

**Meeting Date:** 6/24/2014

**Report Type:** Consent

**Report ID:** 2014-00454

**Title:** Assignment and Assumption Agreement: Brownfields Revolving Loan Program

**Location:** R Street, District 4

**Recommendation:** Pass a Motion authorizing the City Manager or the City Manager's designee to execute 1) an assignment and assumption agreement with the Sacramento Housing and Redevelopment Agency relating to the 2002 Brownfields Cleanup Revolving Loan Fund (Fund 2029) loan to Capitol Area Development Authority; and 2) an assignment and assumption agreement with the Sacramento Housing and Redevelopment Agency relating to the 2004 Brownfields Cleanup Revolving Loan Fund loan to Capitol Area Development Authority.

**Contact:** Denise Malvetti, Senior Project Manager, (916) 808-7064, Economic Development Department

**Presenter:** None

**Department:** Economic Development Dept

**Division:** Citywide Development

**Dept ID:** 18001031

**Attachments:**

- 1-Description/Analysis
- 2-Assignment and Assumption Agreement 2002 (Final)
- 3-Loan 1 \$250K with signed P-note
- 4-Assignment and Assumption Agreement 2004 (Final)
- 5-Loan 2 - \$200K

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**City Attorney Review**

Approved as to Form  
Michael Sparks  
6/10/2014 11:48:34 AM

**Approvals/Acknowledgements**

Department Director or Designee: Jim Rinehart - 6/5/2014 3:42:14 PM

## Description/Analysis

**Issue Detail:** In 1997, the City established a Brownfields cleanup revolving loan fund program (the “BCRLF Program”) funded by the United States Environmental Protection Agency. The purpose of the BCRLF Program is for the City to provide loans and sub-grants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City.

Through a series of agreements between the City and SHRA, most recently in City Agreement 2000-121-1, the City designated SHRA to serve as fund manager of the BCRLF Program. As fund manager, SHRA was responsible for managing the financial aspects of the BCRLF Program on behalf of the City, including entering into BCRLF Program loan agreements with borrowers.

In 2002, SHRA and the Capitol Area Development Authority (“CADA”) entered into a BCRLF Program loan agreement in the amount of \$250,000 to fund the removal of contaminated soil in connection with CADA’s Warehouse project on R Street (the “Loan Agreement 1”). In 2004, SHRA and CADA entered into a second BCRLF Program loan agreement in the amount of \$200,000 to fund the removal of contaminated soil in connection with CADA’s Warehouse project on R Street (the “Loan Agreement 2”).

City Agreement 2000-121-1 expired on December 31, 2007, and SHRA no longer serves as the fund manager. The City has assumed the role of managing the BCRLF Program, and now SHRA and the City desire to formally transfer the rights and obligations under Loan Agreements 1 and 2.

**Policy Considerations:** Although the proposed action is strictly an administrative matter, the BCRLF program supports the 2013 Economic Development Strategy goals of Invest in Building Sacramento and Invest in Partners.

**Economic Impacts:** Not applicable as the recommendation is an administrative matter.

**Environmental Considerations:** The recommendations are administrative, organizational and fiscal matters that do not constitute a “project” under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3). The activity is covered by the general rule that CEQA applies only to projects which have the potential to cause significant effect on the environment.

**Sustainability:** Not applicable as the recommendation is an administrative matter.

**Commission/Committee Action:** On June 18, 2014, the Sacramento Housing and Redevelopment Commission authorized the Executive Director to execute the Assignment and Assumption Agreements.

**Rationale for Recommendation:** City Agreement 2000-121-1 expired on December 31, 2007. SHRA no longer serves as the fund manager, and the City has assumed the role of managing the BCRLF Program. As a result, staff recommends that the City assumes all of the rights and obligations under the 2002 and 2004 Loan Agreements by approving the two Assignment and Assumption Agreements.

**Financial Considerations:** In 2002, SHRA and the Capitol Area Development Authority (“CADA”) entered into a BCRLF Program loan agreement in the amount of \$250,000 (the “Loan Agreement 1”) and in 2004, they entered into a second loan agreement in the amount of \$200,000 (the “Loan Agreement 2”). CADA is current on its annual payments for both loans. Economic Development will

bill CADA for the annual loan payments. The loan under Loan Agreement 1 will be paid off in 2022, and the loan under Loan Agreement 2 will be paid off in 2016. The funds will return to the BCRLF Program (Fund 2029, Brownfield Revolving Loan Program Fund) so that the City can lend them out to additional brownfields projects.

**Local Business Enterprise (LBE):** Not applicable, no good or services are being procured under this report.

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(2002 Loan)**

This agreement, dated \_\_\_\_\_, 2014, for purposes of identification, is between the **City of Sacramento** (the “**City**”), a California municipal corporation, and the **Sacramento Housing and Redevelopment Agency** (“**SHRA**”), a California joint powers agency.

**Background**

In 1997, the City established a brownfields cleanup revolving loan fund program funded by the United States Environmental Protection Agency (the “**BCRLF Program**”). The purpose of the BCRLF Program is for the City to provide loans and subgrants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City.

Through a series of agreements between the City and SHRA, most recently in City Agreement 2000-121-1, the City designated SHRA to serve as fund manager of the BCRLF Program. As fund manager, SHRA was responsible for managing the financial aspects of the BCRLF Program on behalf of the City, including entering into BCRLF Program loan agreements with borrowers.

In 2002, SHRA and the Capitol Area Development Authority (“**CADA**”) entered into a BCRLF Program loan agreement to fund the removal of contaminated soil in connection with CADA’s Warehouse project on R Street (the “**Loan Agreement**”). The Loan Agreement is attached as **Exhibit A** to this agreement. CADA has made one payment, in the amount of \$25,000.00, to SHRA under the Loan Agreement.

City Agreement 2000-121-1 expired on December 31, 2007, and SHRA no longer serves as the fund manager. The City now desires to formally assume all of the rights and obligations under the Loan Agreement. The parties further desire that SHRA transfer the \$25,000.00 payment to the City.

***With these background facts in mind, the City and SHRA agree as follows:***

- 1. Assignment.** SHRA hereby assigns to the City all of SHRA’s rights and obligations under the Loan Documents. “**Loan Documents**” has the meaning given that term in article II, section 1.18 of the Loan Agreement.
- 2. Assumption.** The City hereby accepts the assignment and assumes all of the rights and obligations of SHRA under the Loan Documents.
- 3. Payment.** SHRA shall pay the City \$25,000.00 not more than 30 days after the effective date of this agreement.
- 4. Release of SHRA.** Upon the City’s assumption of the Loan Agreement and all of its provisions, terms, conditions, and covenants and the receipt by the City of the \$25,000 payment, SHRA shall be released from that Loan Agreement.
- 5. Binding effect.** This agreement binds and inures to the benefit of the parties’ successors and assigns.

6. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.
7. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibit A is part of this agreement.
8. **Third-Party Beneficiaries.** This agreement is solely for the benefit of the City and SHRA. It is not intended to benefit any third parties.
9. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
10. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement shall have the same binding effect as originals.
11. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_  
John F. Shirey  
City Manager  
Date: \_\_\_\_\_, 2014

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_  
Michael Sparks  
Senior Deputy City Attorney

Attest:

By: \_\_\_\_\_  
Assistant City Clerk

**Sacramento Housing and Redevelopment Agency**

By: \_\_\_\_\_  
La Shelle Dozier  
Executive Director  
Date: \_\_\_\_\_, 2014

Approved as to Legal Form

By: \_\_\_\_\_  
David Levin  
Agency Counsel

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND  
LOAN AGREEMENT  
CADA WAREHOUSE**

**ARTICLE I TERMS AND DEFINITIONS**

**LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE** This Loan Agreement in addition to attachments and Exhibits listed below includes Article II Loan Provisions Article III Certifications and Assurances and Article IV Regulatory Requirements which are attached to and incorporated in this Loan Agreement by this reference The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I General Terms and as defined in Article II Loan Provisions (Terms being defined are indicated by quotation marks If an item in this Article I table is marked 'None 'Not Applicable 'N/A or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate ) The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement

**NOW, THEREFORE** in consideration of their mutual promises the parties agree as follows

A. "Loan Information" The general loan provisions of the Loan	
<b>LENDER</b>	The following public agency that is making the Loan and whose legal status and address are
Name	Sacramento Housing and Redevelopment Agency
Legal Status	A public body corporate and politic
Principal Address	630 I <sup>st</sup> Street City of Sacramento Sacramento County California 95814
<b>BORROWER</b>	The borrower of the Loan funds whose name legal status and address are
Name	Capitol Area Development Authority (CADA)
Legal Status	A joint powers authority of the City of Sacramento and the State of California
Principal Address	1522 14 <sup>th</sup> Street Sacramento California 95814
<b>EFFECTIVE DATE</b>	<u>JUNE 28, 2009</u> Which is the date that this Loan Agreement shall be effective
<b>LOAN</b>	The Loan made by this Loan Agreement.
<b>LOAN COMMITMENT</b>	Lender s loan commitment, made by letter dated as of
<b>LOAN PROGRAM</b>	Lender s Loan Program commonly known as
<b>LOAN AMOUNT</b>	\$250 000
<b>INTEREST RATE</b>	This is a zero/no interest loan
<b>MATURITY DATE</b>	The first day of the first month twenty years after the date of the execution of loan documents
<b>PAYMENT SCHEDULE</b>	Beginning July 1 2013 and on each successive July 1 <sup>st</sup> until maturity Borrower shall reduce the principal balance by an amount not less than \$25 000 All remaining amounts are due on July 1 2022
<b>BORROWER EQUITY</b>	N/A
<b>'SPECIAL TERMS</b>	1 FEES shall equal three percent (3%)of the loan amount, which fees shall be amortized within the loan
<b>PROJECT</b>	The removal of contaminated soil from 1130 R Street ( Site )and backfill of same location as approved in the Removal Action Workplan ( RAW' ) or EPA equivalent, dated November 28 2001 prepared by approved by the California Department of Toxic Substance Control (DTSC)

Brownfield Revolving Loan Fund Agreement  
 Article I Terms and Conditions

B. "Collateral" The Collateral securing repayment of the Loan, which Collateral consists of the following		
<b>COLLATERAL</b>		
<b>TAX INCREMENT FUNDS</b>	Borrower s is pledging its own Tax Increment funds as collateral for this loan	Evidence of the pledge of the Tax Increment funds shall be in the form of a resolution by the Borrower s governing board and execution of the Pledge Agreement, attached hereto and incorporated herein
<b>ADDITIONAL REAL PROPERTY</b>	Address	None
	Assessor s Parcel Number	Not applicable
	Legal Description	Not applicable
	Borrower s Title Interest	Not applicable

C. "ESCROW INFORMATION"		
Title Company and Escrow Agent	N/A	
Escrow	N/A	
Closing Date	N/A	

D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Loan Agreement):	
EXHIBIT	DEFINED TERM
<u>Exhibit Legal Description</u>	<u>Legal Description</u>
<u>Exhibit Scope of Response Activities</u>	<u>Response Activities</u>
<u>Exhibit Note Form</u>	<u>Note</u>

E. "APPROVAL DOCUMENTS" Borrower shall submit the following documents for Lender approval	
Budget for the Project	
The Removal Action Workplan	

F. "ASSIGNED DOCUMENTS" Borrower shall assign the following documents to Lender	
Hazard Response consultant engineering and contractor contracts	

G. "Construction Information":		
Completion Date	Twelve months from date of execution of loan documents	Which date on or before which the Completion of the Project must occur
General Contractor	Delta Oil	Which is the general contractor for the Project

Brownfield Revolving Loan Fund Agreement  
 Article I Terms and Conditions

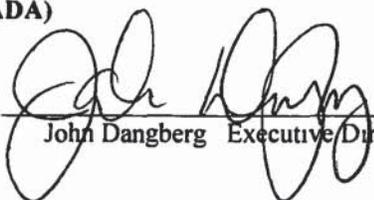
Licensed Environmental Professional	Harding ESE	Which is the environmental specialist preparing the Project	
Retention	The following percentage of each disbursement made for construction work in aggregate not to exceed the following percentage of the Loan Amount which shall be retained by Lender for disbursement with the final disbursement of the Loan	Percentage of disbursement	Ten Percent (10%)
		Percentage of Loan	Ten Percent (10%)

<b>H. "SPECIAL PROVISIONS"</b> The following special provisions shall be in addition to the provisions of this Loan Agreement	
1	Borrower shall use funds only for eligible activities
2	Borrowers shall document all funds use
3	The Borrower agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of ten (10) years after maturity of the loan except as follows a) Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved b) All such records and supporting documents shall be made available upon request for inspection or audit by the Lender or its representatives
4	Borrower shall use no more than 10 percent of the loan for allowable non cleanup activities
5	Borrower shall certify that it is not currently nor has it been subject to any penalties resulting from environmental non compliance at the site subject to this Loan
6	Borrower shall conduct all cleanup and response activities under this loan in accordance with the cooperative agreement and CERCLA (42 U S C §9601 et seq ) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ( NCP ) (40 CFR §300 et seq )
7	Borrower shall modify response activities as required by the Lead Agency
8	Borrower shall comply with both federal and state prevailing wage law All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis Bacon prevailing wages (Federal) California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq ) The prevailing wages shall be the higher of Davis Bacon wages or state prevailing wages for each trade

THE PARTIES HAVE EXECUTED THIS LOAN AGREEMENT in Sacramento California as of the date first written above

**BORROWER**  
**CAPITOL AREA DEVELOPMENT AUTHORITY**  
**(CADA)**

**AGENCY SACRAMENTO HOUSING &**  
**REDEVELOPMENT AGENCY**

By  \_\_\_\_\_  
 John Dangberg Executive Director

By  \_\_\_\_\_  
 Anne M Moore Executive Director

Approved as to form  \_\_\_\_\_  
 Cynthia Knight  
 Borrower Counsel

Approved as to form  \_\_\_\_\_  
 Agency Counsel

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of CALIFORNIA
County of SACRAMENTO

On June 27, 2002 before me, Christin Ogden
Date Name Title of officer

personally appeared John Dangberg
Name(s) of Signer(s)

[X] Personally known to me
OR

[ ] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument



Handwritten signature of the notary.

