

**Meeting Date:** 6/9/2015

**Report Type:** Public Hearing

**Report ID:** 2015-00367

**Title: (City Council/Housing Authority) Approval of Disposition and Development Agreement and Related Loan Agreements for the Del Paso Nuevo Phase V Project (Noticed 05/26/2015)**

**Location:** Del Paso Nuevo Development between Ford Road and Fairbanks Avenue off Norwood Avenue, District 2

**Recommendation:** Conduct a public hearing pursuant to Health and Safety Code §33431 and §33433; upon conclusion 1) pass a City Council Resolution a) finding that the sale and transfer of the property by the Housing Authority of the City of Sacramento (Housing Authority) to Pach DPN-5 Housing Partners LLC (Developer) for construction and sale of new single-family homes is consistent with the Del Paso Heights Implementation Plan for the Del Paso Nuevo Project, b) approving the sale and transfer of the Property pursuant to the Disposition and Development Agreement (DDA); and 2) pass a Housing Authority Resolution a) finding the Housing Authority's sale of the Property for construction and sale of new single-family homes is consistent with the Del Paso Heights Implementation Plan for the Del Paso Nuevo Project and will assist in the elimination of blight and increase the supply of affordable housing, b) finding that an economically feasible method of alternative financing is not available, c) approving the sale and transfer of the Property for the Developer's obligations under the DDA and \$1,137,500 in the form of Seller Carry-back notes for the fair market value of the Property with terms as required by the DDA and Grant Deed; and d) authorizing the Executive Director to enter into and execute the DDA, Seller Carry-back notes, and all other documents and agreements as approved to form by Agency Counsel, as well as perform other actions necessary to ensure proper repayment of the Housing Authority funds.

**Contact:** Christine Weichert, Assistant Director, Development Finance, (916) 440-1353; Tyrone Roderick Williams, Director of Development, (916) 440-1316, Sacramento Housing and Redevelopment Agency

**Presenter:** Bern Wikhammer, Sr. Management Analyst, Development Finance, Sacramento Housing and Redevelopment Agency

**Department:** Sacramento Housing & Redevelopment Agency

**Division:** Sacramento Housing & Redevelopment Agency

**Dept ID:** 99991011

**Attachments:**

- 01-Description/Analysis
- 02-Background
- 03-Regional Map
- 04-Del Paso Nuevo Phases 1 - 6 Map
- 05-Rendering and Floor Plans
- 06-Project Summary (15 Homes)
- 07-City Council Resolution
- 08-Exhibit A
- 09-Housing Authority Resolution
- 10-Exhibit A (Commitment Letter)
- 11-Exhibit B (DDA 91 Lots)

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**City Attorney Review**

Approved as to Form  
Sheryl Patterson  
6/2/2015 9:03:21 AM

**SHRA Counsel Review**

Approved as to Form  
David Levin  
6/2/2015 9:57:21 AM

**Approvals/Acknowledgements**

Department Director or Designee: LaShelle Dozier - 5/26/2015 2:50:55 PM

## Description/Analysis

**Issue:** The Agency's remaining housing obligation to the U.S. Department of Housing and Urban Development (HUD) for the Del Paso Nuevo Homeownership Zone in Phase V is to construct 91 single-family homes with at least 51 percent sold at affordable prices to low-income buyers (Project).

Del Paso Nuevo is a 154-acre master planned community formed to provide a minimum of 300 new single-family homes in the former Del Paso Heights Redevelopment Area (see Attachment 2 – Regional Map). In 1997, this area received a Homeownership Zone Designation from the U.S. Department of Housing and Urban Development (HUD) and more than \$10 million in federal loan guarantees and grants for the project. In return, at least 51 percent of the new homes constructed in Del Paso Nuevo must be sold at affordable prices to families that earn no more than 80 percent of the area median income (AMI). To date, construction has been completed on two community parks, all infrastructure and street improvements, and 325 finished lots. A total of 137 new single-family homes have been completed, including 64 sold at affordable prices to low-income families. Three of the six planned building phases in this new community are complete. The remaining three phases, Del Paso Nuevo IV through VI, are in various stages of completion.

Del Paso Nuevo Phase V (Phase V) is located near the southeast corner of Nuevo Park (see Attachment 3 – Del Paso Nuevo Map). It began in early 2007 when the original developer purchased land from the Agency through a Seller Carry-back loan to develop the property into 95 finished lots. All street and infrastructure improvements, 95 finished lots, and four model homes were completed using only borrower equity and private construction financing. Construction then began on 11 new for-sale homes but, due to the rapid decline in the economy and housing market at that time, the project stalled and all construction was halted by the lender. The construction lender filed a Notice of Default in April 2008 and commenced the foreclosure process. To protect its interest in the property and preserve affordability restrictions, the Agency was granted authority to bid at the January 2009 trustee sale and subsequently purchased the 91 finished lots and the four model homes at the sale. To defray the costs of ownership, the model homes were rented and have been maintained along with the lots by the Housing Authority.

