



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
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Meeting Date: 5/1/2012

Report Type: Consent

Title: Agreements: Township 9 Amended Assignment & Assumption, Loan Commitment, and Density Bonus

Report ID: 2012-00373

Location: District 3

Recommendation: Pass a Motion approving the Amended and Restated Assignment and Assumption and Loan Commitment Agreements for the Proposition 1C Infill Infrastructure Program Grants for the Township 9 Project; and 2) approving the Density Bonus Housing Agreement for the Township 9 affordable housing project.

Contact: Rachel Hazlewood, (916) 808-8645, Senior Project Manager, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Downtown Development

Dept ID:

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Amend & Restated Assign Agreement
- 4-Loan Commitment Letter - Parking Garage
- 5-Density Bonus Agreement T-9 Housing

City Attorney Review

Approved as to Form
Sheryl Patterson
4/20/2012 2:33:30 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
4/17/2012 8:42:20 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 4/17/2012 4:03:53 PM



Description/Analysis

Issue: This staff report recommends approval of three agreements for the Township 9 project: 1) an Amended and Restated Assignment and Assumption Agreement for Proposition 1C Infill Infrastructure Program grants (Proposition 1C Grants); 2) a Loan Commitment for the Proposition 1C Grants; and 3) the Township 9 Density Bonus Housing Agreement for Residential Rental Property.

The City has assigned the two Proposition 1C Grants it received for the Township 9 project to its master developer, Capitol Station 65, LLC (Master Developer), in two previously approved assignment agreements. In order to consolidate these two agreements for ease of reference and consistent terminology, the Amended and Restated Assignment and Assumption Agreement Proposition 1C Infill Infrastructure Program Grants (Exhibit A) for the Township 9 Project has been prepared. There are no substantive changes in this restated assignment agreement.

The Proposition 1C Grants require the development of an affordable housing project and the Master Developer has selected T9 Affordable Housing Associates, LLC as their housing developer (Housing Developer). A portion of the Proposition 1C Grant funds has been allocated to construct a parking garage to serve this housing project, which was originally estimated to cost \$7.2 million. The cost of the garage has been reduced with the redesign of the project. The attached Loan Commitment (Exhibit B) would provide \$6.2 million of Proposition 1C Grant funds for the garage's construction. Additionally, the Loan Commitment would rescind the earlier adopted resolution that identified another company as the developer of the affordable housing project and make the commitment to the new Housing Developer.

The affordable housing project also received certain variations from the Zoning Code requirements under the State's density bonus law. This Density Bonus Agreement (Exhibit C) allows the Housing Developer to exceed the zoning code for the maximum number of units allowed by 42 additional units and receive variances in development standards. These variations would be given to the Housing Developer in consideration for the rent restriction on 179 units to low, very low and extremely low income households, levels consistent with the Proposition 1C Grants' requirements. This agreement would be executed through escrow at the time the property is transferred and the loans close, and recorded to ensure that it is binding on all owners of the property for the 30 year term.

Policy Considerations: The recommendation is consistent with the City Council direction and actions regarding the Proposition 1C grant applications received for the Township 9 project on March 18, 2008 (Resolution No. 2008-164) and on March 10, 2009 (Resolution No. 2009-147). The recommendation is also consistent with the City's Smart Growth Principles, the River District Specific Plan, the 2002 Infill Strategy and the transit-supportive housing policies in the 2030 General Plan.

Environmental Considerations: The environmental impacts of construction of the infrastructure improvements, the affordable housing project, and the market-rate housing, which are the subject matters of the agreements referenced in this report, were included in the Township 9 Project Environmental Impact Report (EIR), which was certified on August 28, 2007 (Resolution No. 2007-641). There have been no project changes or new information of substantial importance which would require reevaluation of the EIR for compliance with CEQA to support the proposed actions.

Sustainability: The improvements to be funded with the Proposition 1C Grants have been reviewed for consistency with the goals, policies and targets of the City's Sustainability Master Plan and the 2030 General Plan. The improvements comply with many of the goals, in particular Goal Number Six - Urban Design, Land Use, Green Building and Transportation specifically by reducing dependence on the private automobile by providing efficient and accessible public transit and transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy city.

Commission/Committee Action: N/A

Rationale for Recommendation: The Township 9 project is a major infill and transit-oriented development project, with 179 units of housing to be built for low and very low income households per the requirements of the Proposition 1C Grants. The Township 9 project is expected to promote increased transit ridership in Sacramento, with the new light rail station located at Township 9 scheduled to open by summer 2012. The Proposition 1C Grants fund a portion of the infrastructure needed for the housing development, the light rail station on Richards Boulevard, Riverfront Park, the North 7th Street Parkway and the parking garage for the affordable housing project.

Financial Considerations: The Loan Commitment approves the allocation of \$6.2 million in Proposition 1C grant funds for the parking garage serving the affordable housing project. No other new financial impacts are anticipated from these actions.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

BACKGROUND

In 2008 and 2009, the City of Sacramento was awarded a total of \$30 million in Proposition 1C Infill Infrastructure Grants from the California Department of Housing and Community Development (HCD) for the Township 9 project under two separate grants. The HCD grants are providing funds for project infrastructure, parks and a parking garage. The Proposition 1C grants require awardees to construct housing affordable to low, very low and extremely low income residents.

The first Proposition 1C grant was for a total of \$19.1 million. On March 16, 2010 the City Council approved an Assignment and Assumption Agreement (Agreement 2010-0210) assigning its rights and obligations under the first Proposition 1C grant to the Township 9 Master Developer, Capitol Station 65, LLC (Master Developer).

The second Proposition 1C grant in the amount of \$10.9 million was assigned to the Master Developer on September 6, 2011 under the First Amendment to the Assignment and Assumption Agreement. Under both grants, the Master Developer is undertaking construction of street and utility improvements, a parking garage and two parks. Funding for the parking garage was not assigned to the Master Developer because the garage would be constructed by the affordable housing developer.

In order to consolidate these two agreements for ease of reference and consistent terminology, the Amended and Restated Assignment and Assumption Agreement Proposition 1C Infill Infrastructure Program Grants for the Township 9 Project has been prepared. There are no substantive changes in this restated assignment agreement.

The Loan Commitment for the garage was approved on September 6, 2011 with a prior affordable housing developer. This Loan Commitment was never executed, in part because of the high cost of the underground parking structure. The project has since been redesigned by a new affordable housing developer to lower the costs for the garage from \$7.2 million to \$6.2 million, and the cost of the housing has also been reduced through the redesign. T9 Affordable Housing Associates, LLC (Housing Developer) is ready to undertake that development project and a new Loan Commitment is being submitted for approval. A separate staff report by the Sacramento Housing and Redevelopment Agency (SHRA) will provide funding for the housing construction, which is schedule for Council consideration on May 8, 2012.

Also included for Council approval is the Township 9 Density Bonus Housing Agreement for Residential Rental Property. The provision of density bonuses and variations in development standards is allowed by State law in Government Code Section 65915 and is permitted by the City zoning code, Chapter 17.18 if the developer agrees to restrict the rents to affordable levels for 30 years. The affordable housing

project is a 180 unit apartment building. This agreement allows the Housing Developer to exceed the zoning code for the maximum number of units allowed by 42 additional units in consideration for the rent restriction for 179 units to low, very low and extremely low income households. Additionally, it allows for variations in stepbacks, height and private outdoor space standards, which have been approved by the City Planning Director.



**AMENDED AND RESTATED ASSIGNMENT AND ASSUMPTION AGREEMENT
PROPOSITION 1C INFILL INFRASTRUCTURE PROGRAM GRANTS
FOR THE TOWNSHIP 9 PROJECT**

THIS AMENDED AND RESTATED ASSIGNMENT AND ASSUMPTION AGREEMENT ("Restated Assignment Agreement" or "Agreement") is made and entered into as of this _____ day of _____, 2012 ("Commencement Date") by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and CAPITOL STATION 65 LLC, a limited liability company (hereinafter the DEVELOPER"). CITY and DEVELOPER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

This Restated Assignment Agreement is entered into upon the basis of the following facts, understandings, and intentions of the CITY and DEVELOPER:

A. **Project Site.** The Township 9 project is located on 65 acres of land which lie north of Richards Boulevard between North 5th and North 7th Streets in the River District area of the City of Sacramento (the "Project Site"). DEVELOPER owns the land encompassing the Project Site, referred to as Assessor Parcel Numbers 001-0020-003, -019, -034, -036, -041, -044, -045, -046, and 001-0200-012, -013 and -034 (the "Property").

B. **Development Project.** On August 28, 2007, the City Council approved certain entitlements for development of 2,350 housing units, 839,628 square feet of office, 147,000 square feet of retail, 5,389 off-street parking spaces and 27 acres of parks and open space at the Project Site based on the development scenario B that was evaluated in the environmental impact report (the "Development Project"). By Resolution No. 2007-643 and Ordinance No. 2007-071, the City Council approved the Township 9 Planned Unit Development ("PUD") Schematic Plan and PUD Design Guidelines (collectively "PUD Plan and Guidelines") to specify the development standards and design requirements for the Development Project, and rezoned the Property consistent with the PUD Schematic Plan.