Signature of notary

OPTIONAL

The data below is not required by law, however it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

SIGNATURE AUTHORITY OF SIGNER

- [ ] INDIVIDUAL
[ ] CORPORATE OFFICER(S)

Title(s)

- [ ] PARTNER
[ ] LIMITED
[ ] GENERAL
[ ] ATTORNEY IN FACT
[ ] TRUSTEE(S)
[ ] GUARDIAN/CONSERVATOR
[ ] OTHER

NAME(S) OF PERSON(S) OR ENTITY(IES) SIGNER IS REPRESENTING

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT 1 LEGAL DESCRIPTION**

Lots 1 2 3 and 4 in the block bounded by 11th and 12th and R and S Streets of the City of Sacramento according to the official plat thereof

APN 009-0075-001

**EXHIBIT 2 SCOPE OF RESPONSE ACTIONS**

The work consists of mobilization demolition of AC paving and fencing installation of temporary facilities and controls excavation and stockpiling of overburden soil to the limits of excavation indicated on the Contract Drawings excavation temporary storage hauling and disposal of PAH impacted soil to the limits of excavation indicated on the Contract Drawings additional excavation at the direction of Harding ESE demobilization for a period of two to three weeks during USEPA analysis remobilization backfill of excavations using stockpiled overburden soil supplemented with import fill to original pre construction grades removal of temporary facilities and control and site restoration

All work shall be performed in accordance with the Contract Drawings Specifications and the Final Removal Action Workplan (RAW) Harding ESE November 12 2001 The requirements of the RAW supercede should conflicts between the RAW and Specifications be identified

**PROMISSORY NOTE**

<b>"EFFECTIVE DATE</b>	<u>JUNE 28 2002</u>
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**ARTICLE I TERMS AND DEFINITIONS:**

**BORROWER HAS MADE THIS PROMISSORY NOTE ("NOTE") AS OF THE EFFECTIVE DATE.** This Note, in addition to attachments and Exhibits listed below includes Article II Note Provisions, which is attached to and incorporated in this Note by this reference. The capitalized terms in this Note shall have the meanings assigned in this Article I Terms Definitions and as defined in Article II Note Provisions. (Terms being defined are indicated by quotation marks. If an item in a table in this Article I is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Note or the referenced item is not required or is not included in this Note as the context may indicate.) The Lender is making the Loan to Borrower in consideration of Borrowers making this Note and delivering it to Lender.

For purposes of this Note, the following terms shall have the following meanings:

DEFINED TERM	DEFINITION
"Loan Date"	<u>June 28, 2002</u>
"Lender"	Sacramento Housing and Redevelopment Agency
"Borrower"	Capitol Area Development Authority
"Borrower Legal Status"	A body corporate and politic
"Loan Agreement"	The Brownfields Cleanup Revolving Loan Fund Agreement between the Borrower and Lender as of the Loan Date for making of the loan ("Loan") evidenced by this Note
"Principal Amount"	\$250,000
"Interest Rate"	Zero Interest
<b>"SPECIAL TERMS"</b>	1. Borrower shall use funds only for eligible activities.
	2. Borrowers shall document all funds use
	3. Borrower shall maintain documentation for a minimum of 10 years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever, is longer. Borrower shall obtain written approval from the lead agency prior to disposing of records.
	4. Borrower shall use no more than 10 percent of the loan for allowable non-cleanup activities
	5. Borrower shall certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to this Loan.
	6. Borrower shall conduct all cleanup and response activities under this loan in accordance with the cooperative agreement and CERCLA (42 U.S.C. §9601 et seq.) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 CFR §300 et seq.).
	7. Borrower shall modify response activities as required by the Lead Agency.
	8. All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to prevailing wage, which shall be the higher of Davis-Bacon wages or state prevailing wages

**PAYMENT SCHEDULE. Repayment of this Note shall be made the following amounts:**

Beginning July 1, 2013 and on each successive July 1<sup>st</sup> until maturity Borrower shall reduce the principal balance by an amount not less than \$25,000.  
All remaining amounts are due on July 1, 2022.

**BROWNFIELD CLEANUP REVOLVING LOAN FUND**

**PROMISSORY NOTE**

**ARTICLE II NOTE PROVISIONS:**

**BORROWER HAS MADE THIS NOTE AS OF THE LOAN DATE.** The capitalized terms in this Note shall have the meanings assigned in Article I General Terms and Definitions and as defined in this Article II Note Provisions. (Terms being defined are indicated by quotation marks.) The Lender is making the Loan pursuant to the terms and conditions of the Loan Agreement and this Note.

**FOR VALUE RECEIVED, THE UNDERSIGNED, JOINTLY AND SEVERALLY, PROMISES TO PAY** to Lender, or its successors or assigns, the Principal Amount or such lesser amount as may be endorsed on this Note on behalf of Lender. The Loan shall bear interest on the outstanding principal balance, computed from the date of each advance by Lender to Borrower at Interest Rate.

1. This Note evidences the obligation of Borrower to Lender for repayment of funds loaned to Borrower under a loan agreement between Borrower and Lender dated as of the Loan Date ("Loan Agreement"). The terms and covenants of the Loan Agreement are incorporated in this Note by reference. The Loan Agreement provides for and incorporates the Certification by Borrower, and Borrower acknowledges that Certification by Borrower is further consideration for this Note.
2. Borrower shall make payments in the amounts shown in the Payment Schedule. On the first day of the first month occurring twenty (20) years after the execution of the loan documents the unpaid balance of said principal, if any, together with all unpaid, fees and charges due, if any, shall become due and payable. All payments on this Note shall be applied first to fees and charges due under the Loan Agreement, if any, and then to the principal due on this Note. Borrower shall make the payments to the Lender at 630 "I" Street, Sacramento, CA 95814-2490, or to such other person or organization as may be designated by Lender to Borrower and noticed as provided in the Loan Agreement.
3. If any installment under this Note is not received by Lender within fifteen (15) calendar days after the installment is due, Borrower shall pay to Lender a late charge of five percent (5%) of such installment. Such late charge shall be immediately due and payable without demand by Lender.
4. This Note is made in reliance upon the Borrower executing a Pledge Agreement of its Tax Revenues (Tax Increment) monies. Such Pledge shall be by written instrument and by resolution of the Borrower's governing board.
5. Borrower shall comply with and fulfill the Special Terms.
6. Upon occurrence of any one or more of the following (subject to applicable notice and cure requirements, if any), Lender may, at its sole discretion, declare all unpaid principal immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds:
  - a. Borrower defaults in the payment of any principal or interest when due.
  - b. Lender discovers that Borrower, in any application to Lender in connection with the Loan, had failed to disclose or misrepresented any fact deemed by Lender to be material or which would have prevented Borrower from being eligible for the Loan.
  - c. Lender discovers that Borrower had made any misrepresentations or failed to disclose any fact deemed material by Lender in the Loan Agreement, this Note or the Loan Agreement.
  - d. Borrower defaults or breaches any of the terms of Loan Agreement, this Note, or the Regulatory Agreement, if any.
  - e. The occurrence of any of the following:
    - 1) Borrower becoming insolvent or bankrupt or being unable or admitting, in writing, his/her inability to pay his/her debts as they mature or making a general assignment of or entering into any arrangement with creditors.
    - 2) Proceedings for the appointment of a receiver, trustee or liquidator of the assets of Borrower or a substantial part of such assets, being authorized or instituted by or against the Borrower.
    - 3) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against Borrower.

**BROWNFIELD CLEANUP REVOLVING LOAN FUND  
PROMISSORY NOTE**

7. No waiver of any default or breach by Borrower under this Note shall be implied from any omission by Lender to take action on account of such default, and no express waiver shall affect any default, other than the default specified in the waiver. Such waiver shall be in writing and shall be operative only for the time and to the extent therein stated.

8. Borrower may prepay this Note in full or in part at any time, without any prepayment penalty being charged by Lender.

9. During the existence of default or delinquency under the terms of this Note or the Loan Agreement, the Lender is expressly authorized to apply all payments made on this Note to the payment of all or part of the delinquency, as it may elect.

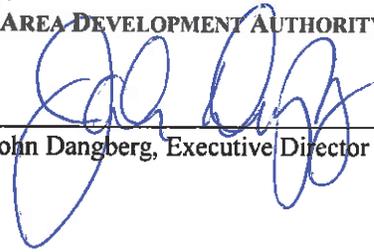
Borrower shall pay to Lender all costs of enforcement of all or any portion of this Note and the Loan Agreement, including attorney's fees, witness fees, investigator fees and court costs, incurred by Lender, whether or not litigation is commenced.

IN WITNESS WHEREOF, Borrower has executed this Note as of the Loan Date.

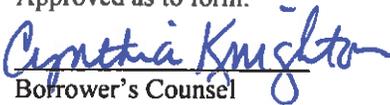
**Borrower:**

**CAPITOL AREA DEVELOPMENT AUTHORITY  
(CADA)**

By: \_\_\_\_\_

  
John Dangberg, Executive Director

Approved as to form:

  
Cynthia Knighton  
Borrower's Counsel

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

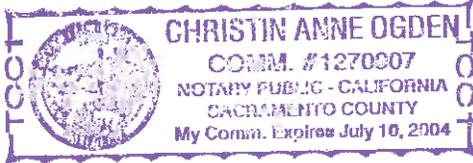
State of CALIFORNIA
County of SACRAMENTO

On June 27, 2002 before me, Christin Ogden
Date Name, Title of officer

personally appeared John Dangberg
Name(s) of Signer(s)

[X] Personally known to me
OR

[ ] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



[Handwritten signature]
Signature of notary

OPTIONAL

The data below is not required by law, however it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

SIGNATURE AUTHORITY OF SIGNER:

DESCRIPTION OF ATTACHED DOCUMENT

- [ ] INDIVIDUAL
[ ] CORPORATE OFFICER(S)

Title(s)

TITLE OR TYPE OF DOCUMENT

- [ ] PARTNER
[ ] LIMITED
[ ] GENERAL
[ ] ATTORNEY-IN-FACT
[ ] TRUSTEE(S)
[ ] GUARDIAN/CONSERVATOR
[ ] OTHER:

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE:

NAME(S) OF PERSON(S) OR ENTITY(IES) SIGNER IS REPRESENTING:

**ARTICLE II LOAN PROVISIONS**

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**LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE** The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I General Terms and as defined in Section 1 of this Article II - Loan Provisions (Terms being defined are indicated by quotation marks ) The Lender is making the Loan pursuant to the Loan Commitment and the terms and conditions of this Loan Agreement

**NOW, THEREFORE** in consideration of their mutual promises the parties agree as follows

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

**1 1 'Borrower s Certification** is attached to and incorporated in its entirety into this Loan Agreement The Borrower s Certification is further consideration for this Loan and is required under this Loan Agreement

**1 2 'Brownfields Site Manager"** is designated by the Lead Agency and is responsible for overseeing cleanups at specific sites The Brownfields Site Manager must be a qualified government employee (per definition of "On Site Coordinator in 40 C F R 300 5)

**1 3 Budget** is the budget approved by Lender for the Project

**1 4 Business Day'** means regularly scheduled business day of the Sacramento Housing and Redevelopment Agency Whenever any payment to be made under this Loan Agreement is due on a day other than a Business Day it may be made on the next succeeding Business Day and the resulting extension of time will be included in the computation of payment of interest

**1 5 Change** means any extra work or installation of materials not included in the Plans and Specifications or any change in or deviation from the Plans and Specifications

**1 6 "Clean up"** means the actual response to and cleanup and removal of the hazardous substance(s) from the site in accordance with the terms of this Loan and to the satisfaction of this Lender and the Lead Agency

**1 7 Close of Escrow'** means the fulfillment of the Escrow terms and conclusion of the Escrow including without limitation the execution of unexecuted documents the recordation of documents specified for recording the issuance of title insurance policies the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow The Close of Escrow shall occur on the Closing Date

**1 8 Completion of the Project** means that in Lender's sole judgment the Project has been implemented and completed in a good and proper manner in accordance with the Response Plan Plans and Specifications and the Budget as approved by Lender all notices of completion with respect to the

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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Project have been filed and all statutory lien periods have expired, all costs of the Project have been paid closure letter has been issued by DTSC and all of the conditions to final disbursement of the Loan have been satisfied

1 9 Event of Default is breach of or default in a party s obligations under this Loan Agreement the Pledge Agreement the Note and any other instrument which is incorporated in this Loan Agreement or which otherwise secures the repayment of the Loan An Event of Default may be subject to cure provisions as specified in this Loan Agreement

1 10 Financial Statements means the financial statements of Borrower (and any other persons on whose financial capacity the Lender has relied in making this Loan) as may be required by Lender from time to time including operating statements balance sheets and any other financial reports and information that Lender may require

1 11 General Contractor means the general contractor named by Borrower in his application or supporting documents as the general contractor to perform the response or remediation work that is the Project or any other general contractor so designated by Borrower and approved in writing in advance by Lender Said Contractor shall have and maintain all of the necessary environmental certifications and licenses required to remove or remediate the hazardous substance(s) at the Property in addition to possession of a California State Contractor s License maintained in good standing

1 12 Governmental Authority means the United States of America the State of California, the County of Sacramento the City of Sacramento or any other political subdivision agency department commission board bureau or instrumentality of any of them

1 13 Governmental Requirement means any law, ordinance order rule regulation, plan, ruling, determination or requirement of a Governmental Authority

1 14 Inspector is the person or persons designated by Lender for the inspection of Borrower s books and records and the physical progress of the Project as provided in this Loan Agreement

1 15 " Lead Agency means the City of Sacramento (the cooperative agreement recipient) The Lead Agency is responsible for ensuring that environmental cleanups conducted using BCRLF pilot funds are conducted in accordance with the cooperative agreement and CERCLA and are consistent with the NCP

1 16 Loan is the loan from Lender to Borrower made pursuant to this Loan Agreement

1 17 Loan Agreement means this Brownfields Cleanup Revolving Loan Fund Loan Agreement including Article I and II the Certifications and Assurances and all Exhibits attached to this Loan Agreement (which are incorporated in this Loan Agreement by this reference) and the Loan Documents which are not otherwise included in this definition

1 18 Loan Documents means the Note this Loan Agreement the Security Documents and all other documents (including guaranties) evidencing securing or relating to the Loan

1 19 Loan Maturity Date means the date on which the entire unpaid balance of the Loan including

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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principal and interest, is due and payable

1 20 **Loan Proceeds** means funds disbursed by Lender on account of the Loan and pursuant to this Loan Agreement

1 21 **"Plans and Specification"** means the Final Removal Action Workplan (RAW) for the Project

1 22 **Potential Default** means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse

1 23 **Project** as defined in Article I of this Loan Agreement

1 24 **Response Plan** means the cleanup of the Site as defined above

1 25 **Security Documents** means the Pledge Agreement together with all other documents entered into between Borrower and Lender or by Borrower in favor of, or for the benefit of Lender that recite that they are to secure the Loan

1 26 **"Site"** means 1130 R Street Sacramento California

**2 BORROWER'S REPRESENTATIONS AND WARRANTIES** As a material inducement to Lender to enter into this Loan Agreement and to make the Loan to Borrower Borrower and each signatory who signs on its behalf unconditionally and jointly and severally represents and warrants to Lender as of the Close of Escrow as follows

**2 1 LEGAL ORGANIZATION** Borrower is duly formed and validly exists in the form stated in Article I is qualified to do business in California and has full power to consummate the transactions contemplated

**2 2 BORROWER'S POWERS** Borrower has full authority to execute this Loan Agreement the Note and all of the other Loan Documents to undertake and consummate the contemplated transactions and to pay perform and observe all of the conditions covenants agreements and obligations

**2 3 BINDING OBLIGATION** This Loan Agreement the Note and each of the other Loan Documents constitutes a legal and binding obligation of and is valid and enforceable against each party other than Lender in accordance with the terms of each

**2 4 LITIGATION** There are no actions suits or proceedings pending or to the best knowledge of Borrower threatened against or affecting Borrower the Property or any part of it, or involving the validity or enforceability of the Loan Agreement or the Promissory Note the priority of the lien or the validity or enforceability of any of the other Loan Documents, at law or in equity or before or by any Governmental Authority Borrower is not in default with respect to any order writ injunction decree or demand of any court or other Governmental Authority

