Section 2. The statements and findings of the 33433 Report are true and correct and are hereby adopted. The Project will assist in the preservation and improvement of affordable housing as provided in the 33433 Report and will benefit residents in the Morrison Creek Estates Area (Morrison Creek) and the adjacent Franklin Boulevard Redevelopment Project Area.
- Section 3. The Executive Director is authorized to execute a Memorandum of Understanding (MOU) attached hereto as Exhibit A, which would convey fee interest in the Agency-owned properties located within Morrison Creek to the Housing Authority of the City of Sacramento (Housing Authority), as more specifically described in the MOU, and which would require the improvements to Properties, as further described in the MOU.
- Section 4. The Properties to be conveyed from the Redevelopment Agency to the Housing Authority pursuant to the execution of the MOU are located in Morrison Creek Estates. Conveyance of the following properties is approved:
- 66 La Fresa Ct #4 (049 0282 005 0004); 17 La Fresa Ct #2 (049 0281 024 0002); 7456 Franklin Blvd #2 (049 0281 019 0002); 7408 Franklin Blvd #3 (049 0281 013 0003); 4359 Shining Star Dr 1 (049 0283 005 0001); 1 La Fresa Ct #3 (049-0281-022-0003); 58 La Fresa Ct #3 (049-0282-006-0003); 7400 Franklin #4 (049-0281-012-0004); 4367 Shining Star #4 (049-0283-004-0004); 73 La Fresa #2 (049-0281-031-0002); 4351 Shining Star #4 (049-0283-006-0004); 7448 Franklin Blvd. #4 (049-0281-018-0004); 33 La Fresa Ct #3 (049-0281-026-0003); 7440 Franklin Blvd. #4 (049-0281-017-0004); 9 La Fresa Ct #2 (049-0281-023-0002); 34 La Fresa Ct #2 (049-0281-023-0002).
- Section 5. The Executive Director is authorized to amend the Agency budget to allocate up to Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars (\$984,472) in Franklin Boulevard Redevelopment Project Area Low/Mod Housing Funds to the Project.

- Section 7. Subject to the satisfaction of conditions in the MPA, the Executive Director, or designee, is authorized to execute any and all documents required for the making of the loan, (including without limitation the documents necessary for the use of the allocated funds and the documents necessary to make and reasonably administer the loan); provided, however, that the loan shall be made on the terms set out in the MPA. Agency Counsel shall prepare the Loan documents on standard agency loan document forms kept on file with the Agency Clerk. As stated in the MPA, the loan shall be up to Nine Hundred Eighty-Four Thousand Four Hundred Seventy-Two Dollars and No-Cents (\$984,472).
- Section 8. The Executive Director, or designee, is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of this resolution, the MOU and the MPA, in accordance with their respective terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions and restructuring of such a loan.
- Section 9. The Executive Director, or designee, is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the MPA and MOU, with Agency policy, with this resolution and with good legal practices for making of such a loan.