C. **Tentative Map.** On August 28, 2007, by Resolution No 2007-644, the City Council approved the tentative map to authorize subdivision of the 65 acre Project Site into 36 parcels, to require the construction of infrastructure improvements which are needed for the Development Project, and to impose certain requirements before a final map for a parcel can be recorded ("Tentative Map"). The requirements include compliance with the entitlements, PUD Plan and Guidelines and CEQA Mitigation.

D. **Environmental Mitigation.** On August 28, 2007, by Resolution No. 2007-641, the City Council certified the environmental impact report ("EIR"). As part of the

EIR certification, the City Council adopted mitigation measures and approved a mitigation monitoring plan for the Development Project (collectively “CEQA Mitigation”).

E. **Development Agreement.** On August 28, 2007, by Ordinance No. 2007-069, CITY and DEVELOPER entered into a contract (Agreement No. 2007-1081, the Development Agreement”) to vest certain rights of DEVELOPER and to impose certain obligations in regards to the Development Project. The Development Agreement was amended (“First Amendment”) on September 3, 2008 to include and clarify termination and lender notice and cure rights (Agreement No. 2007-1081-1). The Development Agreement was amended (“Second Amendment”) on September 1, 2010, to provide for DEVELOPER to maintain the stormwater vaults to the manufacturer’s specifications until CITY’s acceptance of those improvements (Agreement No. 2007-1081-2). On February 23, 2012, by Ordinance No. 2012-002, the Development Agreement was further amended (“Third Amendment”) to address phasing and construction of the parks within the Development Project (Agreement No. 2007-1081-3).

F. **Proposition 1C Grants.** CITY has been awarded two grants for the Development Project by the State Department of Housing and Community Development (“HCD”) under Proposition 1C, the Housing and Emergency Shelter Act of 2006, pursuant to the Infill Infrastructure Grant Program Guidelines, to fund certain infrastructure improvements such as streets, utilities, parks, the light rail station, and a parking garage (collectively the “Infrastructure Project”) which are part of the Development Project. The first grant (“First Grant”) was approved by HCD in June of 2008 for \$19.1 million. Pursuant to Resolution No. 2008-164, the CITY executed the two agreements with HCD for the First Grant; a Standard Agreement dated October 20, 2009 and a Disbursement Agreement dated March 8, 2010 (City Agreement No. 2009-0935). Additionally, on March 19, 2012, the CITY executed the first amendment to the Standard Agreement to extend the term and disbursement deadline, which was approved by DEVELOPER prior to CITY’s execution. Under Resolution No. 2010-142, CITY assigned a portion of the First Grant to DEVELOPER (\$11.9 million) under that certain Assignment and Assumption Agreement dated March 17, 2010 (City Agreement No. 2010-0210) (the “Initial Assignment Agreement”). The remaining portion of the First Grant (\$7.2 million) was to be loaned to the affordable housing or QIP Developer for the construction of the QIP Garage (as defined below), which is part of the “Infrastructure Project.” References herein to the First Grant include the first amendment and any subsequent amendment entered into between HCD and CITY if approved by DEVELOPER.

In July of 2009, HCD notified CITY that it was awarded a second grant under Proposition 1C (“Second Grant”) for \$10.9 million to fund additional infrastructure improvements for the Infrastructure Project, which are part of the Development Project, some of which are the same infrastructure improvements which received partial funding under the First Grant. Pursuant to Resolution No. 2009-147, the CITY executed two agreements with HCD for the Second Grant; a Standard Agreement and a Disbursement Agreement, both of which were dated March 30, 2011 (City Agreement No. 2011-0442). Under Resolution No. 2011-512, CITY assigned the Second Grant to

DEVELOPER under that certain First Amendment to Assignment and Assumption Agreement dated September 13, 2011 (City Agreement No. 2011-0442-1)(the "First Amendment"). References herein to the Second Grant include any subsequent amendment entered into between HCD and CITY if approved by DEVELOPER.

As part of the First Amendment, the amount assigned to DEVELOPER under the First Grant was increased from \$11.9 million to \$12.9 million because the amount needed for the construction of the QIP Garage was reduced from \$7.2 million to \$6.2 million. In addition, the allocation of the funding under the First Grant for the various components of the Infrastructure Project was revised, due to design changes and refined cost estimates. This adjustment of the Sources and Uses of Funds for the Infrastructure Project components under the First Grant was included in Exhibit C of the Disbursement Agreement for the Second Grant.

G. **Affordable Housing Project.** A condition in the First and Second Grants is the development of a specified amount of affordable housing, referred to as the "Qualifying Infill Project" or "QIP," at the Project Site on specified parcels. The First Grant required development of 89 affordable housing units on Parcel 11C and the Second Grant required development of 90 affordable housing units on Parcel 11A, which abuts Parcel 11C. The QIP Developer, T9 Affordable Housing Associates, LLC, has entered into an agreement with DEVELOPER for conveyance of these parcels to construct one affordable housing project with a total of 179 restricted units to meet the QIP requirement under both the First and Second Grants, subject to obtaining certain financing. CITY will loan \$6.2 million of the First Grant to the QIP Developer to fund the cost of the parking garage component of the QIP to contain at least 180 spaces on Parcel 11C (the "QIP Garage"). Under the terms of the First and Second Grants, DEVELOPER has recorded the HCD Declaration of Restrictive Covenant for the Development of Affordable Housing on Parcels 11A and 11C to insure that the QIP will be located on those parcels.

H. **Market Rate Housing Project.** A condition in the First and Second Grants is the development of a specified amount of market rate housing ("Additional Housing Development") at the Project Site on specified parcels. The Additional Housing Development under the First and Second Grants is for development of a total of 571 units on Parcels 3A, 3B, 4, 10A and 12. Under the terms of the First and Second Grants, DEVELOPER has recorded the HCD Declaration of Restrictive Covenant for the Development of Market Rate on Parcels 3A, 3B, 4, 10A and 12 to insure that the specified amount of market rate housing will be located on those parcels.

I. **Assignment of HCD Grants.** Under the Initial Assignment Agreement and the First Amendment, CITY granted DEVELOPER the right to receive funding under the First and Second Grants for the Infrastructure Project, but excluding funding for the QIP Garage, so that DEVELOPER could commence and complete construction of the infrastructure improvements necessary for development of the QIP and the Additional Housing Development in accordance with the specified milestone schedules

as set out in the First and Second Grants, which schedules may be further extended in the future with approval from HCD.

J. **Purpose of Agreement.** This Restated Assignment Agreement incorporates substantially the same terms and conditions as set forth in the Initial Assignment Agreement, as revised under the First Amendment, so that all of the rights and obligations of CITY and DEVELOPER are set forth in one agreement for ease of reference. Also, some of the terms used herein were changed from what was set out in the Initial Assignment Agreement and the First Amendment for clarity and consistency with the terms used in First and Second Grants.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Restated Assignment Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Effective Date; Termination.** This Restated Assignment Agreement shall become effective as of the Commencement Date and on said date the Initial Assignment Agreement and the First Amendment will longer be effective or controlling as to subsequent actions of the Parties with regard to their respective rights and obligations under the First and Second Grants. This Restated Assignment Agreement shall expire on the date ("Expiration Date") that both of the following conditions have been met: (i) recording of DEVELOPER's conveyance and CITY's acceptance of the Infrastructure Project as defined in the First and Second Grants, but excluding the QIP Garage, and subject to DEVELOPER's compliance with the requirements related thereto as set forth in Sections 3, 4 and 5, and (ii) DEVELOPER's completion of the North 7th Street light rail station improvements in accordance with the Development Agreement; subject to the indemnity, payment and the QIP and Additional Housing Development obligations that survive the termination of this Restated Assignment Agreement as set out in Sections 6, 7 and 8. Neither Party may terminate this Restated Assignment Agreement for its convenience prior to the Expiration Date; however, either Party may terminate this Restated Assignment Agreement for default prior to the Expiration Date subject to the cure provisions set forth in Sections 9 and 10. DEVELOPER's obligations under this Restated Assignment Agreement shall apply solely to actions taken on or after the Commencement Date, although DEVELOPER is nonetheless entitled to reimbursements of costs incurred for the Infrastructure Project with the Proposition 1C Grant Proceeds, as defined in Section 2B, below, prior to the Commencement Date under the terms of the Initial Assignment Agreement and the First Amendment.

2. **Assignment and Assumption of HCD Grants.** Under the Initial Assignment Agreement and the First Amendment, CITY assigned and transferred to DEVELOPER any and all of CITY's rights under the First and Second Grants and DEVELOPER accepted and assumed all of the duties and obligations of CITY under the First and

Second Grants, except funding for and duties and obligations relating to the QIP Garage. CITY and DEVELOPER confirm such assignment and assumption of the First and Second Grants under this Restated Assignment Agreement and both Parties are hereby obligated to comply with all of the terms and conditions set out therein, with the exception of the development of the QIP and the QIP Garage as specified in Section 8. The First and Second Grants identifies the DEVELOPER, as the owner and developer of the Property on which the Infrastructure Project and the Additional Housing Development will be built, as the "Infrastructure Sub-Recipient." DEVELOPER's entitlement to the Proposition 1C Grant Proceeds for the Infrastructure Project shall be subject to the approval of HCD and DEVELOPER shall have no recourse against CITY for HCD's decisions.