**2 5 NO VIOLATION** The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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or constitute a default under, any mortgage, deed of trust lease contract loan or credit agreement corporate charter bylaws partnership agreement, trust agreement or other instrument to which the Borrower or any of its general partners is a party or by which it or they or the Property may be bound or affected

**2 6 NO DEFAULT** There is no Event of Default or Potential Default on the part of Borrower

**2 7 CONTROL OF PROPERTY** Borrower has control of the Site sufficient to carry out the purposes of this Loan

**2 8 NO UNAPPROVED LOANS** Borrower has not received financing for completion of the Project except as has been specifically disclosed to and approved by Lender in writing

**2 9 USE OF PROCEEDS** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of the Project in accordance with the Loan Agreement and for the purposes specified in the Loan Borrower understands that the purpose of this Loan is to cleanup improve and revitalize the subject Property and the surrounding area, which will benefit both the Borrower and the community

**2 9 1 PROHIBITED USES** The following uses with the proceeds of this Loan are prohibited

-Pre-cleanup environmental response activities such as site assessment identification and characterization,

-Cleanup of a naturally occurring substance products that are part of the structure and result in exposure within residential buildings or business or community structures (e g interior lead based paint contamination or asbestos which results in indoor exposure) or public or private drinking water supplies that have deteriorated through ordinary use except as determined on a site-by-site basis and approved by the U S EPA Headquarters consistent with CERCLA section 104(a)(3) and (4)

-Monitoring and data collection necessary to apply for, or comply with environmental permits under other Federal and state laws unless such permit is required as a component of the cleanup action and

-Development activities that are not removal actions (e g construction of a new facility or marketing of a property)

**2 9 2 RESTRICTION AGAINST PETROLEUM ONLY RELEASES** BCRLP pilot funds may not be used at any sites contaminated by petroleum products to address a non petroleum hazardous substance (e g co-mingled waste)

**2 10 TAXES PAID** Borrower has filed all required Federal State County and City tax returns and has paid all taxes due Borrower knows of no basis for additional assessments with respect to any taxes

**2 11 PLANS AND SPECIFICATIONS** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and the On Scene Coordinator To the best of Borrower's knowledge no violation of any Governmental Requirements exists in the Plans and Specifications

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**2 12 ACCURACY** All applications financial statements reports documents instruments information, and forms of evidence delivered to Lender concerning the Loan or required by this Loan Agreement or any of the other Loan Documents are accurate correct and sufficiently complete to give Lender true and accurate knowledge of their subject matter and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading

**3 LOAN** Lender agrees to lend to Borrower and Borrower agrees to borrow from Lender an amount not to exceed the Loan Amount to finance the cleanup of the Project subject to the terms conditions representations warranties and covenants in this Loan Agreement

**3 1 PRINCIPAL AMOUNT** The principal amount of the Loan shall be the actual disbursements of the Lender on account of the Project not to exceed the amounts stated in the Budget (as the Budget may be adjusted by written approval of Lender) In any event the principal amount of the Loan shall not exceed the Loan Amount

**3 2 USE OF LOAN FUNDS** Loan funds shall be used solely for actual costs incurred for items as specified in the Budget Unless otherwise noted in the Budget predevelopment costs are not subject to withholding as Retention

**3 3 LOAN TERMS** The Loan is made pursuant to the Loan Program and is subject to the laws rules and regulations of the Loan Program Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement Repayment of the loan shall be made in payments of principal in lawful tender of the United States in accordance with the Payment Schedule

**3 4 NOTE AND SECURITY DOCUMENTS** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow Repayment of the Note is to be secured by the pledging of Tax Increment funds

**3 5 BORROWER'S CERTIFICATIONS AND ASSURANCES** Borrower s Certifications and Assurances are attached hereto and incorporated herein and are further consideration for this Loan Borrower acknowledges that Lender has relied on such Certifications and Assurances in making this Loan

**4 PERFORMANCE CONDITIONS** The following are conditions precedent to performance under this Loan Agreement

**4 1 CONDITIONS TO LENDER'S PERFORMANCE** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement (b) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow (c) the Agreement continues to be in full force and effect no default on the part of Borrower has occurred under the Loan Agreement, and no event has occurred that with the giving of notice or the passage of time will constitute a default by Borrower under the Loan Agreement and (d) Lender has approved the Approval Documents

**4 2 CONDITIONS TO BORROWER'S PERFORMANCE** Borrower's obligation to perform under this Loan Agreement is subject to satisfaction of all of the following conditions (a) Lender has performed all of its obligations then to be performed pursuant to this Loan Agreement (b) Lender s representations and

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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warranties in this Loan Agreement are correct as of the date of this Loan Agreement and as of the Close of Escrow and (c) the Loan Agreement continues to be in full force and effect no default on the part of Lender has occurred under the Loan Agreement and no event has occurred that with the giving of notice or the passage of time will constitute a default by Lender under the Loan Agreement

**5 RELOCATION** Lender is required by law to provide relocation services and make relocation payments to eligible tenants if any displaced as a result of the Project Borrower shall comply fully with all relocation laws which are the obligation of Lender or are otherwise applicable to the Project Borrower's compliance with the relocation requirements as stated in this Section 5 is a material element of this Loan Borrower's failure to comply with the relocation requirements as stated in this Section 5 is an Event of Default **Section 5 and its subparts are hereby waived by the Lender**

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

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

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

**6 RESPONSE IMPLEMENTATION** As a condition of the Loan Borrower will diligently proceed with the implementation of the response or cleanup in accordance with the Response Plan and the terms and conditions of this Loan Lender shall issue a notice to proceed with the cleanup within ten (10) business days of Close of Loan and Borrower shall not commence the cleanup until such notice to proceed has been issued Borrower shall complete such work on or before the Completion Date

**6.1 CHANGES** In order to assure sufficient funding for the Project, Borrower shall not authorize any Change without the prior written consent of Lender If in the judgment of Lender a Change together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will as a condition precedent to Lender's consent provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes Borrower shall make any changes as required by the Lead Agency Borrower shall maintain funds available in the contingency reserve that are in substantially the same percentage of the original contingency reserve as the percentage of the Project then remaining to be

completed

**6 2 CONTRACTORS AND CONTRACTS** Upon Lender s request Borrower will furnish to Lender correct lists of all contractors subcontractors and material suppliers employed in connection with the Project specifying their addresses their respective portion of the Project and their respective Project cost Lender may contact directly each contractor subcontractor and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification

**6 3 INSPECTION** Lender may at any time and without notice to Borrower enter on the Property and inspect the Project and during regular business hours examine the books records accounting data, plans shop drawings, specifications and other documents of Borrower pertaining to the Project and to make extracts or copies Borrower shall make all such documents available to Lender promptly on demand Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Lender and its Inspector and to permit all appropriate access to the Property and to all relevant books and records Borrower shall bear the cost of reasonable inspections

**6 4 PROTECTION AGAINST LIEN CLAIMS** Borrower shall promptly and fully discharge all claims for labor done and materials and services furnished in connection with the Project promptly file a valid Notice of Completion on completion of the Project promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of (30) days or more and take all other reasonable steps to protect against the assertion of lien claims against the Property or any part of it

**6 4 1** Lender at any time may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers Lender at any time may require Borrower to make any payments for the Project by joint check made payable to the General Contractor and subcontractor for whose account the payment is to be made as joint payees

**6 4 2** In any event Borrower is not required to pay any claims for labor materials or services that Borrower disputes reasonably and in good faith and that Borrower at its own expense is currently and diligently contesting provided that Borrower will in that case and in each other case where a claim of lien has been filed within ten (10) days after the filing of any claim of lien record in the office of the Recorder of the County where the Property is located a surety bond sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender

**6 5 PAYMENT AND PERFORMANCE BONDS** As a condition precedent to beginning the Project the Developer or its contractor shall provide the Agency performance bond and a labor and material payment bond obtained by Developer or its general contractor in favor of the Developer and Agency as named dual obligees in form and amount as approved by the Agency and securing respectively completion of the work and payment of all labor and material suppliers and subcontractors for the work as stated in the contract for the Project The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties Developer shall assure compliance with all requirements of the surety Developer shall permit no changes in the work to be performed by the general contractor and shall make no advance payments to the general contractor without prior written notice to the surety and the

Agency if such change or payment could release the surety of its obligations under the bonds

**6 6 SECURITY INSTRUMENTS** Upon request by Lender Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project Lender may require such instrument at any time and from time to time may require additions of new contracts Borrower irrevocably assigns to Lender effective upon Lender's written demand as security for the due performance of this Loan Agreement all of its right title and interest in the Assigned Documents

**6 7 NO PRIOR LIENS** Borrower shall not allow the Project to begin until after full execution of the Loan Documents

**7 LOAN DISBURSEMENT PROCEDURES**

**7 1 CONDITIONS PRECEDENT TO EACH LOAN DISBURSEMENT** The obligation of Lender to make any disbursements under this Loan Agreement shall be subject to the following conditions precedent

**7 1 1** No Event of Default or Potential Default of Borrower has occurred and is continuing

**7 1 2** Lender is satisfied that all cleanup work has been performed in a good and proper manner consistent with federal state and local laws and Borrower has provided satisfactory evidence that all CERCLA and/or California Superfund requirements have been met

**7 1 3** The representations and warranties in the Loan Documents are correct as of the date of the requested disbursement

**7 1 4** Borrower has paid Lender all commitment loan and other fees then due and Borrower has submitted to and Lender has approved in writing all documents records statements certificates reports and other materials and information then required to be submitted to Lender for approval under this Loan Agreement

**7 1 5** Borrower has delivered to Lender all funds documents instruments policies evidence of satisfaction of conditions and other materials then due or otherwise requested by Lender under the Loan Documents

**7 2 CONDITIONS PRECEDENT TO FIRST DISBURSEMENT** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 7 1 have been met

**7 2 1** There is no legal action threatened or pending against Borrower or affecting the Property

**7 2 2** Lender has provided proof of all insurance required by the Loan Documents

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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7 2 3 Borrower has filed all tax returns required to be filed and paid all taxes due which, if unfiled or unpaid might adversely affect Lender s security under the Security Documents

7 3 **MAKING DISBURSEMENT** Lender shall pay each disbursement request within twenty (20) Business Days after the disbursement request is submitted to Lender subject to fulfillment of the conditions precedent as stated in Section 7 1 Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld

7 4 **DISBURSEMENT OF LESS THAN FULL REQUEST** If Lead Agency makes a disbursement which is less than the full amount of the disbursement requested, Lender shall inform Borrower of the items disallowed for disbursement and the reason for disallowing them Lender shall disburse the Loan in the following order of priority except as expressly provided and unless paid by Borrower from other funds (a) first to pay Lender's Loan fees and expenses due and (b) fifth to make the disbursement of funds then due in response to Borrower s current request for disbursement

7 5 **FINAL DISBURSEMENT** If Agency is not the Project Lender whose funds are disbursed last then Lead Agency shall disburse all of the Loan Proceeds including the Retention (a) if and only if the Lender whose funds will be disbursed last retains an amount that is not less than the same percentage of the total loan proceeds for the Project as the Retention bears to the Loan Proceeds and (b) if and only if the final disbursement of the such retained amount is made after fulfillment of the following conditions to Lead Agency final payment Lead Agency shall not make a final payment including the Retention unless the following conditions have been satisfied

7 5 1 Borrower has filed a notice of completion of the Project work as necessary to establish the commencement of the shortest statutory period for filing of mechanics' and materialmen's liens

7 5 2 The Project has received a final release or no further action letter from the Brownfields Site Manager and the Inspector has determined that all Project work to be completed under this Agreement has been fully and satisfactorily completed

7 5 3 The provisions of Section 7 1 will have been fully satisfied

7 5 4 Thirty-five days shall have expired after filing of a Notice of Completion and no mechanic s or materialmen's liens remain against the Site except those liens for which Borrower has provided bonds assuring their full payment Alternatively Borrower may provide Lender with unconditional lien waivers from the General Contractor each of the various subcontractors and material suppliers and substantially all of the subcontractors and submaterial suppliers under the subcontractors and material suppliers at any level, or Borrower will have furnished evidence satisfactory to Lender that the General Contractor and subcontractors and material suppliers and sub-subcontractors and submaterial suppliers have been paid in full

7 5 5 Lender has received written approval from the surety on any bond required by Lender

7 6 **NO WAIVER BY DISBURSEMENT** Regardless of the failure of any condition precedent to Lender's obligation to make disbursements to the BCRLF Account Lender may make a disbursement if Lender in

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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its sole discretion determines it to be advisable. The making of any disbursement shall not be deemed to constitute an approval or acceptance by Lender of the work completed or a waiver of the condition with respect to a subsequent disbursement.

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

## **8 DEFAULT**

**8.1 EVENTS OF DEFAULT** At the option of Lender, each of the following events will constitute a default (each an "Event of Default"):

8.1.1 The occurrence of an Event of Default under the Pledge Agreement.

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

8.1.3 Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the Project.