On January 2, 2014 a Request for Qualifications (RFQ) was issued to attract new developers to the project. On March 25, 2014 a development team led by Pacific Housing, Inc. was recommended by a selection committee to complete Phase V. This report recommends actions to facilitate the completion of this phase including the phased disposition of the 91 lots to the Developer for the phased construction of new single-family homes, including a minimum of 51 percent affordable to families earning 80 percent of less than the AMI.

The property will be sold to the Developer at market value less demolition and subdivision repair costs. The property will be financed with seller carry back loans of varying amounts based on the value of each lot multiplied by the number of lots transferred in each phase. All loans will carry a four percent interest rate. This project is subject to Health and Safety Code §33431 and §33433 as a sale of property without public bidding and the disposition of property acquired with tax increment funds. In compliance with §33433, a report has been prepared and is attached as Exhibit A to the City Council resolution accompanying this report.

In the first phase, 16 lots will be transferred from the Housing Authority to the Developer to construct five model homes, 10 for-sale homes, and one lot to be used as a construction staging area. The second phase will consist of the transfer of 15 lots to construct 15 for-sale homes. Subsequent property transfers will also be done in sets of 15 parcels unless market conditions demonstrate the ability to absorb additional homes and Agency approval is given to transfer more than 15 parcels prior to transfer of the property. Construction on the second phase of homes will not begin until all of the previous set of for-sale homes has been built and at least 80 percent of the homes have been sold. Each phase of for-sale homes is estimated to be constructed in six to nine months. The total project is anticipated to be completed in approximately three to five years.

**Policy Considerations:** The recommended actions are consistent with City and Agency objectives of developing property for uses in compliance with the City's Housing Element that encourages infill development, enhancing and preserving existing neighborhoods, and expanding affordable housing opportunities in a mixed income development. The recommended actions are also consistent with the requirements of the Del Paso Nuevo Homeownership Zone.

**Economic Impacts:** This residential new construction project is expected to create approximately 227.9 total jobs (127.9 direct jobs and 100 jobs through indirect and induced activities) and result in approximately \$31.6 million in total economic output (\$19.4 million direct output and another \$12.2 million of output through indirect and induced activities).

*The indicated economic impacts are estimates calculated using a calculation tool developed by the Center for Strategic Economic Research (CSER). CSER utilized the IMPLAN input-output model (2009 coefficients) to quantify the economic impacts of a hypothetical \$1 million of spending in various construction categories within the City of Sacramento in an average one-year period. Actual impacts could differ significantly from the estimates and neither the City of Sacramento nor CSER shall be held responsible for consequences resulting from such differences.*

#### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The impacts of the entire Del Paso Nuevo project were evaluated in accordance with CEQA and a Mitigated Negative Declaration was adopted for the project on January 11, 2005, by Resolution 2005-002. The recommended actions herein do not constitute a new project or substantive changes or modifications to the project as previously analyzed. Because there is neither any new information of substantial importance nor any substantial changes to the circumstances under which the project will be undertaken that would require the preparation of supplemental environmental documentation. The recommended actions do not require further environmental review under CEQA Guidelines Sections 15162 or 15163.

**Sustainability Considerations:** The recommended actions will provide a wide array of housing choices and transportation options near jobs reducing long commutes for a balanced, healthy City. New home construction will conform to current building codes incorporating improved energy efficiency and enhanced green building standards above base Title 24 standards. In addition, each of the 91 homes in Phase V is planned to have its own solar photovoltaic panels to further reduce its energy requirements and cost. The goal is to create a neighborhood of quality, affordable, energy efficient homes.

**Other:** A Finding of No Significant Impact was made pursuant to the National Environmental Policy Act (NEPA) for the Del Paso Nuevo Project, and the data and conditions upon which it was based remain unchanged. There is no federal funding associated with this action, there has been no change in the scope of work, and there are no new circumstances that would have any direct or indirect effect on the environment that was not previously considered. Therefore, no further action under National Environmental Policy Act (NEPA) is required.