- A. HCD Grants - The First and Second Grants, which have been assigned to DEVELOPER previously and herein contain both the two Standard Agreements and the two Disbursement Agreements between CITY and HCD as defined in the Recitals, provide for DEVELOPER's receipt of funding in the combined total amount of \$23.8 million under HCD's Infill Infrastructure Grant Program for the Infrastructure Project, which infrastructure improvements are part of the Development Project. The Standard Agreements and the Disbursement Agreements for the First and Second Grants were attached as part of the Initial Assignment Agreement and the First Amendment and are incorporated herein by this reference as if set forth in full.
- B. Grant References - The funds under the First and Second Grants to be paid to DEVELOPER, either directly by HCD or through the CITY, are herein referred to as the "Proposition 1C Grant Proceeds."
- C. Partial Assignment - Notwithstanding the foregoing assignment by CITY and assumption by DEVELOPER of the First and Second Grants, the CITY remains as the named grantee and party to those agreements because HCD has not approved the Initial Assignment Agreement, First Amendment, or this Restated Assignment Agreement and released CITY from its obligations under the First and Second Grants. However, HCD has acknowledged that DEVELOPER is to serve as the Infrastructure Sub-Recipient to receive the Proposition 1C Grant Proceeds for the Infrastructure Project, with the exception of the QIP Garage which costs are to be funded by CITY with the Proposition 1C Grant Proceeds under a loan with the QIP Developer. HCD has agreed to accept draw requests from DEVELOPER and will pay DEVELOPER the Proposition 1C Grant Proceeds directly based on CITY's execution of HCD's direct payee form in reliance on CITY's approval of each draw request based on its plan reviews and construction inspection reports. DEVELOPER agrees to submit to CITY copies of all plans, draw requests, other required documents and all correspondence submitted to HCD for CITY to comply with its grant oversight obligations.

- D. Grant Amendments – The Parties acknowledge that HCD may be amenable to amend the terms of the First and Second Grants to change the milestone schedules, to extend the grant term, and/or to extend the time period for final distribution of the Proposition 1C Grant Proceeds. There may be other amendments which may be desired by either Party, or HCD may propose amendments during the term of this Restated Assignment Agreement, or thereafter during the term of the First and Second Grants. Any written amendment, modification or waiver of any term or condition of the First or Second Grant, which is supported by both CITY and DEVELOPER and which is approved by HCD in the form of a grant amendment or other written acknowledgment, shall become binding under the terms of this Restated Assignment Agreement and such written amendment, modification or waiver shall be attached and incorporated into this Restated Assignment Agreement by this reference without the need for a formal amendment. CITY shall not unilaterally amend or terminate the First or Second Grant without DEVELOPER’s prior written approval unless DEVELOPER is in default of its obligations under this Restated Assignment Agreement and the applicable cure period(s) within which to cure such default set forth in Sections 9 and 10 have expired without a cure having been made.
- E. Enforcement – CITY and HCD shall each have the right to enforce all of the terms and conditions set out in the First and Second Grants and DEVELOPER’s obligations therein relating to the design and construction of the Infrastructure Project, including, without limitation, requirements for bonds, insurance, prevailing wages, mechanics liens, signage, assignment of contracts, indemnity, audits, and record retention. All of the rights accruing to HCD as set out in the First and Second Grants with respect to the Infrastructure Project, including, without limitation, assumption and enforcement of the design and construction contracts, shall also accrue to CITY. DEVELOPER acknowledges and agrees that under the terms of this Restated Assignment Agreement, CITY has the right to enforce the covenants and obligations set out in the First and Second Grants on behalf of HCD, even after the Expiration Date, as provided in Sections 8 and 9, subject to the provisions of Section 10.

3. Public Improvements. DEVELOPER shall undertake the design and construction of the “Infrastructure Project” as specified in the First and Second Grants, but excluding the QIP Garage, in accordance with the scope of work and schedule set out therein and in accordance with the terms and conditions set out in this Restated Assignment Agreement. Due to the differences between the allocation of the Proposition 1C Grant Proceeds for the scope of work constituting the Infrastructure Project, as set out in the Sources and Uses of Funds exhibits, from the First Grant and the Second Grant, the funding allocation in the Second Grant shall control.

4. Street Improvements. To the extent funds made available to DEVELOPER by CITY for the Infrastructure Project under the First and Second Grants are for roadways and utility improvements within such rights of way that will be owned by CITY

(collectively the “Street Improvements”), DEVELOPER shall undertake the design and construction of the Street Improvements in accordance with those terms of the First and Second Grants which are applicable to the Street Improvements, the applicable CITY permits, and all of the following requirements:

- A. CITY Standards - Standard Specifications for Public Construction (2007), Street Design Standards, Pedestrian Friendly Street Standards, Utilities Standards, Street Lighting and Traffic Signal Design Standards, and those other portions of the Design and Procedures Manual and the applicable provisions of the Project Delivery Manual as identified by CITY.
- B. Project Entitlements – The PUD Plan and Guidelines, Tentative Map, and CEQA Mitigation.
- C. Other Entities - All required permits and approvals from all applicable utility companies and state and local regulatory agencies (other than CITY).
- D. Public Works - All applicable state laws pertaining to contracting and construction of public works with public funds, including, without limitation, competitive bidding, obtaining 100% payment and performance bonds, and payment of prevailing wages.
- E. North 7th Street Agreement – All of the terms and conditions set out in the North 7th Street Reconstruction Project Agreement between CITY and DEVELOPER (Agreement No. 2008-0407) shall apply to the Street Improvements. The applicable requirements and procedures include, without limitation, design and contracting, inspection, bonds, insurance, and approval of change orders. CITY shall not be obligated to approve payments for the North 7th Street improvements with the Proposition 1C Grant Proceeds in the event of a default under the North 7th Street Reconstruction Project Agreement.

5. Park Improvements. DEVELOPER shall undertake the design and construction of that portion of the Infrastructure Project which includes two public parks, Riverfront Park and the North 7th Street Parkway, (collectively the “Park Improvements”) with the Proposition 1C Grant Proceeds in accordance with the terms of the First and Second Grants and the requirements set out in CITY’s standard park credit reimbursement agreement (“Park Turnkey Agreement”) as modified under the Third Amendment to the Development Agreement. CITY shall not be obligated to approve payments for the Park Improvements with the Proposition 1C Grant Proceeds in the event of a default under the Park Turnkey Agreement for said park.

The design of the Park Improvements shall be in compliance with the PUD Plan and Guidelines and Tentative Map. In addition, DEVELOPER will be required to obtain permits from the County of Sacramento and the Sacramento Area Flood Control Agency for construction of Riverfront Park along the American River Parkway and abutting the flood control levee.

6. Indemnity. DEVELOPER shall indemnify, defend and hold harmless CITY (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any acts or omissions of DEVELOPER (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Infrastructure Project under this Restated Assignment Agreement, except to the extent arising from the active negligence or willful misconduct of CITY. DEVELOPER hereby waives and releases any and all Claims of whatever sort or nature which may arise against CITY in connection with CITY's review and inspection of the design and construction of the Infrastructure Project, except those resulting from the active negligence or willful misconduct of CITY.

7. Payment of Costs. CITY will approve DEVELOPER as the direct payee for reimbursement by HCD of DEVELOPER's Infrastructure Project costs under the First and Second Grants. CITY will promptly review and if approved, promptly forward DEVELOPER's draw requests to HCD for payment. The total compensation to be requested by DEVELOPER and paid by HCD for the Infrastructure Project costs with the Proposition 1C Grant Proceeds shall not exceed \$23.8 million.

DEVELOPER's draw requests shall comply with the requirements set out in the First and Second Grants. DEVELOPER shall indemnify, defend and hold harmless CITY from and against all demands and claims filed by HCD against CITY seeking reimbursement of the Proposition 1C Grant Proceeds due to DEVELOPER's improper invoices or any other violation of any term or condition in the First or Second Grant in regards to payment of the Infrastructure Project costs.

Except for payments to be provided to DEVELOPER under the First and Second Grants and any other agreements between CITY and DEVELOPER, CITY shall have no further liability to DEVELOPER for the costs of the Infrastructure Project under this Restated Assignment Agreement.

The total compensation to be requested by DEVELOPER and paid by HCD for the costs of the Infrastructure Project under the First Grant shall not exceed TWELVE MILLION NINE HUNDRED THOUSAND DOLLARS (\$12.9 million). The total compensation to be requested by DEVELOPER and paid by HCD for the costs of the Infrastructure Project under the Second Grant shall not exceed TEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$10.9 million). The combined total amount of Proposition 1C Grant Proceeds to be paid to DEVELOPER from the First and Second Grants under this Restated Assignment Agreement shall not exceed TWENTY THREE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$23.8 million).

The amount of compensation to be allocated by CITY to the QIP Developer for the QIP Garage under the First Grant, as amended by the Second Grant, shall not exceed \$6.2 million, unless this amount is further adjusted under an amendment to the First or Second Grant to change the Sources and Uses of Funds exhibit as approved by HCD, CITY and DEVELOPER and set forth in an amendment to this Restated Assignment Agreement.