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

8.1.5 Borrower's failure to complete the Project by the Completion Date.

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

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

## **9 REMEDIES**

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

9 1 1 Terminate its obligation to make disbursements

9 1 2 Declare the Note and all other sums owing to Lender with respect to the other Loan Documents immediately due

9 1 3 Make any disbursements after the happening of any one or more of the Events of Default without waiving its right to demand payment of the Note and all other sums owing to Lender with respect to the other Loan Documents or any other rights or remedies and without liability to make any other or further disbursements regardless of Lender's previous exercise of any rights and remedies

9 1 4 Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that remain entitled to exercise all other rights and remedies described in this Loan Agreement or the Pledge Agreement

9 1 5 Make any unauthorized payment from Loan Proceeds or other funds of Lender

9 1 6 Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents together with interest at the Default Rate from the date the funds were spent until repaid which amounts will be deemed secured by the Pledge Agreement

**9 2 RIGHTS CUMULATIVE, NO WAIVER** All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default No waiver will be implied from Lender's failure to take or delay in taking any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms

**9 3 DISCLAIMER** Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default Lender will not be liable for the completion of or failure to complete, or protect the Project, the payment of any expense incurred in connection with the exercise of any remedy available to Lender for the completion of the Project or the performance or nonperformance of any other obligation of Borrower

**9 4 GRANT OF POWER** Borrower irrevocably appoints Lender as its attorney-in fact with full power and authority including the power of substitution exercisable on the occurrence of an Event of Default to act for Borrower in its name place and stead as provided in this Loan Agreement to take possession of the Property and Project remove all employees contractors and agents of Borrower to complete or attempt to complete the Final Removal Action Workplan to make any additions changes and corrections in the Final Removal Action Workplan as may be necessary or desirable in Lender's sole discretion or as it deems proper to complete the Project to employ any contractors subcontractors suppliers, architects inspectors consultants, and other agents that Lender in its sole discretion deems proper for the completion of the Project for the protection or clearance of title to the Property or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage to pay settle or compromise all bills and claims then existing or later arising against Borrower that Lender

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in its sole discretion, deems proper for the completion of the Project for the protection or clearance of title to the Property or for the protection of Lender's interests to prosecute and defend all actions and proceedings in connection with the Site or Project and to execute acknowledge and deliver all other instruments and documents in the name of Borrower that are necessary or desirable to exercise Borrower's rights under all contracts concerning the Property or Project and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf in each case as Lender in its reasonable discretion deems proper

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

**10 1 LIABILITY INSURANCE POLICY LIMITS** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than \$50,000

**10 2 WORKER'S COMPENSATION** 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)

**10 3 COMPREHENSIVE GENERAL LIABILITY** Commercial general liability coverage shall include premises operations independent contractor's protective products and completed operation (for four years) broad form property damage and contractual liability coverage (or such other substantially similar coverage as may approved by Agency Counsel) Such insurance shall have limits of liability which are not less than \$1 000 000 each occurrence for bodily injury coverage \$1 000 000 aggregate for products and completed operations coverage \$1 000,000 each occurrence for property damage coverage single limit and aggregate and which is the same as the foregoing coverages

**10 4 COMPREHENSIVE AUTOMOBILE LIABILITY** Comprehensive automobile liability coverage for any vehicle used for or in connection with the Project (owned, non-owned hired leased) having not less than the statutory limits of liability

**10 5 FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE** For the duration of Loan Agreement Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property with endorsements of extended coverage vandalism and malicious mischief and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project In the

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event of damage to the Project and subject to the requirements of Lender Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements

**10 6 INSURANCE PROVISIONS** Each policy of insurance required under this Loan Agreement shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date

**10 7 FAILURE TO MAINTAIN** If Developer fails to obtain or maintain or cause to be obtained and maintained any insurance required by this Loan Agreement the Agency shall have the right to purchase the insurance on Developer s behalf and Developer shall promptly reimburse the full cost of such insurance to the Agency If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest at the maximum rate permissible under the law until paid

## **11 MISCELLANEOUS**

**11 1 FEDERAL REQUIREMENTS** If any Loan Program is federally funded Borrower shall comply with all laws rules regulations and funding requirements which govern the use of such funds Lender shall fully cooperate with and assist Borrower in fulfillment of such obligations (See Attached "Borrower's Certifications and Assurances" and "Regulatory Restrictions")

**11 2 Nature of Representations and Warranties** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading All representations and warranties will remain true and correct in all material respects and will survive so long as any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding and for any applicable statute of limitations period Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request Each representation and warranty made in this Loan Agreement in any other Loan Documents and in any other document delivered to Lender by Borrower will be deemed to have been relied on by Lender regardless of any investigation inspection or inquiry made by Lender or any related disbursement made by Lender The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty

**11 3 FINANCIAL STATEMENTS** Borrower shall provide Financial Statements when requested by Lender but in any event not more often than quarterly during the Project or annually thereafter Borrower shall assure that Financial Statements are prepared in accordance with generally accepted accounting principles If requested by Lender as reasonably necessary to assure the security of its Loan Borrower shall provide Financial Statements prepared or reviewed by a licensed Certified Public Accountant or Public Accountant and fully reflecting the assets and liabilities of the party concerning whom they were prepared

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**11 4 NO WAIVER** No failure or delay on the part of Lender in exercising any right or remedy under the Loan Documents will operate as a waiver nor will Lender be estopped to exercise any right or remedy at any future time because of any such failure or delay No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated Waivers of any covenant term or condition in this Loan Agreement will not be construed to waive any subsequent breach of the same covenant term or condition

**11 5 NO THIRD PARTIES BENEFITED** This Loan Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns and no other Person will have any right of action or any rights to funds at any time on deposit in the BCRLF Account

**11 6 Notices** All notices required to be given will be served in the manner provided below Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion cessation of labor or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents

**Notices to Borrower shall be sent to**  
**Capitol Area Development Authority**  
**1522 14<sup>th</sup> Street**  
**Sacramento, CA 95814**

**Attn Paul Schmidt**

**Notices to Lender shall be sent to**  
**Sacramento Housing and Redevelopment Authority**  
**630 I Street**  
**Sacramento, CA 95814**

**Attn Vicki M Cook**

**11 7 ACTIONS** Lender will have the right to commence appear in or defend any action or proceeding purporting to affect the rights duties or liabilities of the parties or the disbursement of any funds under this Loan Agreement In connection with that Lender may incur and pay costs and expenses including without limitation reasonable attorney fees Borrower agrees to pay to Lender on demand all these expenses and Lender is authorized to disburse funds from the BCRLF Account for that purpose This Section does not apply to actions or proceedings between the parties

**11 8 SIGNS** Borrower agrees that on the request of Lender Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided cleanup financing for the Project The sign will remain the property of Lender and will be required to be removed only after the Project has been completed Lender may also arrange for publicity of the Loan in its sole discretion

**11 9 ASSIGNMENT** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties However Borrower shall not assign this Loan Agreement or any interest it may have in the monies due or except as otherwise provided convey or encumber the Site without the prior written consent of Lender provided however Borrower shall have the right without the

prior written consent of Lender to transfer the Site to a private developer for development of the Site. However, if there is an assignment, conveyance, or encumbrance, Lender may nevertheless, at its option, continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications, and will be secured by the Security Documents. Lender may at any time assign the Loan Documents and its interest in the BCRLF Account to any affiliate of Lender or to a national bank or other lender having experience with this type of lending, and on transfer of the BCRLF Account to assignee for disbursement as provided in this Loan Agreement, the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and the assignee will be substituted in the place and stead of Lender, with all rights, obligations, and remedies of Lender, including, without limitation, the right to further assign the Loan Documents and its interest in the BCRLF Account. In addition, Lender may at any time assign a participation in the Loan to any other party, provided that Lender continues to be primarily obligated under this Loan Agreement.

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

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

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

**11.11.2** Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate, or defective Work.

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

**11 12 CONTROLLING LAW, VENUE** The Loan Documents will be governed by and construed in accordance with California law. The venue for any legal action or proceeding will be in the County of Sacramento, California.

**11 13 CONSENTS AND APPROVALS** All consents and approvals by Lender required or permitted by any provision of this Loan Agreement will be in writing. Lender's consent to or approval of any act by Borrower requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**11 14 SURVIVAL OF WARRANTIES AND COVENANTS** The warranties, representations, conditions, covenants, and agreements in this Loan Agreement and in the other Loan Documents will survive the making of the Loan and the execution and delivery of the Note and will continue in full force until the Indebtedness has been paid in full. Nothing in this Section is intended to limit any other provision of the Loan Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Loan Document.

**11 15 LOAN EXPENSES** In making the first disbursement, Lender may, at its option, deduct from the proceeds of that disbursement a sum equal to the aggregate of the following, to the extent Lender has knowledge of it and demand has been made on Lender at the time of the deposit: all expenses specifically incurred in connection with the Loan or the preparation, execution, and delivery of the Loan Documents, including, but not limited to, recording costs and expenses, transfer and other taxes (if any), surveys, appraisal fees, title and hazard insurance premiums, recording, notary, and escrow charges, and all other similar, usual, or customary loan closing charges and expenses, and any other budgeted expenses that have been approved by Lender in writing, and Lender will, for the benefit of Borrower, pay those amounts over to the respective parties on whose behalf the demands will have been received by Lender. Borrower will pay directly any expenses in connection with the Loan not so paid by Lender, including, without limitation, any of the expenses specified above, and will hold Lender free from any cost, liability, or obligation of any nature in connection with it, including reasonable attorney fees incurred by Lender. Borrower further agrees to pay on demand all out-of-pocket costs and expenses reasonably incurred by Lender, including, without limitation, the fees and disbursements of Lender's outside counsel, in connection with: (i) the administration of the Loan, including, without limitation, all approvals or consents given or contemplated to be given under the Loan Documents, all amendments to the Loan Documents entered into by Lender or requested by any Loan Party, and all title insurance policies and endorsements required by Lender; and (ii) the enforcement of any rights or remedies under the Loan Documents, whether any action or proceeding is commenced, or the protection of the security or interests of Lender under the Loan Documents. All costs and expenses, together with interest at Loan rate, will form a part of the indebtedness and will be secured by the Security Documents.

**11 16 NO REPRESENTATIONS BY LENDER** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.

**11 17 AMENDMENT** The Loan Documents and the terms of each of them may not be modified waived, discharged or terminated except by a written instrument signed by the party against whom enforcement of the modification waiver discharge or termination is asserted

**11 18 TERMINATION** Except as otherwise provided in the Loan Documents all rights and obligations under this Loan Agreement will terminate except as to any accrued obligations effective on the payment of all Indebtedness owing by Borrower to Lender

**11 19 COUNTERPARTS** The Loan Documents may be executed in any number of counterparts and by different parties in separate counterparts each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument

**11 20 SEVERABILITY** If any term provision covenant or condition or any application is held by a court of competent jurisdiction to be invalid void or unenforceable all terms provisions covenants and conditions and all applications not held invalid void or unenforceable will continue in full force and will in no way be affected impaired or invalidated

**11 21 CAPTIONS** All Article and Section headings in the Loan Documents are inserted for convenience of reference only and do not constitute a part of the Loan Documents for any other purpose

**11 22 INDEMNITY** Borrower agrees to defend indemnify and hold Lender harmless from all losses damages liabilities claims actions judgments costs and reasonable attorney fees that Lender may reasonably incur as a direct or indirect consequence of the making of the Loan Borrower's failure to perform any obligations as and when required by this Loan Agreement or any of the other Loan Documents the failure at any time of any of Borrower's representations or warranties to be true and correct or any act or omission by Borrower any contractor subcontractor engineer architect or other Person with respect to the Property the Project or any portion of them Borrower will pay immediately on Lender's demand any amounts owing under this indemnity, together with interest at the maximum rate permitted by law from the date Lender makes a payment or incurs a loss Borrower's duty to indemnify Lender will survive the release and cancellation of the Note and the Pledge Agreement

**11 23 FURTHER ASSURANCES** At Lender's request and at Borrower's expense Borrower will execute acknowledge and deliver all other instruments and perform all other acts necessary desirable or proper to carry out the purposes of the Loan Documents or to perfect and preserve any liens created by the Loan Documents

**11 24 DISCLOSURE OF INFORMATION** If Lender elects to sell the Loan Lender may forward to the buyer of the Loan all documents and information related to the Loan in Lender's possession including without limitation all Financial Statements whether furnished by Borrower or otherwise

**11 25 LENDER'S AGENTS** Lender may designate agents or independent contractors to exercise any of Lender's rights under the Loan Documents Any reference to Lender in any of the Loan Documents will include Lender's employees agents and independent contractors

**11 26 INTEGRATION AND INTERPRETATION** The Loan Documents contain or expressly incorporate

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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

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

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# **Brownfield Cleanup Revolving Loan Fund**

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## **ARTICLE III CERTIFICATIONS AND ASSURANCES**

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### **CERTIFICATIONS AND ASSURANCES**

In consideration of Sacramento Housing and Redevelopment Agency (SHRA) Brownfields Cleanup Revolving Loan Fund (BCRLF) loan in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250 000 00) under the United States Environmental Protection Agency s Brownfields Cleanup Revolving Loan Fund (BCRLF) the Capitol Area Development Authority (the Applicant) hereby assures and certifies that it will comply with regulations policies guidelines and requirements as they relate to the application acceptance and use of the Sacramento Housing and Redevelopment Agency (SHRA) BCRLF loan proceeds for this project Also the Applicant assures and certifies that it will comply with all requirements imposed by the Federal grantor agency In addition the Capitol Area Development Authority (CADA) assures and certifies with respect to the SHRA BCRLF loan that

#### **NO DISCRIMINATION**

The Applicant will comply with

- a Title VI of the Civil Rights Act of 1964 (Public Law 88 352 42 U S C Section 2000 d) which prohibits discrimination on the basis of race color or national origin
- b Section 504 of the Rehabilitation Act of 1973 (29 U S C Section 794) which prohibits discrimination on the basis of handicap
- c The Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Public Law 94 135) which prohibits unreasonable discrimination based on age and
- d Title IX of the Education Amendments of 1972 (20 U S C Section 1681 et seq) which prohibits discrimination on the basis of sex in education programs and activities including those not offered or sponsored by an educational institution

#### **WAGE AND HOURS**

Borrower shall comply with both federal and state prevailing wage law All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis Bacon prevailing wages (Federal) California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq) The prevailing wages shall be the higher of Davis Bacon wages or state prevailing wages for each trade The Borrower must obtain recent and applicable wage rates from the Sacramento Housing and Redevelopment Agency and incorporate them into the construction contract

#### **CLEAN AIR AND WATER**

The Applicant will comply to the extent applicable with all requirements of Section 114 of the Clean Air Act as amended (42 U S C Section 1857 et seq) and Section 308 of the Federal Water Pollution Control Act (33 U S C Section 1857 et seq) respectively relation to inspection monitoring entry reports and information as well as other applicable requirements specified in the Clean Air Act and the Federal Water Pollution Control Act respectively and all regulations and guidelines issued thereunder

#### **ENVIRONMENT**

The Applicant will ensure pursuant to Executive Order 11738 that the facilities under its ownership lease or supervision which shall be utilized in the accomplishment of this project or result from this project are not listed on the Environmental Protection Agency (EPA) list of Violating Facilities

The Property is not listed or proposed for listing on the National Priorities List of the U S Environmental Protection Agency

## **Brownfield Cleanup Revolving Loan Fund**

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### **ARTICLE III CERTIFICATIONS AND ASSURANCES**

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Borrower is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response compensation and Liability Act of 1980 as amended (CERCLA) and

Borrower certifies that it is not an owner operator of the Property pursuant to CERCLA. If the Borrower becomes an owner operator of the Property pursuant to the execution of this Loan Agreement, the Borrower shall certify that it falls under a CERCLA statutory exemption from liability or that EPA could use its enforcement discretion as deemed necessary and appropriate by said agency.