**Commission Action:** At its meeting on April 1, 2015, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this project. The votes were as follows:

AYES: Alcalay, Creswell, Griffin, Macedo, Morgan, Raab

NOES: none

ABSENT: Johnson

**Rationale for Recommendation:** The Developer is purchasing the remaining 91 vacant parcels of land in Del Paso Nuevo Phase V from the Housing Authority of the City of Sacramento. All public infrastructure and street improvements have been completed. Using Developer equity, existing park fee credits, possible energy credits, and private financing, the Developer will complete the phased construction of 91 additional for-sale homes located within Phase V. Construction of these homes will complete Phase V and assist in meeting the HUD requirement for developing a sustainable, mixed income homeownership community in Del Paso Nuevo.

**Financial Considerations:** The Agency will transfer the Property in phases to the Developer's limited liability company; the Developer will finance the purchases through a series of Seller Carry-back loans from the Housing Authority totaling \$1,137,500. Each loan will carry a four percent simple interest rate. The loans will be repaid incrementally from net proceeds upon the sale of each newly constructed home. No additional public financing will be required as construction will be financed using Developer equity, park fee credits, possible energy credits, and private/bank construction loan(s).

**M/WBE/Section 3 and First Source Considerations:** The activities recommended in this staff report do not involve new federal funding; therefore, there are no M/WBE or Section 3 requirements. However, the Developer will instruct its General Contractor and its subcontractors to utilize lower income area residents as employees to the greatest extent feasible. This will include both direct outreach and by using the First Source Program which incorporates referral and training sources that include, but are not limited to, Mutual Assistance Network, SETA, and the Greater Sacramento Urban League. Monthly local hire reporting will be required.

## Background Information

### Project Description

Del Paso Nuevo is a 154-acre master planned community that is providing new single-family homeownership opportunities in the former Del Paso Heights Redevelopment Area. In 1997, this area received a Homeownership Zone Designation from the U.S. Department of Housing and Urban Development (HUD). As a result, the project received more than \$10 million in federal loan guarantees and grants for the project administered by the Sacramento Housing and Redevelopment Agency (Agency). In return, a minimum of 300 homes must be constructed with at least 51% of the homes sold at affordable prices to families that earn no more than 80% of the area median income.

The Del Paso Nuevo Specific Plan Design Guidelines for new homes in Del Paso Nuevo reflect new urban planning principles intended to create a sustainable, ethnically diverse, mixed-income neighborhood that includes nearby supportive civic and commercial land uses.

To date construction has been completed on all infrastructure, street improvements, two community parks, and 325 finished lots. A total of 137 new single-family homes have been constructed, including 64 sold at affordable prices to low-income families. Three of the original six planned building phases in this new community are complete. The remaining three phases are further described below.

### Phase IV

This phase is located north and directly across from Nuevo Park just south of South Avenue (see Attachment 3 – Del Paso Nuevo Map). A Request for Qualifications (RFQ) for this phase of Del Paso Nuevo was issued in 2003. In 2005, Del Paso Nuevo, LLC was selected as the Developer for Phase IV. In 2007 the Developer purchased the land from the former Redevelopment Agency of the City of Sacramento (RDA) using Seller Carry-back financing and entered into a Disposition and Development Agreement to develop 81 finished lots and to construct 81 new for-sale single-family homes.

The unit mix in Phase IV consists of four individual floor plans with a mix of one and two story homes ranging from two to five bedrooms. Each plan offers a front porch and architectural styles that meet the Del Paso Nuevo Specific Plan Design Guidelines.

By early 2008 the Developer completed the required infrastructure, street improvements, 81 finished lots, four model homes and 10 for-sale homes using only conventional Bank construction financing. However, demand for new housing was significantly impacted by the rapid decline in the economy and housing market and, as a result of falling home values, the construction lender declined to provide funding for any additional new home construction.

To assist with project completion, on April 6, 2010 the RDA received approval to lend the Developer \$2.2 million of previously allocated Del Paso Nuevo Tax Increment funds on a revolving basis for the phased construction of the remaining 67 single family homes in this phase. Constructing 10 homes at a time, loan funds disbursed for

construction were then repaid from the net sales proceeds of each home. Once the first set of 10 homes had been constructed and sold, the recaptured net sales proceeds were then re-loaned to the Developer to construct the next 10 homes.

Although initially home prices and demand were stagnant, both eventually improved to the point that the last set of 10 homes constructed with this loan was completely sold out prior to completion of construction and at prices that were at or slightly above breakeven. Unfortunately, due to the dissolution of redevelopment and expiration of the original DDA, this source of construction financing was lost in mid 2013.