DEVELOPER's draw requests shall comply with the requirements set out in the First and Second Grants. DEVELOPER shall indemnify, defend and hold harmless CITY from and against all demands and claims filed by HCD against CITY seeking reimbursement of the Proposition 1C Grant Proceeds due to DEVELOPER's improper invoices or any other violation of any term or condition in the First Grant or Second Grant in regards to payment of the Infrastructure Project costs.

Except for payments of the Proposition 1C Grant Proceeds to be provided to DEVELOPER by HCD under the First and Second Grants, and any other agreements between CITY and DEVELOPER, CITY shall have no further liability to DEVELOPER for the costs of the Infrastructure Project under this Restated Assignment Agreement.

8. Housing Development. DEVELOPER acknowledges and agrees in regards to the obligation to development housing under the terms of the First and Second Grants as follows:

- A. HCD Covenants - DEVELOPER affirms that HCD has recorded a "Declaration of Restrictive Covenant for the Development of Market Rate Housing" and a "Covenant Regarding Development of Affordable Housing" (collectively the "HCD Covenants") against the specified portions of the Property as set out in the First and Second Grants. CITY and DEVELOPER understand that HCD will release these covenants against that portion of the Property which is not the subject of the First and Second Grants when final maps are recorded for each parcel and that the "Declaration of Restrictive Covenant for the Development of Market Rate Housing" will thereafter only remain on Parcels 3A, 3B, 4, 10A and 12 and the "Covenant Regarding Development of Affordable Housing" will thereafter only remain on Parcels 11A and 11C.
- B. QIP Covenant - The HCD "Covenant Regarding Development of Affordable Housing" requires DEVELOPER, as owner of the Property, to insure that the 179 unit affordable housing project, referred to as the Qualifying Infill Project (QIP), including the QIP Garage, will be constructed and operated by an affordable housing developer, as selected by DEVELOPER and approved by HCD, in accordance with the terms and schedule set out in the First and Second Grants. HCD has approved T9 Affordable Housing Associates, LLC as the QIP Developer, which entity is referenced under the First and Second Grants as the "Housing Sub-Recipient." CITY shall enter into the QIP Parking Garage Loan Agreement with T9 Affordable Housing Associates, LLC once it demonstrates that it has: (i) ownership of Parcels 11A and 11C, and (ii) all other

financing commitment required to construct the QIP. The closing of the QIP Parking Garage Loan Agreement will occur simultaneously with the transfer of ownership of Parcels 11A and 11C from the DEVELOPER to T9 Affordable Housing Associates, LLC. The QIP Parking Garage Loan Agreement shall provide that DEVELOPER will have the right to cure any defaults of T9 Affordable Housing Associates, LLC and that the QIP Parking Garage Loan Agreement may be assumed by DEVELOPER in the event CITY declares a default by T9 Affordable Housing Associates, LLC under that loan agreement.

- C. Additional Housing Development - The HCD “Covenant Declaration of Restrictive Covenant for the Development of Market Rate Housing” requires the DEVELOPER, as owner of the Property, to undertake construction of the specified Additional Housing Development on Parcels 3A, 3B, 4, 10A and 12 in accordance with the terms and schedule set out in the First and Second Grants. Failure of DEVELOPER to comply with this HCD Covenant that is not timely cured within the applicable cure period(s) shall constitute a default under the First and Second Grants and this Restated Assignment Agreement and in such event a proportionate share of the Proposition 1C Grant Proceeds must be repaid by DEVELOPER in accordance with the terms of the First and Second Grants.
- D. HCD Covenants Enforcement - CITY is relying on the HCD Covenants as security for DEVELOPER’s compliance with the provisions in the First and Second Grants regarding: (i) meeting its obligations in regards to facilitating development of the QIP (i.e., transfer of Parcels 11A and 11C and under taking Street Improvements which serve those parcels), and (ii) undertaking the Additional Housing Development after the Street Improvements are completed in accordance with the milestone schedules in the First and Second Grants and as those schedules may be extended by HCD, even if the term of this Restated Assignment Agreement expires. DEVELOPER acknowledges and agrees that under the terms of this Restated Assignment Agreement, CITY has the right to enforce the HCD Covenants and to demand repayment of the proportionate amount of the Proposition 1C Grant Proceeds upon declaration by HCD of a default by DEVELOPER of its obligations as a Sub-Recipient for the Infrastructure Project, to facilitate development of the QIP, and to undertake or insure construction of the Additional Housing Development under the First and Second Grants. The terms of this Section 8 shall survive the termination of this Restated Assignment Agreement and shall extend until the HCD Covenants are released or terminated by HCD from each parcel of land comprising the Property as described in the First and Second Grants.
- F. Suspension of Permits During Default - If a dispute arises between HCD and DEVELOPER regarding DEVELOPER’s obligations to build the Infrastructure Project, with the exception of the QIP Garage, facilitate development of the QIP, and undertake or insure construction of the specified Additional Housing Development under the terms of the HCD Covenants and the First and Second

Grants, during the pendency of such dispute where: (i) HCD has issued to CITY a written notice of default, (ii) after expiration of any applicable cure period DEVELOPER (or its lender) has not cured the default, (iii) DEVELOPER has not obtained a time extension from HCD for construction of the QIP or the Additional Housing Development if the default is based on non-compliance with milestone schedules, and (iv) HCD has issued to CITY a written demand for payment of all or a part of the Proposition 1C Grant Proceeds; in that event CITY may withhold approval of final maps, other discretionary entitlements and issuance of building permits for any non-residential development or any residential development not in compliance with the First and Second Grants within that portion of the Development Project covering Parcels 3A, 3B, 4, 10A, 11A, 11C and 12 notwithstanding any contrary provision of the Development Agreement, Tentative Map, PUD Plan and Guidelines, the City Code, the Subdivision Map Act or any other applicable state or local law or regulation.

9. Default. After issuance of a written notice of default and expiration of any applicable cure period, any violation of any material term or condition of the First or Second Grant by DEVELOPER or CITY, or the material failure of performance or a substantial and unreasonable delay in performance by either Party, including, without limitation, the voluntary or involuntary filing of bankruptcy protection or appointment of a receiver, shall be a breach under this Restated Assignment Agreement and the non-defaulting party shall be entitled to cancel this Restated Assignment Agreement for default and be awarded actual damages (excluding consequential damages and lost profits) and injunctive or declaratory relief.

The Party receiving such default notice shall be afforded a period of thirty (30) days following receipt of the notice within which to effectuate a cure, provided that if such default or breach cannot reasonably be cured within such thirty (30) day period and if curative action is commenced within such thirty (30) day period and is being continuously and diligently pursued by such Party, then such Party shall be given such additional period of time as is reasonably necessary for such Party in the exercise of due diligence to cure such default or breach. During any such period, the Party charged shall not be considered in default or breach for purposes of termination of this Restated Assignment Agreement or institution of legal proceedings. Notwithstanding the foregoing, the cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY in reliance on a written default determination issued by HCD under the terms of the First or Second Grant Agreement. CITY will provide DEVELOPER and Lender with copies of any notice of default CITY receives from HCD.

10. Lender Rights. Any bank, mortgage company or other legal entity (together with its successors or assigns, collectively "Lender") that has loaned money to DEVELOPER and has a recorded a mortgage or deed of trust against the Property as of the Commencement Date or thereafter shall have the following default notice and cure rights and releases from the obligations under this Restated Assignment Agreement:

- A. Prior to Lender Possession. No Lender shall have any obligation or duty under this Restated Assignment Agreement to construct or complete the construction of the Infrastructure Project, QIP or Additional Housing Development, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of DEVELOPER or DEVELOPER's successors in interest. Except as otherwise expressly provided in this Section 10, nothing in this Section 10 shall be construed to grant to Lender rights of DEVELOPER hereunder, or to limit any remedy CITY has hereunder in the event of default by DEVELOPER, including but not limited to, cancellation of this Restated Assignment Agreement.
- B. Lender in Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to (i) pay any fees or charges which are obligations of DEVELOPER under this Restated Assignment Agreement, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof, (ii) cure any defaults under this Restated Assignment Agreement, or (iii) repay the Proposition 1C Grant Proceeds. However, a Lender shall not be eligible to become a successor in interest to this Restated Assignment Agreement and receive payments of the Proposition 1C Grant Proceeds or be eligible to apply for or receive entitlements or permits with respect to development of the Property for the Development Project covering Parcels 3A, 3B, 4, 10A, 11A, 11C and 12, or otherwise be entitled to develop or devote that portion of the Property to any uses or to construct any improvements thereon, other than for the QIP and the Additional Housing Development, unless and until DEVELOPER's defaults under this Restated Assignment Agreement have been cured by Lender pursuant to the terms and conditions of Section 10D below.
- C. Notice of DEVELOPER's Default. If CITY receives or has received notice from a Lender making a reference to this Restated Assignment Agreement, or to the Initial Assignment Agreement or First Amendment, requesting a copy of any notice of default given DEVELOPER hereunder or thereunder and specifying the address(es) for service thereof, then CITY shall deliver to such Lender at such address(es) the following: (i) concurrently with service thereon to DEVELOPER, any notice given to DEVELOPER with respect to any claim by CITY that DEVELOPER has committed a default or breach; and (ii) concurrently with service thereon to DEVELOPER, any notice on the part of CITY to cancel this Restated Assignment Agreement for default under the terms of Section 9. The foregoing includes CITY providing Lender with copies of any notice of default CITY receives from HCD.
- D. Lender's Right to Cure. With respect to any default or breach by DEVELOPER under this Restated Assignment Agreement, CITY shall provide written notice (a "Cure Period Expiration Notice") to Lender, promptly upon expiration of the DEVELOPER's cure period set forth in Section 9, specifying the nature of such