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**ARTICLE IV REGULATORY REQUIREMENTS**

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**REGULATORY REQUIREMENTS**

WHEREAS the source of funds for subject loan is the United States Environmental Protection Agency which imposes restrictions and requirements in connection with the use of said funds and WHEREAS these funds are to be used to undertake cleanup of brownfields sites by making low interest loans to parties willing to undertake cleanup of these sites and

WHEREAS the Borrower will be the owner or Lessee of the Site located at 1130 R Street Sacramento California (the Site) which Site is more particularly described in Exhibit 1 attached hereto and

WHEREAS the Site is not listed or proposed for listing on the National Priorities List of the U S Environmental Protection Agency (EPA) and

WHEREAS Borrower is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response compensation and Liability Act of 1980, as amended (CERCLA) and

WHEREAS the Borrower is not and has never been subject to any penalties resulting from environmental non compliance at or on the Site nor is the Borrower or its Project contractors or subcontractors currently suspended debarred or otherwise declared ineligible for participation in this federal program or from the receipt of these funds and

WHEREAS the Borrower acquired the Site after the time of disposal or placement of hazardous substances and has not caused contributed to permitted or exacerbated the release of a hazardous substance on or emanating from that Site

NOW THEREFORE in consideration of the covenants and promises contained herein it is mutually agreed by and between the parties as follows

- 1 The Borrower will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq ) Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31) Cooperative Agreements for Superfund Response Actions (40 CFR Part 35 Subpart O) the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300) and all other applicable provisions of federal state or local law

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

### **ARTICLE IV REGULATORY REQUIREMENTS**

- 2 Borrower shall comply with both federal and state prevailing wage law All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis Bacon prevailing wages (Federal) California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq ) The prevailing wages shall be the higher of Davis Bacon wages or state prevailing wages for each trade The Borrower must obtain recent and applicable wage rates from the Sacramento Housing and Redevelopment Agency and incorporate them into the construction contract
- 3 The Borrower shall comply with Executive Order 11246 Equal Employment Opportunity and implementing regulations at 41 CFR 60 4 relating to Federally assisted construction contracts
- 4 The Borrower has provided the Lender with a copy of the Phase I and Phase II Environmental Assessment of the Site performed according to the American Society for Testing and Materials (ASTM) standards The Borrower shall be responsible for the payment of all costs and expenses related to the Assessment The Borrower agrees that Loan Funds shall not be used for the payment of any cost or expense related to the Assessment The Assessment did include but was not limited to site background the threat posed to by the contaminant to public health welfare and the environment and all past enforcement activities conducted by any governmental agency and the site testing results
- 5 The Lead Agency has identified a Site Manager who may serve as the On-Scene Coordinator (OSC) The Borrower has contracted directly with the Site Manager pursuant to the Voluntary Cleanup Program The Site Manager shall perform all duties as required by the Lead Agency including but not limited to coordination and oversight of the BCRLF Project Response Action (Response Action) The Site Manager shall assist in preparation of an Approval Memo documenting that the situation meets the CERCLA and NCP criteria for initiating a non time critical removal action for signature by the Lead Agency
- 6 After the Lead Agency signed the Approval Memo the Lead Agency caused to be prepared a Community Relations Plan (CRP) with the assistance and cooperation of the Borrower The CRP included the following
  - (a) Copies of interviews conducted with residents and community leaders local officials and public interest groups
  - (b) Copies of news releases and other information which explains the proposed project to be disseminated throughout the area surrounding the affected area
  - (c) Procedures for the establishment of a local information repository at or near the potential site that includes public information supplied by both the Lender and the Borrower related to the proposed response action The Borrower shall supply the

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

### **ARTICLE IV REGULATORY REQUIREMENTS**

Lead Agency with any additional information that would assist the Lead Agency in documenting the BCRLF Response Action

- 7 After the preparation of the CRP, the Borrower drafted an RAW which clearly identified the objectives of the removal action provided an analysis of alternatives recommended an action for the removal of the contamination and the estimated costs of removal The Borrower submitted copies of the RAW to the Site Manager and the Lead Agency for approval The Borrower agreed to accept advice and suggestions from the Site Manager and Lead Agency and to incorporate those suggestions or requests for revisions into the RAW
- 8 The Site Manager prepared a Response to the public comments and an Action Memo documenting the basis for the removal action for signature by the Lead Agency At the request of the Lead Agency the Borrower submitted all information to the Lead Agency in a form requested by the Lead Agency which enabled the Lead Agency to prepare the Action Memo After the Lead Agency signed the Action Memo the Borrower prepared a Scope of Work containing detailed design and construction plans and specifications for the cleanup activities including a Budget and Work Schedule a Health and Safety Plan (OSHA 1910 120 - 126) and a Quality Assurance Project Plan which set forth the manner and method of collecting samples to assure the complete removal of all hazardous substances (collectively referred to as the Project Documents) and submitted same to the Site Manager and Lead Agency for approval
- 9 The Borrower understands and agrees that all Loan Funds provided by Lender shall be used to cleanup the Site identified in Exhibit 1 Site
- 10 The Borrower further understands and agrees that any and all work performed on the Site for which Loan Funds are used and the receipt of any Loan Funds under this Agreement is conditioned upon the Borrower s full compliance with the Project Documents
- 11 Borrower agrees to keep all expenditures from the Loan Funds within the approved Budget Borrower shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager
- 12 All changes or modifications to the Project or the Project Documents shall be approved in writing by the Site Manager and the Lead Agency prior to such change or modification becoming effective All additional costs incurred as the result of any Change Orders shall be the responsibility of the Borrower In the event that unforeseen conditions are discovered during the project implementation the Lead Agency reserves the right to revise the Response Action and the Project Documents

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

### **ARTICLE IV REGULATORY REQUIREMENTS**

- 13 The Borrower shall
- (a) Begin the Project within sixty (60) days and will complete all work included in the Work Plan within twelve (12) months following commencement of Work. The Borrower agrees to complete the work in a timely manner in accordance with the Work Plan and Approved Budget. Borrower shall notify the Lender when the Project is complete. The notice shall contain certification or documentation as necessary to prepare a Cleanup Closeout report developed in accordance with Section 300.165 of the NCP and all applicable EPA guidance. This report shall summarize the actions taken, the resources committed, and the problems encountered in completion of the project, if any.
  - (b) Perform all of its obligations and agreements under this Loan Agreement, the Note, and the Pledge of Tax Revenues securing same, if applicable, and any other agreements or instruments to which the Borrower is a party and which relate to this Loan or to the Project.
- 14 Throughout the term of this Agreement, the Borrower shall indemnify, defend, and hold the Lead Agency and Lender harmless from any and all liability, loss, damage(s), and expense(s), including attorney's fees, which it may or shall incur in connection with the Project or by reason of any good faith action taken by the Lead Agency and Lender in order to protect its rights hereunder.
- 15 The Borrower shall erect a sign on the Project site stating that the Project is being financed in part by BCRLF and the Lender and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Project site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising as well as 40 CFR Subpart O (§35.6105(a)(2)(ii)).
- 16 The Borrower shall not demolish any part of the buildings or structures located on the Site or commit any waste except as provided in the Scope of Work without the prior written consent of the Lender.
- 17 Any forbearance by the Lender with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Lender's rights or privileges granted hereunder.
- 18 In the event of a default of any of the terms or conditions of this Loan Agreement, Promissory Note, or the Pledge of Tax Revenues securing same, then, in that event, the entire outstanding principal balance amount of this Loan shall become immediately due and payable without the necessity of demand from Lender. The Borrower shall be deemed to be in default under this Loan Agreement upon the occurrence of any or more of the following events:

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

### **ARTICLE IV REGULATORY REQUIREMENTS**

- (a) The Borrower assigns this Agreement or any Loan Funds advanced hereunder or any interest herein to a third party or if the Site or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Lender Provided however Borrower shall have the right, without the prior written consent of Lender to transfer the Site to a private developer for development of the Site
- (b) Any representation or warranty made herein or in any report certificate, financial statement or other instrument furnished in connection with this Agreement or the Loan Documents shall prove to be false in any material respect
- (c) The Borrower fails to pay any principal amount or fee on the indebtedness to the Lender after the same shall become due and payable and such failure continues beyond ten (10) business days
- (d) The Borrower defaults in the performance of any term covenant or condition to be performed hereunder and such default is not remedied within thirty (30) days unless a longer period of time is reasonably required to cure the default from and after written notice by certified mail return receipt requested from the Lender to the Borrower specifying said default or if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued the Lender shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrower to the extent allowed by law
- (e) Any proceeding involving the Borrower or the Site, commenced under any bankruptcy or reorganization arrangement probate insolvency, readjustment of debt dissolution or liquidation law of the United States or any state but if such proceedings are instituted no Event of Default shall be deemed to have occurred hereunder unless the Borrower either approves consents to or acquiesces in such proceedings or such proceedings are not dismissed within sixty (60) days
- (f) An order judgment or decree is entered without the application approval or consent of the Borrower by any court of competent jurisdiction approving the appointment of a receiver trustee or liquidator of the Borrower of all or a substantial part of its assets and such order judgment or decree shall continue in effect for a period of sixty (60) days
- (g) Upon the occurrence of any one or more of the events of default enumerated above all indebtedness of the Borrower to the Lender pursuant to this Agreement shall become due and payable both as to the principal and to the interest if any without presentment demand protest or notice of any kind to the Borrower all of which are hereby expressly waived by the Borrower

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

### **ARTICLE IV REGULATORY REQUIREMENTS**

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- 19 The Borrower agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of ten (10) years after maturity of the loan except as follows
- (a) Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved
  - (b) All such records and supporting documents shall be made available, upon request for inspection or audit by the Lender or its representatives
- 20 The Borrower agrees to permit the Lender or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the Lender desires relevant to this Agreement. The Lender shall provide written notice to the Borrower prior to the execution of this provision. The Borrower agrees to deliver the records or have the records delivered to the Lender. If the Lender or its representative finds that the records delivered by the Borrower are incomplete, the Borrower agrees to pay the Lender or its representative's costs to travel to the Borrower's office or other location where the books or records are located to audit or retrieve the complete records. In addition, the Borrower agrees that loan related documents are subject to 40 C.F.R. 35.610.
- 21 The Borrower will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex, and disability. In addition, the Borrower will undertake good faith efforts in compliance with 40 CFR §35.6580 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE), and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The Borrower shall submit a report of such efforts on the City provided form.
- 22 The Borrower agrees to protect, indemnify, defend and hold harmless the Lender, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Borrower may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury including death, personal injury and Site damage arising out of or in connection with the performance of any work or any responsibility or obligation of the Borrower as provided herein and caused in whole or in part by any act, error, or omission of the Borrower, its agents, servants, employees or assigns.

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**ARTICLE IV REGULATORY REQUIREMENTS**

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- 23 The Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Lender
- 24 This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries
- 25 All amendments to this Agreement shall be in writing and signed by both parties hereto
- 26 It is expressly understood that a failure or delay on the part of the Borrower in the performance in whole or in part or any of the terms of this Agreement if such failure is attributable to an Act of God fire flood riot insurrection embargo emergency or governmental orders regulations priority or other limitations or restrictions or other similar unforeseen causes beyond the reasonable control of such party the failure or delay shall not constitute a breach or default under this Agreement however the Borrower shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay
- 27 The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns
- 28 No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof
- 29 All notices requests instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail postage prepaid to the addresses set forth in this Agreement Any such notice request instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or if sent by certified or registered mail on the day mailed to the parties as follows

**TO THE LENDER**

Sacramento Housing and Redevelopment Agency  
Attention Vicki M Cook  
630 I Street  
Sacramento CA 95814

**TO THE BORROWER**

Capital Area Development Authority  
Attention Paul Schmidt  
1422 15th Street  
Sacramento CA 95814

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**ARTICLE IV REGULATORY REQUIREMENTS**

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or to such other address as a party may subsequently specify in writing to the other party

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(2004 Loan)**

This agreement, dated \_\_\_\_\_, 2014, for purposes of identification, is between the **City of Sacramento** (the “**City**”), a California municipal corporation, and the **Sacramento Housing and Redevelopment Agency (“SHRA”)**, a California joint powers agency.

**Background**

In 1997, the City established a brownfields cleanup revolving loan fund program funded by the United States Environmental Protection Agency (the “**BCRLF Program**”). The purpose of the BCRLF Program is for the City to provide loans and subgrants to qualified projects to assist with the investigation and cleanup of contaminated sites within the City.

Through a series of agreements between the City and SHRA, most recently in City Agreement 2000-121-1, the City designated SHRA to serve as fund manager of the BCRLF Program. As fund manager, SHRA was responsible for managing the financial aspects of the BCRLF Program on behalf of the City, including entering into BCRLF Program loan agreements with borrowers.

In 2004, SHRA and the Capitol Area Development Authority (“**CADA**”) entered into a BCRLF Program loan agreement to fund the removal of contaminated soil in connection with CADA’s Warehouse project on R Street (the “**Loan Agreement**”). The Loan Agreement is attached as **Exhibit A** to this agreement.

City Agreement 2000-121-1 expired on December 31, 2007, and SHRA no longer serves as the fund manager. The City now desires to formally assume all of the rights and obligations under the Loan Agreement.

***With these background facts in mind, the City and SHRA agree as follows:***

- 1. Assignment.** SHRA hereby assigns to the City all of SHRA’s rights and obligations under the Loan Documents. “**Loan Documents**” has the meaning given that term in article II, section 1.18 of the Loan Agreement.
- 2. Assumption.** The City hereby accepts the assignment and assumes all of the rights and obligations of SHRA under the Loan Documents.
- 3. Release of SHRA.** Upon the City’s assumption of the Loan Agreement and all of its provisions, terms, conditions, and covenants, SHRA shall be released from that Loan Agreement.
- 4. Binding effect.** This agreement binds and inures to the benefit of the parties’ successors and assigns.
- 5. Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

6. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibit A is part of this agreement.
7. **Third-Party Beneficiaries.** This agreement is solely for the benefit of the City and SHRA. It is not intended to benefit any third parties.
8. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
9. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement shall have the same binding effect as originals.
10. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

*(Signature Page Follows)*

**City of Sacramento**

By: \_\_\_\_\_

John F. Shirey  
City Manager

Date: \_\_\_\_\_, 2014

Approved as to Form  
Sacramento City Attorney

By: \_\_\_\_\_

Michael Sparks  
Senior Deputy City Attorney

Attest:

By: \_\_\_\_\_

Assistant City Clerk

**Sacramento Housing and Redevelopment Agency**

By: \_\_\_\_\_

La Shelle Dozier  
Executive Director

Date: \_\_\_\_\_, 2014

Approved as to Legal Form

By: \_\_\_\_\_

David Levin  
Agency Counsel

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND LOAN AGREEMENT

**ARTICLE I TERMS AND DEFINITIONS:**

LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE. This Loan Agreement, in addition to attachments and Exhibits listed below includes Article II Loan Provisions, Article III Certifications and Assurances, and Article IV Regulatory Requirements which are attached to and incorporated in this Loan Agreement by this reference. The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I General Terms and as defined in Article II Loan Provisions. (Terms being defined are indicated by quotation marks. If an item in this Article I table is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate.) The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement.