default or breach and stating that DEVELOPER's period of time within which to cure such default or breach has expired without a cure having been effectuated. Lender shall have the right to cure such default within thirty (30) days after the date of the Cure Period Expiration Notice; provided, however, if such default is susceptible to cure but cannot reasonably be cured within such thirty (30) day period and if curative action shall be commenced within such thirty (30) day period and is being continuously and diligently pursued by Lender, then Lender shall be given an additional period of time as is reasonably necessary for Lender in the exercise of due diligence to cure such default. Without limiting the foregoing, if it is necessary for Lender to obtain possession of the Property in order to cure such default, Lender shall have such additional period of time as is reasonably necessary for the Lender in the exercise of reasonable diligence to obtain possession of the Property, and such additional time as is reasonably necessary for the Lender in the exercise of reasonable diligence to cure the default. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Restated Assignment Agreement unless such Lender shall agree in writing to perform all obligations of DEVELOPER hereunder under the terms of an assumption agreement between Lender and CITY. In the event that Lender takes possession of all or any portion of the Property and assumes the obligations of Developer hereunder, then the recourse of CITY for such obligations shall be limited to the interest of the Lender in the Property and shall not include personal recourse to Lender. Notwithstanding the foregoing, Lender's cure period may be shorter or longer as proscribed by HCD if the default notice was issued by CITY to DEVELOPER in reliance on a written default determination issued by HCD under the terms of the First or Second Grant.

- E. No Impairment. Neither DEVELOPER's entering into this Restated Assignment Agreement nor its default under this Restated Assignment Agreement shall alter, defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith by the Lender and for value. This Restated Assignment Agreement shall not prevent or limit DEVELOPER in any manner, at DEVELOPER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security instrument securing financing with respect to development of the Property for the Development Project. This Restated Assignment Agreement shall not prevent or limit Lender in any manner from pursuing foreclosure of a mortgage, deed of trust or other security instrument that is secured against the Property.

11. Governing Law and Venue. This Restated Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California. Any litigation concerning this Restated Assignment Agreement must be brought and prosecuted in the Sacramento County Superior Court and the prevailing party shall be entitled to reimbursement of its attorneys' fees and litigation costs.

12. Successors and Assigns. This Restated Assignment Agreement may not be assigned by DEVELOPER without the CITY's prior written consent; provided that this Restated Assignment Agreement may be assigned by DEVELOPER to a Lender as collateral for Lender's loan and, in the event that such Lender takes possession of the Property or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure if the Lender undertakes efforts to cure DEVELOPER's defaults, and such Lender complies with all of its obligations under Section 10, above, and enters into an assumption agreement with CITY, then such Lender shall succeed to the rights of DEVELOPER under this Restated Assignment Agreement. The obligations in this Restated Assignment Agreement shall inure to and bind the successors and assigns of each Party and the successors in interest in the Property, and CITY may record a memorandum of this Restated Assignment Agreement. Lender shall be an express third party beneficiary of this Restated Assignment Agreement.

13. Warranties and Representations. Each person who signs this Restated Assignment Agreement on behalf of a Party warrants and represents that he or she has the capacity and legal authority to execute this Restated Assignment Agreement for that Party and to bind that Party to the obligations imposed on it by this Restated Assignment Agreement.

14. Notices. All notices required or provided for under this Restated Assignment Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and DEVELOPER, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

A. Notice to the CITY:

City of Sacramento
915 I Street
Sacramento, California, 95814
ATTN: City Manager

B. Notice to DEVELOPER:

Capitol Station 65 LLC
640 Bercut Drive, Suite C
Sacramento CA 95811-0131
ATTN: Steve Goodwin

and

Scott Syphax
Nehemiah Corporation of America

640 Bercut Drive, Suite A
Sacramento, CA 95811-0131

with copies to:

Alberto Esquivel
Esquivel Real Estate, Inc.
1801 "F" Street
Sacramento, CA 95816

C. Notice to Lender:

ISIS Lending, LLC
c/o TDA
2031 Pioneer Court
San Mateo, CA 94403
ATTN: Paula Purcell

with copies to:

Cox Castle & Nicholson LLP
555 California Street, Suite 1000
San Francisco, CA 94101-1513
ATTN: Bruce E. Prigoff, Esq.

15. Survivorship. The DEVELOPER's obligations arising under this Restated Assignment Agreement pertaining to indemnity and repayment obligations as set out in Sections 6, 7 and 8 shall survive the expiration, termination or cancellation of this Agreement.

16. Entire Agreement. This Restated Assignment Agreement sets forth the entire understanding of each Party regarding the matters set forth herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations, whether written, oral, express or implied, in regards to the assignment and assumption of the First and Second Grants, including the Initial Assignment Agreement and the First Amendment. This Restated Assignment Agreement may only be modified by another written agreement signed by the Parties.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Restated Assignment Agreement as of the Effective Date.

CITY OF SACRAMENTO
a municipal corporation

By: _____
John F. Shirey
City Manager

Attest:

By: _____
City Clerk

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

CAPITOL STATION 65 LLC
a California limited liability company

By:  _____
Scott Syphax
Managing Member



OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
915 I STREET
5TH FLOOR
SACRAMENTO, CA
95814-2604

PH 916-808-5704
FAX 916-808-7618

May 1, 2012

Michael Johnson and Jack Gardner
Township 9 Affordable Housing Associates, LLC
1320 Fillmore Street
San Francisco, CA 94115

RE: Conditional Loan Commitment; Township 9 Garage Project

Dear Mr. Johnson and Mr. Gardner:

On behalf of the City of Sacramento ("City"), I am pleased to advise Township 9 Affordable Housing Associates, LLC, a California limited liability company, ("Borrower") of the City's commitment of Six Million Two Hundred Thousand Dollars (\$6,200,000) (the "Loan") for the purpose of financing the construction of 180 parking stalls within a parking garage serving the housing development (the "Qualifying Infill Project," or "QIP"), which will be located at the Township 9 master planned development. The QIP consists of the 180 unit housing development and the parking garage (referred to herein as the "Parking Garage.") The City requires the construction of the Parking Garage, a public improvement work, as a condition of regulatory approval of an otherwise private development project. The Parking Garage will provide parking for 179 apartment units affordable to extremely low, very low, and low income households ("affordable housing") and one space for the apartment manager unit. The City is contributing no additional money, or the equivalent of money, to the QIP than is required to perform this public improvement work. The City has and will maintain no proprietary interest in the QIP.

Background

The Township 9 master planned development is located between North 5th and North 7th Streets between Richards Boulevard and the American River in the River District. The QIP is to be constructed on that certain real property referred to as parcels 11A and 11C on the Township 9 tentative map ("Property"). The City's decision to make the Loan is based on the pro-forma and sources and uses of funds provided by the Township 9 master developer, Capitol Station 65, LLC ("Master Developer"), which is

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based in part on the representations and information supplied by Borrower, that financial assistance is required for the Parking Garage.

The Master Developer represents that is has entered into an agreement with Borrower to convey the Property at a nominal cost. The Master Developer has consented to the City's decision to make the Loan to the Borrower to the extent such approval may be required under the agreement between the Master Developer and Borrower.

The Loan is funded under a grant agreement dated March 30, 2011 between City and the State Department of Housing and Community Development ("HCD") under the Infill Infrastructure Grant Program (the "HCD Grant"). Borrower has received a copy of the HCD Grant and Borrower understands that it must comply with terms and conditions of the HCD Grant in construction of the Parking Garage, as condition of receipt of the Loan from the City, which terms and conditions will be included in the Loan agreement and the Loan regulatory agreement, which together with the Loan promissory note and deed of trust are collectively referred to herein as the "Loan Documents".

Loan Commitment Conditions

The City's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the City for the Parking Garage.

The Loan Documents shall be made using standard Sacramento Housing and Redevelopment Agency ("SHRA") loan document forms, which may be modified as applicable to comply with the HCD Grant. No terms not in this Loan Commitment or in the standard SHRA loan document forms shall be included in the final Loan Documents without governing board approval. In the event of any discrepancies between terms stated in this Loan Commitment and the standard SHRA loan document forms, the terms stated in this Loan Commitment shall prevail.

Unless otherwise agreed to in writing by the City in exercise of its absolute discretion, the following shall be considered conditions to City's approval of a binding financing commitment to make the Loan for the Parking Garage.

1. **LOAN COMMITMENT TERM:** This Loan Commitment will expire on December 31, 2012 if the Loan Documents have not been executed by the Borrower by that date.
2. **PROJECT DESCRIPTION:** The Parking Garage is a 180 stall parking garage structure which will serve the QIP. The total cost for the Parking Garage is estimated at \$6,200,000.

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3. BORROWER: The name of the Borrower for the Loan is Township 9 Affordable Housing Associates, LLC, or its affiliate which is formed for the sole purpose of development of the Parking Garage and QIP.
4. PURPOSE OF LOAN: The Loan is to be used by Borrower solely for the pro-rated design, development and construction costs of 180 spaces within the Parking Garage, which is a public work of improvement in that it serves the public policy of providing necessary infrastructure required for the QIP. The construction work to build the Parking Garage and the apartment building on the Property is referred to herein collectively as the "Improvements."
5. PRINCIPAL AMOUNT: The combined principal amount of the Loan will be the lesser of (a) Six Million Two Hundred Thousand Dollars (\$6,200,000), or (b) the actual pro-rated cost to design, develop and construct 180 spaces within the Parking Garage on the Property; whichever amount is less.
6. SOURCE OF LOAN FUNDS: The City is making the Loan from the HCD Grant which allows for Loan disbursements based on actual costs incurred for the Parking Garage, with a ten percent (10%) retention for hard costs until the Parking Garage is completed, and subject to certain requirements in the HCD Grant which will be included in the Loan Documents, which requirements may include disbursement of the ten percent (10%) retention following completion of the QIP. These HCD Grant requirements have been conveyed to Borrower and Borrower acknowledges and agrees to such requirements, which will be included in the Loan Documents. Borrower also acknowledges and agrees that the City's obligation to make the Loan payments is contingent on the City's receipt of funding from HCD and City does not guarantee the Borrower will be paid the full amount of the Loan if HCD does not make payment under the HCD Grant.
7. TERM OF LOAN: The term of the loan is 55 years. No payments will be due and payable during the term of the Loan. The unpaid balance of the Loan will be due and payable on the Loan maturity date. The Loan shall be assignable and shall not become due and payable in the event of a transfer of the Property to an affiliate of Borrower.
8. INTEREST RATE: The Loan will not bear any interest.
9. RENTAL RESTRICTION: Borrower acknowledges that, as a condition of the City making of the Loan, the Property will be subject to restrictions on future sales and rental rates for the QIP which may result in less income to Borrower than

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could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.

_____ (Borrower's Initial)

10. PREVAILING WAGES: Borrower also acknowledges that any construction project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower and Borrower's contractor.

_____ (Borrower's Initial)

11. ACCELERATION: City shall have the right to accelerate repayment of the Loan in the event of a default as specified in the Loan Documents or upon sale, transfer or alienation of the Property, except as specifically provided for in the Loan Documents.
12. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the Borrower's fee interest in the Property and Improvements, which shall be a lien upon the Property and Improvements subject only to senior liens and such other items as the City may approve in writing. The City may subordinate said deeds of trust in order to accommodate construction of the QIP.
13. LEASE AND RENTAL SCHEDULE: The form of lease to be used for the Property and Improvements shall be subject to City's approval prior to execution. Borrower shall not deviate from the rental schedule consistent with the specified Affordable Housing Units household income levels as set out by SHRA based on Borrower's application for a loan for the QIP, without City's prior written approval.
14. PROOF OF EQUITY: Borrower shall provide proof of ownership of the Property which is free and clear of any mortgages or liens at the time Borrower submits the Loan application.
15. OTHER FINANCING: Borrower, as a precondition to the City's execution of the Loan Documents, shall procure and deliver to the City evidence satisfactory to City that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior to City's liens, and which shall be otherwise on terms and conditions acceptable to City:
- A. Construction Loan - Financing from an institutional source, SHRA or other approved sources in amounts sufficient to complete construction of the Improvements on the Property according to a scope of work as approved by City and made for a term not less than that specified in the Schedule of

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Performances in the Loan Documents for completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.

- B. Permanent Loan - Financing from institutional sources or other approved sources, sufficient to repay the Construction Loan.

Such commitments for financing shall not require modification of the City's Loan Documents, or any term of this Loan Commitment. Such commitments shall not be based upon sources and uses of the Loan funds that are different from those approved by the City for the Parking Garage.

16. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of all Improvements in accordance with the Loan Documents. Borrower's evidence of available funds must include one or more of the following: (a) Borrower equity, (b) firm and binding commitments for financing both the Parking Garage and the affordable housing from financial institution(s) or from other lender(s) approved by City in its absolute discretion, and (c) SHRA loans; provided, however, that SHRA is not obligated by this Loan Commitment letter to make any financial contribution to the Parking Garage or the affordable housing.
17. SOILS AND TOXIC REPORTS: Borrower must submit to City a soils report prepared by a licensed soils engineer and a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the City that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
18. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance." The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other lenders for the Improvements are sufficient, in the sole judgment of the City, to pay for the remainder of the construction in order to complete the Improvements as required by written agreement with the City. Should the City determine that the Loan is not "in balance," the City may declare the Loan to be in default.

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19. **PLANS AND SPECIFICATION:** Final plans and specifications for the Parking Garage must be in accordance with this Loan Commitment letter and submitted and approved as part of the Loan application process. Final plans and specifications will be subject to City's final approval prior to execution of the Loan Documents and the disbursement of the Loan funds. Borrower must obtain City's prior written consent to any change in the approved Parking Garage plans and specifications or any material deviation in construction of the Parking Garage and other Improvements.
20. **ARCHITECTURAL AGREEMENT:** The architectural agreement for the preparation of the plans and specifications and other services such as construction support shall be subject to City's approval. The City may require an assignment of Borrower's interest in and to the architectural agreement as security for the Loan.
21. **CONSTRUCTION CONTRACT:** The construction contract and any change orders issued thereunder, and the contractor to be retained by Borrower to construct the Improvements shall be duly licensed and subject to City's approval. City may require an assignment of Borrower's interest in and to the construction contract as security for the Loan. Borrower shall require the general contractor, to: (a) provide performance and payment bonds for the full amount of the Parking Garage construction contract, (b) the insurance coverages specified below, naming the City and State as obligees and as additional insureds, and (c) indemnify and hold harmless the City and State from any claims for injury or damages which may arise or be related to the construction work for the Improvements.
22. **RETENTION AMOUNT:** The City shall retain 10% of the Loan amount for hard costs as retention from each disbursement in accordance with HCD Grant requirements, not to exceed a total of Six Hundred and Twenty Thousand Dollars (\$620,000) of the total amount of the Loan. The retention shall be disbursed after completion of the Parking Garage and/or the QIP as determined by HCD and after submittal of the cost certification and other required documents, and subject to payment by HCD.
23. **COST BREAKDOWN AND CONTRACTS:** Borrower shall deliver to City for its approval prior to commencement of the Parking Garage construction work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the approved Improvement plans and specification and the budget submitted with the Loan application. Borrower shall also deliver a list of all contractors and

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subcontractors to be employed in connection with the construction of the Improvements for City's prior approval. Borrower shall also submit copies of all bids received for each item of work to be performed, as well as copies of executed contracts and subcontracts with the selected bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to City's approval prior to close of the Loan.

24. DISBURSEMENTS: City shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories and Borrower's submittal of documentation supporting all requests for disbursement of Loan funds. All Loan draw requests submitted by Borrower shall include proof of the construction work completed, the actual cost for such work and evidence that payment has been made to the contractor and/or subcontractor. City shall have the right to conduct inspections of the Property to assure that the Parking Garage work was properly performed under the terms of the Loan Documents before making each disbursement of the Loan. The timing for making Loan disbursements for work completed for the Parking Garage will be subject to when City receives payment from HCD for each draw request, and the Parking Garage must be completed prior to the deadline for reimbursement under the HCD Grant, which deadline may be extended by HCD.

_____ (Borrower's Initial)

25. COST SAVINGS. At completion of construction of the Parking Garage, Borrower shall submit to City a cost certification prepared by a qualified, independent auditor acceptable to City, 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 City, the City shall be entitled to withhold that amount from the amount of retention, and the Loan balance shall be reduced to reflect the amount stated in the cost certification. The City, in its sole discretion, shall determine any reduction of the Loan based upon this cost certification and the original approved budget for the Parking Garage.
26. START OF CONSTRUCTION: Borrower shall commence construction of the Improvements at the earliest possible date subject to the conditions set out in this Loan Commitment, the Loan Documents and the requirements of other involved lenders, but no later than March 31, 2013.
27. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements no later than the date set out in the construction schedule in the Loan Documents, and subject to any time extensions approved by City.

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28. **LIABILITY INSURANCE.** Borrower shall obtain and maintain, and require the contractor and subcontractors for the Improvements to obtain and maintain insurance from the following claims which may result from construction of the Parking Garage: (a) workers' compensation claims; (b) bodily injury claims; (c) claims for damage; (d) motor vehicle related claims; and (e) claims for contractual liability arising from the Borrower's obligations under the Loan. Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence and \$4,000,000 aggregate, with a deductible of not more than \$50,000. Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended).
29. **PROPERTY INSURANCE.** For the duration of Loan term, Borrower shall obtain and maintain building and personal property coverage, to the full insurable value of the Property and Improvements with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Improvements), and with such other endorsements and in such amounts as the City may reasonably require to protect the Improvements. In the event of damage to the Improvements and subject to the requirements of a senior lender, Borrower shall use the proceeds of such insurance to reconstruct the Parking Garage and any related public improvements.
30. **INSURANCE PROVISIONS.** Each policy of insurance required hereunder 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 City. Each policy shall contain endorsements naming City and State as additional insureds.
31. **TITLE INSURANCE:** Borrower must procure and deliver to City a 2006 ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as City may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring City in an amount equal to the principal amount of the Loan, that City's Deed of Trust constitutes a lien or charge upon the Property and Improvements subject only to such items as shall have been approved by City. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by City.
32. **ORGANIZATIONAL AGREEMENTS:** Borrower must submit to City certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation

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and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as City may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.