NOW, THEREFORE, in consideration of their mutual promises, the parties agree as follows:

A. "Loan Information" The general loan provisions of the Loan		
"LENDER"	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Sacramento Housing and Redevelopment Agency	
Legal Status	A public body, corporate and politic	
Principal Address	630 "I" Street, City of Sacramento, Sacramento County, California 95814	
"BORROWER"	The borrower of the Loan funds whose name, legal status and address are:	
Name	Capital Area Development Authority	
Legal Status	A California joint powers agency	
Principal Address	1522 14 <sup>th</sup> Street, Sacramento, CA 94244	
"EFFECTIVE DATE"	<u>Dec 15, 2004</u> Which is the date that this Loan Agreement shall be effective .	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of <u>12/15/04</u>	
"LOAN PROGRAM"	Lender's Loan Program, commonly known as Brownfields Cleanup Revolving Loan Fund	
"LOAN AMOUNT"	Two Hundred Thousand Dollars (\$200,000), including a loan origination fee of Two Thousand Dollars (\$2,000)	
"INTEREST RATE"	This is a Two Percent (2%) interest loan.	
"MATURITY DATE"	The Maturity Date is the date for last payment under the Payment Schedule	
"PAYMENT SCHEDULE"	Payments in the following amounts of per year, payable annually starting on the last day of the last full calendar month of the sixth year after the first distribution of Loan funds to Borrower, with the balance of the Loan all due and payable on the last day of the last full calendar month of the tenth year after such first distribution.	
	Sixth year	Forty-four Thousand Dollars (\$44,000)
	Seventh year	Forty-three Thousand and Two Hundred Dollars (\$43,200)
	Eighth year	Forty-two Thousand Four Hundred Dollars (\$42,400)
	Ninth year	Forty-one Thousand Six Hundred Dollars (\$41,600)
	Tenth year	Forty Thousand Eight Hundred Dollars (\$40,800)
"BORROWER EQUITY"	None	
"SPECIAL TERMS"	<ol style="list-style-type: none"> <li>1. Loan origination fees are Two Thousand Dollars (\$2,000).</li> <li>2. If Borrower receives insurance proceeds or a grant of funds on account of the work of the Project, Borrower shall repay the Loan to the extent of such funds remaining after Borrower has reimbursed itself for funds advanced by Borrower to complete the Project work.</li> </ol>	
"PROJECT"	CADA Warehouse Project	

B. "Collateral" The Collateral securing repayment of the Loan, which Collateral consists of the following	
"COLLATERAL"	
"TAX INCREMENT FUNDS"	Borrower pledges tax increment income from all of its tax increment sources not encumbered as of this date, to the amount of the Loan outstanding, including without limitation principal and interest. Said pledge may be subordinate to subsequent bond finance having a debt coverage ratio that does not reduce available tax increment cash flow to an amount that is less than the amount of the Loan then outstanding. Borrower shall execute a pledge agreement, evidencing such pledge of tax increment.
"ADDITIONAL REAL PROPERTY"	None

C. "ESCROW INFORMATION"	
"Title Company and Escrow Agent"	Not applicable
"Escrow"	Not applicable
"Closing Date"	Not applicable

D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Loan Agreement):	
EXHIBIT	DEFINED TERM
Exhibit: Legal Description	"Legal Description"
Exhibit: Scope of Response Activities	"Response Activities"
Exhibit: Note Form	"Note"

E. "APPROVAL DOCUMENTS" Borrower shall submit the following documents for Lender approval
Budget for the Project, Removal Action Workplan, Contract with RAMCO

F. "ASSIGNED DOCUMENTS" Borrower shall assign the following documents to Lender
None

G. "Construction Information":	
"Completion Date"	Twelve (12) months from the Effective Date.
"General Contractor"	RAMCON Engineering
"Licensed Environmental Professional"	none
"Retention"	Ten percent (10%) of each disbursement shall be retained by the Lender for disbursement with the final disbursement of the Loan.

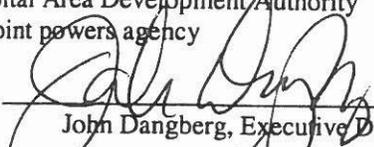
II. "SPECIAL PROVISIONS" The following special provisions shall be in addition to the provisions of this Loan Agreement
1. Borrower shall use funds only for eligible activities.
2. Borrowers shall document all funds use.
3. The Borrower agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of ten (10) years after maturity of the loan except as follows: <ul style="list-style-type: none"> <li>a) Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.</li> <li>b) All such records and supporting documents shall be made available, upon request, for inspection or audit by the Lender or its representatives.</li> </ul>
4. Borrower shall use no more than 10 percent of the loan for allowable non-cleanup activities.
5. Borrower shall certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to this Loan.
6. Borrower shall conduct all cleanup and response activities under this loan in accordance with the cooperative agreement and CERCLA (42 U.S.C. §9601 et seq.) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 CFR §300 et seq.).
7. Borrower shall modify response activities as required by the Lead Agency.

8. Borrower shall comply with both federal and state prevailing wage law: All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis-Bacon prevailing wages (Federal). California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq.) The prevailing wages shall be the higher of Davis-Bacon wages or state prevailing wages for each trade.

THE PARTIES HAVE EXECUTED THIS LOAN AGREEMENT in Sacramento, California as of the date first written above.

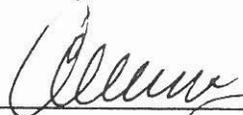
**BORROWER :**

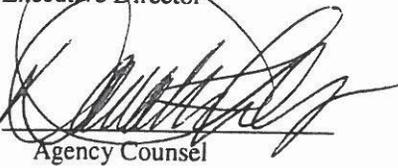
Capital Area Development Authority  
A joint powers agency

By:   
John Dangberg, Executive Director

Approved as to form:  12/14/07  
Borrower Counsel

**AGENCY: SACRAMENTO HOUSING &  
REDEVELOPMENT AGENCY**

By:   
Anne M. Moore, Executive Director

Approved as to form:   
Agency Counsel

**EXHIBIT 1 LEGAL DESCRIPTION**

That certain real property located in the City of Sacramento and County of Sacramento in the State of California and described as Lots 1, 2, 3, and 4 in the block bounded by 11th Street, 12th Street, R Street and S Street of the City of Sacramento according to the official plat thereof.

APN" 009-0075-001

**EXHIBIT 2 SCOPE OF RESPONSE ACTIONS**

## **Exhibit 2: Scope of Response Actions 12<sup>th</sup> and R St soil Remediation**

The work consists of: mobilization; demolition of AC paving and fencing; installation of temporary facilities and controls; preliminary excavation of test soil for STLC testing by MACTEC, and demobilization for a period of one week, upon receipt of results and approval, removal of soil to the limits of excavation indicated on the Contract Drawings; excavation, temporary storage, hauling and disposal of PAH and TPH impacted soil to the limits of excavation indicated on the Contract Drawings; excavation to approximately 9'-0" depth below grade (or former warehouse concrete basement floor; which is to remain). The sidewalls are to be 45 deg. benched. Upon completion of excavation, sidewalls will undergo 21 soil tests to determine level of toxicity. If soil exceeds safety standards, in DTSC determination, the sidewalls also will be removed. *(Note: if sidewall benched soil removal is required, shoring expenses will be an extra cost associated with the project.)*

The site is to remain fenced and secure at the conclusion of the project. It will be transferred by CADA to the developer once a letter of conclusion of work is received from the Department of Toxic Substance Control (DTSC) closing the existing Voluntary Compliance Agreement between CADA and the DTSC.

All work shall be performed in accordance with the Contract Documents and Final Removal Action Workplan (RAW) prepared by MACTEC engineering and dated 5 April 2004 between CADA and Ramcon Engineering. (#C0-238) Contract term is 45 calendar days.

**EXHIBIT 3 PROMISSORY NOTE FORM**

## PROMISSORY NOTE

**"EFFECTIVE DATE"**

**ARTICLE I TERMS AND DEFINITIONS:**

**BORROWER HAS MADE THIS PROMISSORY NOTE ("NOTE") AS OF THE EFFECTIVE DATE.** This Note, in addition to attachments and Exhibits listed below includes Article II Note Provisions, which is attached to and incorporated in this Note by this reference. The capitalized terms in this Note shall have the meanings assigned in this Article I Terms and Definitions and as defined in Article II Note Provisions. (Terms being defined are indicated by quotation marks. If an item in a table in this Article I is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Note or the referenced item is not required or is not included in this Note as the context may indicate.) The Lender is making the Loan to Borrower in consideration of Borrowers making this Note and delivering it to Lender.

For purposes of this Note, the following terms shall have the following meanings:

DEFINED TERM:	DEFINITION:
"Loan Date"	15 DECEMBER 2004
"Lender"	Sacramento Housing and Redevelopment Agency
"Borrower"	Capital Area Development Authority
"Borrower Legal Status"	A California joint powers agency
"Loan Agreement"	The Brownfields Cleanup Revolving Loan Fund Agreement between the Borrower and Lender as of the Loan Date for making of the loan ("Loan") evidenced by this Note
"Principal Amount"	Two Hundred Thousand Dollars (\$200,000), including a loan origination fee of Two Thousand Dollars (\$2,000)
"Interest Rate"	Two Percent (2%) annual interest
Special Terms"	<ol style="list-style-type: none"> <li>1. Borrower shall use funds only for eligible activities.</li> <li>2. Borrowers shall document use of all funds.</li> <li>3. Borrower shall maintain documentation for a minimum of 10 years after the completion of the cleanup activity supported by the loan or for the length of the loan, whichever, is longer. Borrower shall obtain written approval from the lead agency prior to disposing of records.</li> <li>4. Borrower shall use no more than 10 percent of the loan for allowable non-cleanup activities.</li> <li>5. Borrower shall certify that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the site subject to this Loan.</li> <li>6. Borrower shall conduct all cleanup and response activities under this loan in accordance with the cooperative agreement and CERCLA (42 U.S.C. §9601 et seq.) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 CFR §300 et seq.).</li> <li>7. Borrower shall modify response activities as required by the Lead Agency.</li> <li>8. All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to prevailing wage, which shall be the higher of Davis-Bacon wages or state prevailing wages</li> <li>9. Borrower pledges tax increment income from all of its tax increment sources not encumbered as of this date, to the amount of the Loan outstanding, including without limitation principal and interest. Said pledge may be subordinate to subsequent bond finance having a debt coverage ratio that does not reduce available tax increment cash flow to an amount that is less than the amount of the Loan then outstanding. Borrower shall execute a pledge agreement, evidencing such pledge of tax increment.</li> <li>10. Loan origination fees are Two Thousand Dollars (\$2,000) and are included within the Loan Amount.</li> </ol>

**BROWNFIELD CLEANUP REVOLVING LOAN FUND  
PROMISSORY NOTE**

	11. If Borrower receives insurance proceeds or a grant of funds on account of the work of the Project, Borrower shall repay the Loan to the extent that such funds remaining after Borrower has reimbursed itself for funds advanced by Borrower to complete the Project work.
<b>PAYMENT SCHEDULE.</b> Repayment of this Note shall be made the following amounts:	
Payments in the following amounts of per year, payable annually starting on the last day of the last full calendar month of the sixth year after the first distribution of Loan funds to Borrower, with the balance of the Loan all due and payable on the last day of the last full calendar month of the tenth year after such first distribution.	
Sixth year	Forty-four Thousand Dollars (\$44,000)
Seventh year	Forty-three Thousand Two Hundred Dollars (\$43,200)
Eighth year	Forty-two Thousand Four Hundred Dollars (\$42,400)
Ninth year	Forty-one Thousand and Six Hundred Dollars (\$41,600)
Tenth year	Forty Thousand Eight Hundred Dollars (\$40,800)

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**ARTICLE II NOTE PROVISIONS:**

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**BORROWER HAS MADE THIS NOTE AS OF THE LOAN DATE.** The capitalized terms in this Note shall have the meanings assigned in Article I General Terms and Definitions and as defined in this Article II Note Provisions. (Terms being defined are indicated by quotation marks.) The Lender is making the Loan pursuant to the terms and conditions of the Loan Agreement and this Note.

**FOR VALUE RECEIVED, THE UNDERSIGNED, JOINTLY AND SEVERALLY, PROMISES TO PAY** to Lender, or its successors or assigns, the Principal Amount or such lesser amount as may be endorsed on this Note on behalf of Lender. The Loan shall bear interest on the outstanding principal balance, computed from the date of each advance by Lender to Borrower at Interest Rate.

1. This Note evidences the obligation of Borrower to Lender for repayment of funds loaned to Borrower under a loan agreement between Borrower and Lender dated as of the Loan Date ("Loan Agreement"). The terms and covenants of the Loan Agreement are incorporated in this Note by reference. The Loan Agreement provides for and incorporates the Certification By Borrower, and Borrower acknowledges that certification by Borrower is further consideration for this Note.
2. Borrower shall make payments in the amounts shown in the Payment Schedule. On the first day of the first month occurring twenty (20) years after the execution of the loan documents the unpaid balance of said principal, if any, together with all unpaid, fees and charges due, if any, shall become due and payable. All payments on this Note shall be applied first to fees and charges due under the Loan Agreement, if any, and then to the principal due on this Note. Borrower shall make the payments to the Lender at 630 "I" Street, Sacramento, CA 95814-2490, or to such other person or organization as may be designated by Lender to Borrower and noticed as provided in the Loan Agreement.
3. If any installment under this Note is not received by Lender within fifteen (15) calendar days after the installment is due, Borrower shall pay to Lender a late charge of five percent (5%) of such installment. Such late charge shall be immediately due and payable without demand by Lender.
4. This Note is made in reliance upon the Borrower executing a Pledge Agreement of its Tax Revenues (Tax Increment) monies. Such Pledge shall be by written instrument and by resolution of the Borrower's governing board.
5. Borrower shall comply with and fulfill the Special Terms.
6. Upon occurrence of any one or more of the following (subject to applicable notice and cure requirements, if any), Lender may, at its sole discretion, declare all unpaid principal immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds:
  - a. Borrower defaults in the payment of any principal or interest when due.

**BROWNFIELD CLEANUP REVOLVING LOAN FUND  
PROMISSORY NOTE**

b. Lender discovers that Borrower, in any application to Lender in connection with the Loan, had failed to disclose or misrepresented any fact deemed by Lender to be material or which would have prevented Borrower from being eligible for the Loan.

c. Lender discovers that Borrower had made any misrepresentations or failed to disclose any fact deemed material by Lender in the Loan Agreement, this Note or the Loan Agreement.

d. Borrower defaults or breaches any of the terms of Loan Agreement, this Note, or the Regulatory Agreement, if any.

e. The occurrence of any of the following:

1) Borrower becoming insolvent or bankrupt or being unable or admitting, in writing, his/her inability to pay his/her debts as they mature or making a general assignment of or entering into any arrangement with creditors.

2) Proceedings for the appointment of a receiver, trustee or liquidator of the assets of Borrower or a substantial part of such assets, being authorized or instituted by or against the Borrower.

3) Proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction being authorized or instituted against Borrower.

7. No waiver of any default or breach by Borrower under this Note shall be implied from any omission by Lender to take action on account of such default, and no express waiver shall affect any default, other than the default specified in the waiver. Such waiver shall be in writing and shall be operative only for the time and to the extent therein stated.

8. Borrower may prepay this Note in full or in part at any time, without any prepayment penalty being charged by Lender.

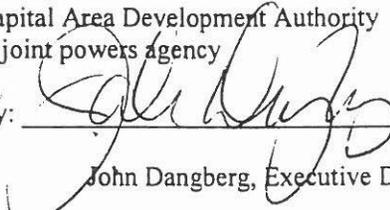
9. During the existence of default or delinquency under the terms of this Note or the Loan Agreement, the Lender is expressly authorized to apply all payments made on this Note to the payment of all or part of the delinquency, as it may elect.

Borrower shall pay to Lender all costs of enforcement of all or any portion of this Note and the Loan Agreement, including attorney's fees, witness fees, investigator fees and court costs, incurred by Lender, whether or not litigation is commenced.

IN WITNESS WHEREOF, Borrower has executed this Note as of the Loan Date.

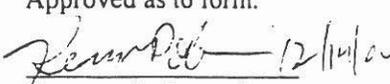
**Borrower:**

Capital Area Development Authority  
A joint powers agency

By:  \_\_\_\_\_

John Dangberg, Executive Director

Approved as to form:

 12/11/04  
Borrower's Counsel

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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### **ARTICLE II NOTE PROVISIONS**

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**LENDER AND BORROWER HAVE ENTERED THIS LOAN AGREEMENT AS OF THE EFFECTIVE DATE.** The capitalized terms in this Loan Agreement shall have the meanings assigned in Article I General Terms and as defined in Section 1 of this Article II Loan Provisions. (Terms being defined are indicated by quotation marks.) The Lender is making the Loan pursuant to the Loan Commitment and the terms and conditions of this Loan Agreement.