33. PURCHASE OF PROPERTY: Borrower shall provide City with copies of all documents relating to Borrower's purchase of the Property.
34. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to City within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Before close of the Loan and during its term, Borrower must deliver to City such additional financial information as may be requested by City. City reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to City a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements, as City may request.
35. MANAGEMENT AGREEMENT: Prior to execution of the Loan Documents, Borrower must submit to City any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to City's approval.
36. LOW INCOME HOUSING TAX CREDITS ("LIHTC"): Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted.
37. OTHER FUNDS. Borrower shall apply for and diligently pursue funds from every source listed in the Loan application as a source of funding for the Parking Garage and the affordable housing in not less than the amount of funds so listed.
38. DOCUMENTATION: This Loan Commitment letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for a City transaction of this

Michael Johnson

Re: *Conditional Loan Commitment; Township 9 Garage Project*

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type. All documents to be delivered to or approved by City must be satisfactory to City in all respects. Borrower must promptly deliver to City any further documentation that may be required by City.

39. CONSISTENCY OF DOCUMENTS: As a material obligation under this Loan Commitment, Borrower shall assure that the all other loan documents for the Parking Garage and the affordable housing are consistent with those lenders' commitments and that such loan documents comply, in all respects, with the term of this Loan Commitment letter.
40. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to City or are subject to City's review or approval shall be modified or terminated without the prior written approval of City.
41. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Loan Commitment shall be evidenced by signing and delivering to City the enclosed copy of this letter. Until receipt of Borrower's acceptance of the terms set out herein, City shall have no obligation to make the Loan. In addition, City may withdraw this Loan Commitment at any time prior to receipt of Borrower's written acceptance.

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Sincerely,

John F. Shirey
City Manager

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

Dated: _____

BORROWER:

T9 Affordable Housing Associates, LLC

By: _____

Its Managing Member



NO FEE DOCUMENT:

Entitled to free recording
per Government Code 6103.

When recorded, return to:

CITY OF SACRAMENTO
Community Development Department
300 Richards Boulevard
Sacramento, CA 95814

**DENSITY BONUS HOUSING AGREEMENT FOR RESIDENTIAL RENTAL PROPERTY
CONTAINING COVENANTS AFFECTING REAL PROPERTY**

PROJECT NAME:	Township 9 Affordable Housing Project
PROJECT ADDRESS:	Lot 11 bounded by North 7 th Street and D, E & F Streets
PROJECT NUMBER:	P11-002

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS ACKNOWLEDGED, CITY AND OWNER HAVE ENTERED THIS DENSITY BONUS HOUSING AGREEMENT AS OF THE EFFECTIVE DATE.

1. DEFINITIONS. The capitalized terms in this Density Bonus Housing Agreement (“Agreement”) shall have the meanings assigned below and as indicated in the body of this Agreement by quotation marks.

DEFINED TERM	DEFINITION	
“Effective Date”	This Density Bonus Housing Agreement shall be effective as of the following date, which is on or after the date that Owner will own the Property in fee:	January 1, 2013
“City”	City of Sacramento a municipal corporation	
“Owner”	T9 Affordable Housing Associates, LLC	
“City Address”	City’s business address is 915 I Street, Sacramento, California 95814	
“Owner Address”	Owner’s business address is as follows:	640 Bercut Drive, Suite C Sacramento, CA 95811
“Jurisdiction”	City of Sacramento	
“Property”	The Property is that certain real property currently owned or which will be owned by Owner as of the Effective Date and the date of recording of this Agreement, as described in the legal description which is attached as Exhibit A – Legal Description and incorporated in this Agreement by this reference.	

“Project”	The Project is the construction of a multi-family residential development containing a total of 180 units on the Property, of which 179 units (the “Restricted Units”) will be restricted to rental and occupancy by Low, Very Low and Extremely Low Income households whose total annual income does not exceed the specified percentage of the Median Income (the “Affordability Level”) as allocated by number of units and Unit Size as set out in Section 3, below.	
“Density Bonus” and “Density Bonus Ordinance”	The “Density Bonus” is the allowance of the development of additional residential units on the Property (the “Bonus Units”), which units are in excess of the maximum number of residential units otherwise permitted by the Zoning Code of the City of Sacramento for the Property. Pursuant to Chapter 17.186, Density Bonuses for Lower Income, Very Low Income, and Senior Households (“Density Bonus Ordinance”), of the Zoning Code which was enacted pursuant to Government Code Section 65915, the Bonus Units are permitted to be developed by Owner in consideration of the allocation and regulation of the Bonus Units by this Density Bonus Housing Agreement.	
“Density Bonus Units”	The Bonus Units are the following number of residential units permitted for this Property as the Density Bonus:	42 Additional Units
“Density Bonus Requirements”	The legal restrictions on the granting of a Density Bonus, as applicable to and restricting the Property. The Density Bonus Requirements are set out below in Sections 3 through 9.	
“Density Bonus Benefits”	Those certain concessions regarding variations from the setback, height and private outdoor space development standards required under the Zoning Code which were approved for the Project by the City Planning Director pursuant to the Density Bonus Ordinance.	
“Affordability Requirements”	All of the legal restrictions and obligations of Owner as set out herein which restrict the rental rate and use and occupancy of the Property as developed for the Project in consideration of City’s approval of the Density Bonus Units and the Density Bonus Benefits.	

2. **REPRESENTATIONS.** This Density Bonus Housing Agreement is required pursuant to the Density Bonus Ordinance for Owner to obtain the right to develop Density Bonus Units and be granted the Density Bonus Benefits. Owner enters into this Agreement for itself and its successors and assigns, and agrees to comply with all of the provisions set out in this Agreement. Owner has been provided with the opportunity to make itself independently familiar with the covenants, conditions and restrictions set out in this Agreement and to confer with legal counsel and Owner accepts and agrees to fully comply with all of the provisions contained herein. Owner understands and agrees that City is not obligated to issue to Owner a building permit to proceed with development of the Property for the Project until this Agreement is recorded against the Property, and Owner consents to such recordation by City.

3. **RENTAL RESTRICTIONS AND AFFORDABILITY LEVELS.** Owner shall only rent those units within the Project designated as Bonus Units to households whose income does not exceed the Affordability Level as set out below, at an Affordable Rent as defined in Section 4, below. In order to insure that the proper number and types of Bonus Units will be offered for rent in accordance with this Density Bonus Housing Agreement, Owner is prohibited from leasing any Bonus Unit until City has approved the form and content of the leases for those units to verify compliance with this Agreement.

The Affordable Rent as of the Effective Date for each Bonus Unit is defined below as the Initial Rent and shall be set in the individual leases; provided, however, that upon the request of Owner, the Affordable Rent schedule shall be adjusted in accordance with the Affordability Level by Unit Size, as defined below, as of the date when the Project is ready for occupancy. In addition, Owner may offer lower rents than the Affordable Rent schedule if more restrictive rents are required to secure Project financing. Unless Owner has obtained prior written City authorization, Owner shall maintain the allocation of the total number of Bonus Units by Affordability Level and Unit Size as set out below. The following table also identifies for ease of reference all of the Project’s rental units by Affordability Level (the “Restricted Units”) under the terms of the covenant previously recorded against the Property (the “HCD Covenant”) in favor of the State Department of Housing and Community Development (“HCD”):

“Affordability Level” (% of Median Income):	Total Number of Restricted Units:	Number of Restricted Units by “Unit Size”:		Number of Bonus Units	“Initial Rent” per Restricted Unit per Month (2011):
“Low Income” (60%)	143	72	1br	11	\$ 901
		71	2br	10	\$ 1,014
“Very Low Income” (50%)	33	16	1br	11	\$ 751
		17	2br	10	\$ 845
“Extremely Low Income” (30%)	3	2	1br		\$ 450
		1	2br		\$ 507
	Total 179			42	

4. **AFFORDABLE RENT.** In accordance with the Density Bonus Ordinance and this Agreement, Owner shall only rent Bonus Units to eligible households for an amount that does not exceed the maximum Affordable Rent applicable to the respective Bonus Unit. The term “Affordable Rent” means the monthly housing expenses for the household, including a reasonable allowance for utilities and costs related to occupancy, does not exceed thirty percent (30%) of the Affordability Level (the percentage of the Median Income), after adjustment for Household Size, divided by twelve (12).

a. In determining the maximum Affordable Rent, the following “Household Size” assumption shall be based on the Unit Size as follows:

- 1 bedroom = 2 person household
- 2 bedrooms = 3 person household

b. In determining the maximum Affordable Rent, the term “Median Income” means the amount set annually by the federal Department of Housing and Urban Development (“HUD”) for the Sacramento Metropolitan Statistical Area. The Affordable Rent for the Bonus Units may be adjusted during the term of this Agreement, but not more often than annually, if the Median Income level is increased from the prior year.

c. Owner shall be responsible for determining the maximum Affordable Rent for the Bonus Units annually. Within ten (10) days of receipt of Owner’s written request, City shall provide all information necessary for Owner to compute the Affordable Rent and will assist Owner in determining the applicable rental rate schedule for the Bonus Units in accordance with the Affordability Levels and Unit Size.

5. **DEVELOPMENT STANDARDS.** In developing the Project, Owner shall assure that all of the residential units are constructed in accordance with all applicable City Code requirements, the Project entitlements issued by City, and any loans or other financing agreements between Owner and City, between Owner and the Sacramento Housing and Redevelopment Agency (“SHRA”), and the HCD Covenant.

6. **TERM.** The term of this Density Bonus Housing Agreement and the covenants contained herein shall regulate the Bonus Units and burden the Property for a period of thirty (30) years from the date the first Bonus Unit becomes available for occupancy, which is measured by the date of issuance of the occupancy permit for the Project.

7. **RENT VERIFICATION AND ANNUAL REPORTS.** Owner shall annually verify the income of all members of the household in each Bonus Unit to determine if they still qualify at the specified Affordability Level and shall maintain books and records of their respective rents and incomes. Annually, not later than January 31 of each year for the term of this Agreement, Owner shall submit a report to City stating the addresses, unit numbers and bedroom sizes of each Bonus Unit, together with the rent amount, the actual household size and the annual household income for each respective Bonus Unit. Owner may submit to City the same annual report required by SHRA and/or HCD if it contains substantially the same information.

8. **DISGORGEMENT OF EXCESS RENTS.** If City determines that Owner has collected rent in excess of the Affordable Rent for any Bonus Unit, City shall notify Owner of such overpayment and within thirty (30) days thereafter, Owner shall deliver to City the total amount of the overpayment for all Bonus Units charged improperly for the applicable period of time. The parties intend that such proceeds shall be returned to the individual tenants of the Bonus Units named in each affected lease by paying them the amount of overpayment that was paid above the applicable Affordable Rent. Owner shall be responsible for providing City with the current address of each and every tenant entitled to such repayment, notwithstanding that fact that the tenant may have moved to a new address or addresses. If Owner and City are unable to find each tenant that is owed a rent rebate, City may retain such proceeds for investment in or to benefit other affordable housing projects located within the City boundaries.

9. **ADDITIONAL COVENANTS.** Owner agrees to comply with the following additional covenants. Unless Owner has received the prior written consent or approval by City to vary from any of the covenants set out herein, Owner shall fully comply with each and every covenant. Except as may otherwise be stated in this Density Bonus Housing Agreement, the following covenants shall have the same term as this Agreement.

a. Owner shall assure full compliance with the Affordability Requirements. In the event of a conflict between the Affordability Requirements, the HCD Covenant, and any covenant recorded against the Property in furtherance of any agreement between Owner and City and/or SHRA which restricts the rental rate and occupancy of the Bonus Units, the most restrictive covenant shall control.

b. 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 Density Bonus Housing Agreement.

c. Owner shall maintain the Property and the building improvements, grounds and equipment on the Property in good repair and condition and in compliance with all applicable housing quality standards and building code requirements. Owner 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 Project in a timely manner, provided that such restoration or replacement is then economically feasible.

d. Owner shall comply with all applicable provisions of the City Code, in particular, Chapter 8.08, the Social Nuisance Code, with regard to management of the Property to prevent tenants from engaging in illegal activities or causing any loud, unnecessary or unusual noise which disturbs the peace and quiet, or which causes discomfort and annoyance, to persons residing in the surrounding neighborhood, and Chapter 8.120, the Rental Housing Inspections Code.

e. Owner shall employ a qualified and experienced property manager who resides on the Property to conduct tenant background checks, enforce the lease restrictions, evict tenants that engage in unlawful or unpermitted activities, and other related matters with regard to the use and occupancy of the Property as set out in this Agreement and in the City approved lease.

f. Owner shall not cause and shall not permit discrimination on the basis of race, color, ancestry, national origin, religion, creed, sex, marital status, sexual orientation, age, disability or medical condition in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no such discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.

10. NATURE OF COVENANTS. The provisions contained in this Density Bonus Housing Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the covenants, conditions and restrictions contained in this Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, 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, City, HCD, SHRA, City's successors and assigns, any other governmental entity acting within its authority against Owner, its successors and assigns and every successor in interest to all or any part of the Property.

11. REVIVAL OF COVENANTS AFTER FORECLOSURE. The Affordability Requirements shall be revived after foreclosure by a lender with a secured interest in the Property, or after transfer of a deed in lieu of foreclosure to said lender, according to the terms set out herein if, during the original term of this Density Bonus Housing Agreement, Owner or a related party or affiliate of Owner regains an ownership interest in the Property. For purposes of this provision, a "related party" is anyone with whom 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, and an "affiliate" is a person or entity that controls, or is controlled by, Owner or who holds at least a 10% interest in ownership in the legal entity comprising Owner.

12. RECORDKEEPING AND REPORTING. Upon request of City, Owner shall promptly provide any additional information or documentation requested in writing by the City to verify Owner's

compliance with the provisions of this Density Bonus Housing Agreement. At the written request of the City, Owner shall, within a reasonable period of 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 Project.

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 inspection, examination and audit by City or its agents. The books and accounts of the ownership and operation of the Property shall be kept in accordance with generally accepted accounting principles and practices. Owner shall provide City with access to the Property and its tenants during reasonable hours for the purpose of reviewing Owner's compliance with this Density Bonus Housing Agreement.

14. INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS. Owner shall indemnify and hold City, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to comply with: (a) the covenants, conditions and restrictions contained in this Density Bonus Housing Agreement, (b) all other laws, rules, regulations and restrictions related to the Density Bonus Ordinance, and/or (c) the HCD Covenant. Without limitation, such indemnity shall include repayment to the appropriate parties of rents in excess of amounts authorized to be charged under this Agreement or the HCD Covenant, and repayment to the City of the costs of funds and the value of lost opportunities resulting from the required repayment by City to HCD or to other agencies which provided funding for improvements which benefitted the Property due to Owner's failure to comply with the terms of this Agreement.

15. CHANGES WITHOUT CONSENT OF LENDERS, TENANTS, LESSEES OR OTHERS. City (and its successors and assigns) and Owner (and its successors and assigns) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions or restrictions contained in this Density Bonus Housing Agreement without the consent of any easement holder, licensee, lessee, tenant, lender other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee interest in the Property.

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

17. BINDING ON SUCCESSORS IN INTEREST AND ASSIGNS. This Density Bonus Housing Agreement shall bind, and the benefits conveyed under the Density Bonus Ordinance shall inure

to, Owner and its successors in interest and assigns that hold an ownership interest in the Property for the term of this Agreement. This Agreement is to be recorded against the Property to provide constructive notice of the obligations and restrictions that apply to the use and occupancy of the Property and City's right to enforce said provisions to all successors and assigns of Owner. Owner shall not be required to obtain the advanced written consent of City before any interest in the Property may be sold, transferred or assigned as long as the successor in interest or assignee acknowledges that the obligations and restrictions set out in this Density Bonus Housing Agreement shall remain enforceable by City against the Property for the term of this 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 Density Bonus Housing Agreement, and that, in any event, the requirements of this Density Bonus Housing Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements of Owner that may be in conflict with the terms of this Density Bonus Housing Agreement, with the exception of any agreement with HCD, City and/or SHRA which has more restrictive covenants as set out in Section 9.

19. ATTORNEYS' FEES. If the services of any attorney are required by a party to secure the performance of this Density Bonus Housing Agreement, including, without limitation, enforcement upon the breach or default of the other party, or if any judicial remedy, arbitration or mediation is necessary to enforce or interpret any provision of this Density Bonus Housing Agreement or the rights and duties of any person in relation to this Density Bonus Housing Agreement, the prevailing party shall be entitled to recovery of reasonable attorneys' fees (including the fees of the office of the City Attorney), 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 Density Bonus Housing 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.

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

21. ELECTION OF REMEDIES. To the extent applicable, in the event of any breach or default of the covenants, conditions and restrictions contained in this Density Bonus Housing Agreement, City shall reasonably endeavor to remedy such breach by conference and conciliation. If, in the opinion of City, City 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 City.

City may institute or prosecute in its own name, any suit City may consider advisable in order to compel performance of any obligation of Owner or any successor or assign to develop, maintain and operate the Property in conformity with the terms of this Density Bonus Housing Agreement and to remedy any default of Owner under of this Agreement. City may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for uses not permitted under this Density Bonus Housing Agreement.

The remedies of City under this Density Bonus Housing Agreement are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by City any one or more of its other remedies.

22. **NO WAIVER.** No waiver by City of any breach or default under this Density Bonus Housing 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 City at the City Address or such other address as each respective party has designated by written notice to the other party.

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[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

THE PARTIES HAVE EXECUTED THIS DENSITY BONUS HOUSING AGREEMENT in Sacramento, California on the following dates, although the Agreement will not become binding with regard to the Property until the Effective Date as defined above.

OWNER:

CITY:

By: _____
Name:
Title:

By: _____
John Dangberg
Assistant City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By _____
Owner Counsel

By: _____
Deputy City Attorney

Attest:

By: _____
City Clerk

NOTARY ACKNOWLEDGMENT REQUIRED

Exhibit A
Property Legal Description