**NOW, THEREFORE,** in consideration of their mutual promises, the parties agree as follows:

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

1.1. "Borrower's Certification" is attached to and incorporated in its entirety into this Loan Agreement. The Borrower's Certification is further consideration for this Loan and is required under this Loan Agreement.

1.2. "Brownfields Site Manager" is designated by the Lead Agency and is responsible for overseeing cleanups at specific sites. The Brownfields Site Manager must be a qualified government employee (per definition of "On Site Coordinator" in 40 C.F.R. 300.5).

1.3. "Budget" is the budget approved by Lender for the Project.

1.4. "Business Day" means regularly scheduled business day of the Sacramento Housing and Redevelopment Agency. Whenever any payment to be made under this Loan Agreement is due on a day other than a Business Day, it may be made on the next succeeding Business Day, and the resulting extension of time will be included in the computation of payment of interest.

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

1.6. "Clean up" means the actual response to, and cleanup and removal of the hazardous substance(s) from the site in accordance with the terms of this Loan and to the satisfaction of this Lender and the Lead Agency.

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

1.8. "Completion of the Project" means that, in Lender's sole judgment the Project has been implemented and any construction or rehabilitation completed, equipped, and furnished in a good and proper manner in accordance with the Response Plan. Plans and Specifications, the Scope of Development and the Budget as approved by Lender; all notices of completion with respect to the Project have been filed and all statutory lien periods have expired; all costs of the Project have been paid, including, without limitation, interest on the Note which may be due prior to the Completion Date; ; closure letter has been issued by DTSC; and all of the conditions to final disbursement of the Loan have been satisfied.

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

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

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

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

the Loan. An Event of Default may be subject to cure provisions as specified in this Loan Agreement.

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

1.13. "General Contractor" means the general contractor named by Borrower in his application or supporting documents as the general contractor to perform the response or remediation work that is the Project, or any other general contractor so designated by Borrower and approved in writing in advance by Lender. Said Contractor shall have and maintain all of the necessary environmental certifications and licenses required to remove or remediate the hazardous substance(s) at the Property in addition to possession of a California State Contractor's License maintained in good standing.

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

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

1.16. "Inspector" is the person or persons designated by Lender for the inspection of Borrower's books and records and the physical progress of the Project as provided in this Loan Agreement.

1.17. "Lead Agency" means the City of Sacramento (the cooperative agreement recipient). The Lead Agency is responsible for ensuring that environmental cleanups conducted using BCRLF pilot funds are conducted in accordance with the cooperative agreement and CERCLA and are consistent with the NCP.

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

1.19. "Loan Agreement" means this Brownfields Cleanup Revolving Loan Fund Loan Agreement including Article I and II, the Certifications and Assurances and all Exhibits attached to this Loan Agreement (which are incorporated in this Loan Agreement by this reference) and the Loan Documents which are not otherwise included in this definition.

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

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

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

1.23. "Plans and Specification" means the Final Removal Action Workplan (RAW) for the Project.

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

1.25. "Project" as defined in Article I of this Loan Agreement.

1.26. "Response Plan" means the cleanup of the Site as defined above.

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

1.28. "Site" means 1130 R Street Sacramento, California.

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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

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

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

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

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

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

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

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

2.7. **CONTROL OF PROPERTY.** Borrower has control of the Site sufficient to carry out the purposes of this Loan..

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

2.9. **USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of the Project in accordance with the Loan Agreement and for the purposes specified in the Loan. Borrower understands that the purpose of this Loan is to cleanup, improve and revitalize the subject Property and the surrounding area, which will benefit both the Borrower and the community.

2.9.1. **PROHIBITED USES.** The following uses with the proceeds of this Loan are prohibited:

- Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;
- Cleanup of a naturally occurring substance, products that are part of the structure and result in exposure within residential buildings or business or community structures (e.g., interior lead-based paint contamination or asbestos which results in indoor exposure), or public or private drinking water supplies that have deteriorated through ordinary use - except as determined on a site-by-site basis and approved by the U.S. EPA Headquarters, consistent with CERCLA section 104(a)(3) and (4);

-Monitoring and data collection necessary to apply for, or comply with, environmental permits under other **60 of 79**

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Federal and state laws, unless such permit is required as a component of the cleanup action; and  
-Development activities that are not removal actions (e.g. construction of a new facility or marketing of a property).

**2.9.2 RESTRICTION AGAINST PETROLEUM ONLY RELEASES.** BCRLP pilot funds may not be used at any sites contaminated by petroleum products to address a non-petroleum hazardous substance (e.g., co-mingled waste).

**2.10. TAXES PAID.** Borrower has filed all required Federal, State, County, and City tax returns and has paid all taxes due. Borrower knows of no basis for additional assessments with respect to any taxes. **LANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and the On Scene Coordinator. To the best of Borrower's knowledge, no violation of any Governmental Requirement exists in these plans and specifications.

**2.11. PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and the On Scene Coordinator. To the best of Borrower's knowledge, no violation of any Governmental Requirements exists in the plans and specifications.

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

**3. LOAN.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to finance the cleanup of the project subject to the terms, conditions, representations, warranties, and covenants in this Loan Agreement.

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

**3.2. USE OF LOAN FUNDS.** Loan funds shall be used solely for actual costs incurred for items as specified in the Budget. Unless otherwise noted in the Budget, predevelopment costs are not subject to withholding as Retention.

**3.3. LOAN TERMS.** The Loan is made pursuant to the Loan Program and is subject to the laws, rules and regulations of the Loan Program. Lender agrees to disburse the Loan Proceeds in the manner and subject to the limitations stated in this Loan Agreement. Repayment of the loan shall be made, in payments of principal, in lawful tender of the United States, in accordance with the Payment Schedule.

**3.4. NOTE AND SECURITY DOCUMENTS.** The Loan is to be evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. Repayment of the Note is to be secured by the pledging of Tax Increment funds as generated from the Site.

**3.5. BORROWER'S CERTIFICATIONS AND ASSURANCES.** Borrower's Certifications and Assurances are attached hereto and incorporated herein and are further consideration for this Loan. Borrower acknowledges that Lender has relied on such Certifications and Assurances in making this Loan.

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

**4.1. CONDITIONS TO LENDER'S PERFORMANCE.** Lender's obligation to perform under this Loan Agreement is subject to all of the following conditions: (a) Borrower has performed all of its obligations then to be performed pursuant to this Loan Agreement; (b) Borrower has met the Additional Conditions to Close of Escrow and applicable Special Provisions, if any (c) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (d) Borrower's representations and warranties in this Loan Agreement are true and correct as of the Close of Escrow, (e) the Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under the Loan Agreement, and no

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event has occurred that, with the giving of notice or the passage of time, will constitute a default by Borrower under the Loan Agreement; and (f) Lender has approved the Approval Documents.

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

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

**5. RELOCATION.** Lender is required by law to provide relocation services and make relocation payments to eligible tenants, if any, displaced as a result of the Project. Borrower shall comply fully with all relocation laws which are the obligation of Lender or are otherwise applicable to the Project. Borrower's compliance with the relocation requirements as stated in this Section 5 is a material element of this Loan. Borrower's failure to comply with the relocation requirements as stated in this Section 5 is an Event of Default. **Section 5 and its subparts are hereby waived by the Lender.**

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

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

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

**6. RESPONSE IMPLEMENTATION.** As a condition of the Loan, Borrower will diligently proceed with the implementation of the response or cleanup in accordance with the Response Plan and the terms and conditions of this Loan. Lender shall issue a notice to proceed with the cleanup within ten (10) business days of Close of Loan and Borrower shall not commence the cleanup until such notice to proceed has been issued. Borrower shall complete such work on or before the Completion Date.

**6.1. CHANGES.** In order to assure sufficient funding for the Project, Borrower shall not authorize any Change without the prior written consent of Lender. If in the judgment of Lender, a Change, together with all other Changes contemplated or previously approved by Lender, will cause an increase in the cost of the Project in excess of the contingency reserve identified in the Budget, then Borrower will, as a condition precedent to Lender's consent, provide Lender with proof that the contingency reserve has been increased as necessary to pay for all such Changes. Borrower shall make any changes as required by the Lead Agency. Borrower shall maintain funds available in the contingency reserve that are in substantially the same percentage of the original contingency reserve as the percentage of the Project then remaining to be completed.

**6.2. CONTRACTORS AND CONTRACTS.** Upon Lender's request, Borrower will furnish to Lender correct lists of all contractors, subcontractors and material suppliers employed in connection with the Project, specifying their addresses, their

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respective portion of the Project and their respective Project cost. Lender may contact directly each contractor, subcontractor, and material supplier to verify the facts disclosed by the list or for any other purpose related to the Loan. All contracts let by Borrower or its contractors relating to the Project will require them to disclose to Lender information sufficient to make such verification.

6.3. **INSPECTION.** Lender may, at any time and without notice to Borrower, enter on the Property and inspect the Project; and, during regular business hours, examine the books, records, accounting data, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Project and to make extracts or copies. Borrower shall make all such documents available to Lender promptly on demand. Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Lender and its Inspector and to permit all appropriate access to the Property and to all relevant books and records. Borrower shall bear the cost of reasonable inspections.

6.4. **PROTECTION AGAINST LIEN CLAIMS.** Borrower shall promptly and fully discharge all claims for labor done and materials and services furnished in connection with the Project, promptly file a valid Notice of Completion on completion of the Project, promptly file a Notice of Cessation in the event of a cessation of labor on the Project for a continuous Period of (30) days or more, and take all other reasonable steps to protect against the assertion of lien claims against the Property or any part of it.

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

6.4.2. In any event, Borrower is not required to pay any claims for labor, materials, or services that Borrower disputes, reasonably and in good faith, and that Borrower, at its own expense, is currently and diligently contesting, provided that Borrower will, in that case and in each other case where a claim of lien has been filed, within ten (10) days after the filing of any claim of lien record in the office of the Recorder of the County where the Property is located a surety bond sufficient to release the claim of lien or deliver to Lender any other assurance as may be acceptable to Lender.

6.5. **SECURITY INSTRUMENTS.** Upon request by Lender, Borrower shall execute and deliver to Lender a security instrument in favor of Lender naming as secured property all contracts related to the Project and all other property of any kind owned by Borrower and used primarily in connection with the Property. Lender may require such instrument at any time, and from time to time may require additions of new contracts and other property. Borrower irrevocably assigns to Lender, effective upon Lender's written demand, as security for the due performance of this Loan Agreement all of its right, title, and interest in the Assigned Documents.

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

## **7. LOAN DISBURSEMENT PROCEDURES.**

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

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

7.1.2. Lender is satisfied that all cleanup work has been performed in a good and proper manner, consistent with federal, state, and local laws and borrower has provided satisfactory evidence that all CERCLA and/or California Superfund requirements have been met.

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

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

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

**7.2. CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 7.1 have been met:

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

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

7.2.3. Lender has provided proof of all insurance required by the Loan Documents.

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

**7.3. MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) Business Days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 7.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

**7.4. DISBURSEMENT OF LESS THAN FULL REQUEST.** If Lead Agency makes a disbursement which is less than the full amount of the disbursement requested, Lender shall inform Borrower of the items disallowed for disbursement and the reason for disallowing them. Lender shall disburse the Loan in the following order of priority, except as expressly provided and unless paid by Borrower from other funds: (a) first, to pay Lender's Loan fees and expenses due; (b) second, to pay Lender the interest due on the Loan; (c) third, at Lender's option to pay all Impositions due; (d) fourth, at Lender's option, to make any other payments that Lender may in its sole discretion deem necessary or advisable to protect Lender's security under the Loan Documents; and (e) fifth, to make the disbursement of funds then due in response to Borrower's current request for disbursement.

**7.5. FINAL DISBURSEMENT.** If Agency is not the Project Lender whose funds are disbursed last, then Lead Agency shall disburse all of the Loan Proceeds, including the Retention, (a) if and only if the Lender whose funds will be disbursed last retains an amount that is not less than the same percentage of the total loan proceeds for the Project as the Retention bears to the Loan Proceeds, and (b) if and only if, the final disbursement of the such retained amount is made after fulfillment of the following conditions to Lead Agency final payment. Lead Agency shall not make a final payment, including the Retention, unless the following conditions have been satisfied:

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

7.5.2. The Project has received a final release or "no further action" letter from the Brownfields Site Manager, and the Inspector has determined that all Project work to be completed under this Agreement has been fully and satisfactorily completed.

7.5.3. The provisions of Section 7.1 will have been fully satisfied.

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7.5.4. Thirty-five days shall have expired after filing of a Notice of Completion, and no mechanic's or materialmen's liens remain against the Site, except those liens for which Borrower has provided bonds assuring their full payment. Alternatively, Borrower may provide Lender with unconditional lien waivers from the General Contractor, each of the various subcontractors and material suppliers, and substantially all of the subcontractors and submaterial suppliers under the subcontractors and material suppliers at any level, or Borrower will have furnished evidence satisfactory to Lender that the General Contractor and subcontractors and material suppliers and sub-subcontractors and submaterial suppliers have been paid in full.

7.6. **NO WAIVER BY DISBURSEMENT.** Regardless of the failure of any condition precedent to Lender's obligation to make disbursements to the Construction Account, Lender may make a disbursement if Lender, in its sole discretion, determines it to be advisable. The making of any disbursement shall not be deemed to constitute an approval or acceptance by Lender of the work completed or a waiver of the condition with respect to a subsequent disbursement.

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

### **8. DEFAULT**

8.1. **EVENTS OF DEFAULT.** At the option of Lender, each of the following events will constitute a default (each an "Event of Default"):

8.1.1. The occurrence of an Event of Default under the Pledge Agreement.

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

8.1.3. Borrower's failure to keep in full force any permit, license, consent, or approval with respect to the construction, occupancy, or use of the Project.

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

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

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

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

### **9. REMEDIES**

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

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9.1.1. Terminate its obligation to make disbursements.

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

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

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

9.1.5. Make any unauthorized payment from Loan Proceeds or other funds of Lender.

9.1.6. Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Loan Documents, together with interest at the Default Rate from the date the funds were spent until repaid which amounts will be deemed secured by the Pledge Agreement.

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

**9.3. DISCLAIMER.** Whether Lender elects to employ any of the remedies available to it in connection with an Event of Default, Lender will not be liable for the completion of or failure to complete, or protect the Project; the payment of any expense incurred in connection with the exercise of any remedy available to Lender or the construction or completion of the Project; or the performance or nonperformance of any other obligation of Borrower.

**9.4. GRANT OF POWER.** Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, to act for Borrower in its name, place, and stead as provided in this Loan Agreement to take possession of the Property and Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the Final Removal Action Workplan; to make any additions, changes, and corrections in the Final Removal Action Workplan as may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers, architects, inspectors, consultants, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property or Personalty, or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Site or Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property or Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

**10. LIABILITY INSURANCE.** With regard to this Loan Agreement, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his

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employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this Loan Agreement.

**10.1. LIABILITY INSURANCE POLICY LIMITS.** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than \$50,000.

**10.2. WORKER'S COMPENSATION.** 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).

**10.3. COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may approved by Agency Counsel). Such insurance shall have limits of liability which are not less than \$1,000,000, each occurrence, for bodily injury coverage; \$1,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

**10.4. COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having not less than the statutory limits of liability.

**10.5. FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE.** For the duration of Loan Agreement, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project. In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

**10.6. INSURANCE PROVISIONS.** Each policy of insurance required under this Loan Agreement shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

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

## **11. MISCELLANEOUS**

**11.1. FEDERAL REQUIREMENTS.** If any Loan Program is federally funded, Borrower shall comply with all laws, rules, regulations and funding requirements which govern the use of such funds. Lender shall fully cooperate with, and assist, Borrower in fulfillment of such obligations. (See Attached "Borrower's Certifications and Assurances" and "Regulatory Restrictions").

**11.2. Nature of Representations and Warranties.** Borrower certifies to Lender that all representations and warranties made in this Loan Agreement and all other Loan Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

any of Borrower's obligations have not been satisfied or the Loan or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Borrower for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Loan Agreement, in any other Loan Documents, and in any other document delivered to Lender by Borrower, will be deemed to have been relied on by Lender, regardless of any investigation, inspection, or inquiry made by Lender or any related disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

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

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

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

**11.6. Notices.** All notices required to be given will be served in the manner provided below. Borrower irrevocably appoints Lender as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interests under this Loan Agreement or under the Loan Documents.

**Notices to Borrower shall be sent to:** Attention: Paul Schmidt  
Capitol Area Development Authority  
1522 14th Street, Sacramento, CA 95814

**Notices to Lender shall be sent to:**  
Sacramento Housing and Redevelopment Authority  
630 I Street  
Sacramento, CA 95814

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

**11.8. SIGNS.** Borrower agrees that on the request of Lender, Borrower will erect and place on or in the immediate vicinity of the Property a sign indicating that Lender has provided construction financing for the Project. The sign will remain the property of Lender and will be required to be removed only after construction has been completed. Lender may also arrange for publicity of the Loan in its sole discretion.

**11.9. ASSIGNMENT.** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Borrower shall not assign this Loan Agreement or any interest it may have in the monies due

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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

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

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

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

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

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

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

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

## **BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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

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

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

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

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

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## Brownfield Cleanup Revolving Loan Fund

### ARTICLE III, CERTIFICATIONS AND ASSURANCES

#### **CERTIFICATIONS AND ASSURANCES**

In consideration of Sacramento Housing and Redevelopment Agency (SHRA) Brownfields Cleanup Revolving Loan Fund (BCRLF) loan in the amount of Two Hundred Thousand Dollars (\$200,000) under the United States Environmental Protection Agency's Brownfields Cleanup Revolving Loan Fund (BCRLF), Capital Area Development Authority, a California joint powers agency, (the Applicant) hereby assures and certifies that it will comply with regulations, policies, guidelines, and requirements, as they relate to the application, acceptance and use of the Sacramento Housing and Redevelopment Agency (SHRA) BCRLF loan proceeds for this project. Also, the Applicant assures and certifies that it will comply with all requirements imposed by the Federal grantor agency. In addition, the Applicant assures and certifies with respect to the SHRA BCRLF loan that:

#### NO DISCRIMINATION

The Applicant will comply with:

- a. Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 42 U.S.C. Section 2000-d), which prohibits discrimination on the basis of race, color or national origin;
- b. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicap;
- c. The Age Discrimination Act of 1975, enacted as an amendment to the Older Americans Act (Public Law 94-135), which prohibits unreasonable discrimination based on age; and
- d. Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), which prohibits discrimination on the basis of sex in education programs and activities, including those not offered or sponsored by an educational institution;

#### WAGE AND HOURS

Borrower shall comply with both federal and state prevailing wage law: All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis-Bacon prevailing wages (Federal). California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq.). The prevailing wages shall be the higher of Davis Bacon wages or state prevailing wages for each trade. The Borrower must obtain recent and applicable wage rates from the Sacramento Housing and Redevelopment Agency and incorporate them into the construction contract.

#### CLEAN AIR AND WATER

The Applicant will comply, to the extent applicable, with all requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. Section 1857, et seq.) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1857, et seq.), respectively, relation to inspection, monitoring, entry, reports, and information, as well as other applicable requirements specified in the Clean Air Act and the Federal Water Pollution Control Act, respectively, and all regulations and guidelines issued thereunder;

#### ENVIRONMENT

The Applicant will ensure, pursuant to Executive Order 11738, that the facilities under its ownership, lease or supervision, which shall be utilized in the accomplishment of this project or result from this project are not listed on the Environmental Protection Agency (EPA) list of Violating Facilities.

The Property is not listed, or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency;

## **Brownfield Cleanup Revolving Loan Fund**

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### **ARTICLE III, CERTIFICATIONS AND ASSURANCES**

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Borrower is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response compensation and Liability Act of 1980, as amended (CERCLA); and

Borrower certifies that it is not an owner operator of the Property pursuant to CERCLA. If the Borrower becomes an owner operator of the Property pursuant to the execution of this Loan Agreement, the Borrower shall certify that it falls under a CERCLA statutory exemption from liability, or that EPA could use its enforcement discretion as deemed necessary and appropriate by said agency.

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

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**ARTICLE IV REGULATORY REQUIREMENTS**

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**REGULATORY REQUIREMENTS**

WHEREAS, the source of funds for subject loan is the United States Environmental Protection Agency which imposes restrictions and requirements in connection with the use of said funds; and WHEREAS, these funds are to be used to undertake cleanup of brownfields sites by making low interest loans to parties willing to undertake cleanup of these sites; and

WHEREAS, the Borrower will be the owner of certain real Site located at 1130 R Street Sacramento, California (the Site), which Site is more particularly described in Exhibit 1, attached hereto; and

WHEREAS, the Site is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency (EPA); and

WHEREAS, Borrower is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response compensation and Liability Act of 1980, as amended (CERCLA); and

WHEREAS, the Borrower is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Site nor is the Borrower, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, the Borrower acquired the Site after the time of disposal or placement of hazardous substances and has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance on, or emanating from that Site.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows

1. The Borrower will carry out the Project in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in (42 USC 9601 et seq.); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Contingency Plan (NCP) (40 Part 300) and all other applicable provisions of federal, state or local law.

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

2. Borrower shall comply with both federal and state prevailing wage law: All work performed with funds provided by this Loan and pursuant to this Loan Agreement shall be subject to Davis-Bacon prevailing wages (Federal). California prevailing wages are applicable to the subject work (Labor Code Section 1720 et seq.). The prevailing wages shall be the higher of Davis Bacon wages or state prevailing wages for each trade. The Borrower must obtain recent and applicable wage rates from the Sacramento Housing and Redevelopment Agency and incorporate them into the construction contract.
3. The Borrower shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally assisted construction contracts.
4. The Borrower has provided the Lender with a copy of the Phase I and Phase II Environmental Assessment of the Site performed according to the American Society for Testing and Materials (ASTM) standards. The Borrower shall be responsible for the payment of all costs and expenses related to the Assessment. The Borrower agrees that Loan Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment did include, but was not limited to site background, the threat posed to by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
5. The Lead Agency has identified a Site Manager who may serve as the On-Scene Coordinator (OSC). The Borrower has contracted directly with the Site Manager pursuant to the Voluntary Cleanup Program. The Site Manager shall perform all duties as required by the Lead Agency, including but not limited to coordination and oversight of the BCRLF Project Response Action (Response Action). The Site Manager shall assist in preparation of an Approval Memo documenting that the situation meets the CERCLA and NCP criteria for initiating a non-time critical removal action for signature by the Lead Agency.
6. After the Lead Agency signed the Approval Memo, the Lead Agency caused to be prepared a Community Relations Plan (CRP) with the assistance and cooperation of the Borrower. The CRP included the following:
  1. Copies of interviews conducted with residents and community leaders, local officials, and public interest groups.
  2. Copies of news releases and other information which explains the proposed project to be disseminated throughout the area surrounding the affected area.
  3. Procedures for the establishment of a local information repository at or near the potential site that includes public information supplied by both the Lender and the Borrower related to the proposed response action. The Borrower shall supply the Lead Agency with any additional information that would assist the Lead Agency in documenting the BCRLF Response Action.

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

7. After the preparation of the CRP, the Borrower drafted an RAW, which clearly identified the objectives of the removal action, provided an analysis of alternatives, recommended an action for the removal of the contamination and the estimated costs of removal. The Borrower submitted copies of the RAW to the Site Manager and the Lead Agency for approval. The Borrower agreed to accept advice and suggestions from the Site Manager and Lead Agency, and to incorporate those suggestions or requests for revisions into the RAW.
8. The Site Manager prepared a Response to the public comments and an Action Memo documenting the basis for the removal action for signature by the Lead Agency. At the request of the Lead Agency, the Borrower submitted all information to the Lead Agency in a form requested by the Lead Agency which enabled the Lead Agency to prepare the Action Memo. After the Lead Agency signed the Action Memo, the Borrower prepared a Scope of Work containing detailed design and construction plans and specifications for the cleanup activities including a Budget and Work Schedule; a Health and Safety Plan (OSHA 1910-120 - 126) and a Quality Assurance Project Plan which set forth the manner and method of collecting samples to assure the complete removal of all hazardous substances, (collectively referred to as the Project Documents) and submitted same to the Site Manager and Lead Agency for approval.
9. The Borrower understands and agrees that all Loan Funds provided by Lender shall be used to cleanup the Site identified in Exhibit 1: Site
10. The Borrower further understands and agrees that any and all work performed on the Site for which Loan Funds are used and the receipt of any Loan Funds under this Agreement is conditioned upon the Borrower's full compliance with the Project Documents.
11. Borrower agrees to keep all expenditures from the Loan Funds within the approved Budget. Borrower shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager.
12. All changes or modifications to the Project or the Project Documents shall be approved in writing by the Site Manager and the Lead Agency prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be the responsibility of the Borrower. In the event that unforeseen conditions are discovered during the project implementation, the Lead Agency reserves the right to revise the Response Action and the Project Documents.
13. The Borrower shall:
  1. Begin the project within sixty (60) days and will complete all work included in the Work Plan within twelve (12) months following commencement of work. The Borrower agrees to complete the work in a timely manner in accordance with the

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

Work Plan and Approved Budget. Borrower shall notify the Lender when the Project is complete. The notice shall contain certification or documentation as necessary to prepare a Cleanup Closeout report developed in accordance with Section 300.165 of the NCP and all applicable EPA guidance. This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any.

2. Perform all of its obligations and agreements under this Loan Agreement, the Note and the Pledge of Tax Revenues securing same, if applicable, and any other agreements or instruments to which the Borrower is a party and which relate to this Loan or to the Project.
14. Throughout the term of this Agreement, the Borrower shall indemnify, defend and hold the Lead Agency and Lender harmless from any and all liability, loss, damage(s) and expense(s), including attorney's fees, which it may or shall incur in connection with the Project or by reason of any good faith action taken by the Lead Agency and Lender in order to protect its rights hereunder.
15. The Borrower shall erect a sign on the Project site stating that the Project is being financed in part by BCRLF and the Lender and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Project site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising as well as 40 CFR Subpart O (§35.6105(a)(2)(ii)).
16. The Borrower shall not demolish any part of the buildings or structures located on the Site or commit any waste except as provided in the Scope of Work without the prior written consent of the Lender.
17. The Borrower shall not demolish any part of the buildings or structures located on the Site or commit any waste except as provided in the Scope of Work without the prior written consent of the Lender.
18. Any forbearance by the Lender with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Lender's rights or privileges granted hereunder.
19. In the event of a default of any of the terms or conditions of this Loan Agreement, Promissory Note, or the Pledge of Tax Revenues securing same, then, in that event, the entire outstanding principal balance amount of this Loan shall become immediately due and payable without the necessity of demand from Lender. The Borrower shall be deemed to be in default under this Loan Agreement upon the occurrence of any or more of the following events:

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

1. The Borrower assigns this Agreement or any Loan Funds advanced hereunder or any interest herein to a third party or if the Site or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Lender,
  2. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the Loan Documents shall prove to be false in any material respect;
  3. The Borrower fails to pay any principal amount, or fee on the indebtedness to the Lender after the same shall become due and payable and such failure continues beyond ten (10) business days;
  4. The Borrower defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure the default, from and after written notice by certified mail, return receipt requested, from the Lender to the Borrower, specifying said default, or, if such default cannot be remedied within that period, and remedial effort is not commenced within that period and diligently and continuously pursued, the Lender shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrower to the extent allowed by law.
  5. Any proceeding involving the Borrower or the Site, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Borrower either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within sixty (60) days.
  6. An order, judgment or decree is entered, without the application, approval or consent of the Borrower, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Borrower of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of sixty (60) days.
  7. Upon the occurrence of any one or more of the events of default enumerated above, all indebtedness of the Borrower to the Lender pursuant to this Agreement shall become due and payable, both as to the principal and to the interest, if any, without presentment, demand, protest or notice of any kind to the Borrower, all of which are hereby expressly waived by the Borrower.
20. The Borrower agrees to maintain financial records pertaining to all matters relative to this Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of ten (10) years after maturity of the loan except as follows:

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

1. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.
  2. All such records and supporting documents shall be made available, upon request, for inspection or audit by the Lender or its representatives.
21. The Borrower agrees to permit the Lender or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy therefrom any information that the Lender desires relevant to this Agreement. The Lender shall provide written notice to the Borrower prior to the execution of this provision. The Borrower agrees to deliver the records or have the records delivered to the Lender.. If the Lender or its representative finds that the records delivered by the Borrower are incomplete, the Borrower agrees to pay the Lender or its representative's costs to travel to the Borrower's office or other location where the books or records are located to audit or retrieve the complete records. In addition, the Borrower agrees that loan related documents are subject to 40 C.F.R. 35.610.
22. The Borrower will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Borrower will undertake good faith efforts in compliance with 40 CFR §35.6580 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The Borrower shall submit a report of such efforts on the City-provided form.
23. The Borrower agrees to protect, indemnify, defend and hold harmless, the Lender, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Borrower may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and Site damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Borrower as provided herein and caused in whole or in part by any act, error, or omission of the Borrower, its agents, servants, employees or assigns.
24. The Borrower shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Lender. The Borrower shall not assign all or any portion of the Site made the subject of this Agreement without the prior written consent of the Lender.
25. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.

## BROWNFIELDS CLEANUP REVOLVING LOAN FUND

### ARTICLE IV REGULATORY REQUIREMENTS

26. All amendments to this Agreement shall be in writing and signed by both parties hereto.
27. It is expressly understood that a failure or delay on the part of the Borrower in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement however, the Borrower shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.
28. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
29. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
30. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE LENDER:

Sacramento Housing and Redevelopment Agency  
Development Services – Brownfields Program  
630 I Street  
Sacramento, CA 95814

TO THE BORROWER:

Capitol Area Development Authority  
1522 14<sup>th</sup> Street  
Sacramento, CA 95814  
Attention: Executive Director

or to such other address as a party may subsequently specify in writing to the other party.