In conjunction with a \$1,250,000 Bank construction loan, new construction financing from the Agency in the amount \$975,000 was subsequently approved on April 22, 2014 to complete construction of the remaining 37 homes in this phase using Housing Trust Funds. This loan was also structured on revolving basis and is being used to construct the remaining 37 homes in three phases. Construction began in late May of 2014 on the first set of 12 new homes. All 12 have since been completed with 11 of the homes sold to date including five at affordable prices to income qualified buyers.

The total number of homes constructed to date in Phase IV is now 56 including four model homes. A total of 52 of the for-sale homes have been sold including 27 to low-income families at affordable prices. The remaining 25 homes will be constructed and sold over the next 16 months at which time Phase IV of Del Paso Nuevo will be complete.

### **Phase V**

This phase is located between Ford Road and Fairbanks Avenue near the southeast corner of Nuevo Park (see Attachment 3 – Del Paso Nuevo Map). The original RFQ for Phase V was issued in 2003. In 2005, a Developer was selected and a Disposition and Development Agreement was approved. In early 2007, the Developer purchased the land from the Agency through a Seller Carry-back loan and began the process of subdividing the property into 95 finished lots. Using Bank construction financing, all of the infrastructure and four model homes were completed. In addition, construction also began on 11 new homes. Unfortunately, due to the rapid decline in the economy and housing market, the project stalled and all construction was halted by the Bank. The construction lender eventually filed a Notice of Default in April 2008 and commenced the foreclosure process.

To protect its interest in the property and preserve the affordability restrictions, the Agency was granted authority to bid at the January 2009 trustee sale. At the sale, the Agency purchased the 91 finished lots and the four model homes. The lots and the model homes were secured and have been maintained by the Housing Authority of the City of Sacramento since that time. In April of 2010 the Agency received approval to rent the model homes which eliminated vandalism and provided a nominal source of income to help defray ongoing maintenance costs associated with ownership of this phase.

As prices and demand for new single-family homes improved, another RFQ was issued on January 2, 2014 to identify and attract new developers to complete the build-out of

the 91 lots in this phase. In response to the RFQ, a development team led by Pacific Housing, Inc., a nonprofit public benefit corporation, was recommended by a selection committee on March 25, 2014.

The Developer is planning to offer five individual floor plans on the 91 lots. The homes will have two stories and range in size from 1,550 to 2,160 square feet. All homes will have three to four bedrooms, a minimum of two bathrooms, and two car garages. Subject to changing market conditions, the proposed plan is to construct approximately 25% of the homes using the smallest plan, 50% using the mid-size plans, and 25% that utilize the largest plans. All new home construction will conform to current building codes incorporating improved energy efficiency and enhanced green building standards. The new homes will be constructed to exceed Title 24 standards and use solar photovoltaic panels to further improve energy efficiency and reduce energy costs as design allows. The goal is to create a neighborhood of quality, affordable, energy efficient homes that meet the Del Paso Nuevo Specific Plan Design Guidelines.

It is anticipated that lots will be released in multiple phases of 15 homes each with all 91 homes to be constructed and sold over the next 36 - 60 months. After the first two phases, subsequent phases may contain additional lots depending on demand and anticipated absorption rates at the time and as may be agreed upon in advance and in writing by Housing Authority prior to transfer. Construction on each subsequent set of homes will not begin until 100% of the previous set have been constructed and at least 80% have been sold.

### **Development Team**

Pacific Housing Inc. (PHI) is a California non-profit, public benefit corporation founded in 1998 (Developer). PHI is the managing general partner of various limited partnerships that own and operate 86 multifamily housing properties throughout the State of California including 22 properties in Sacramento County. PHI also provides resident services to the majority of these properties. Mark Wiese, founder and President of PHI, will be project manager for the Del Paso Nuevo Phase V project. PHI will oversee all aspects of the process, from initial home design through to final home sales.

In addition to its multifamily experience and resident services activities, PHI has recently partnered with Johan Otto on two single-family residential projects in Sacramento, including the highly successful, 34 net zero energy home development known as 2500 R Street; and the 39 affordable homes built in the Caselman Ranch development. They have also worked together on several other single-family developments, notably the Terraces at Eskaton (136 patio homes in Grass Valley), the Cottages at Carter Ranch (an affordable housing development in Winters that included 30 single-family homes); as well as on the Caselman Ranch Master Plan (261 single-family homes) in Sacramento.

The borrower for the Del Paso Nuevo V development project will be PacH DPN-5 Housing Partners, LLC, a California limited liability company formed by PHI. The managing member of the borrower will be PacH Sustainable LLC, whose sole member will be Pacific Housing, Inc. Other members PacH DPN-5 Housing Partners LLC will include Johan Otto and Bellstone Commercial.

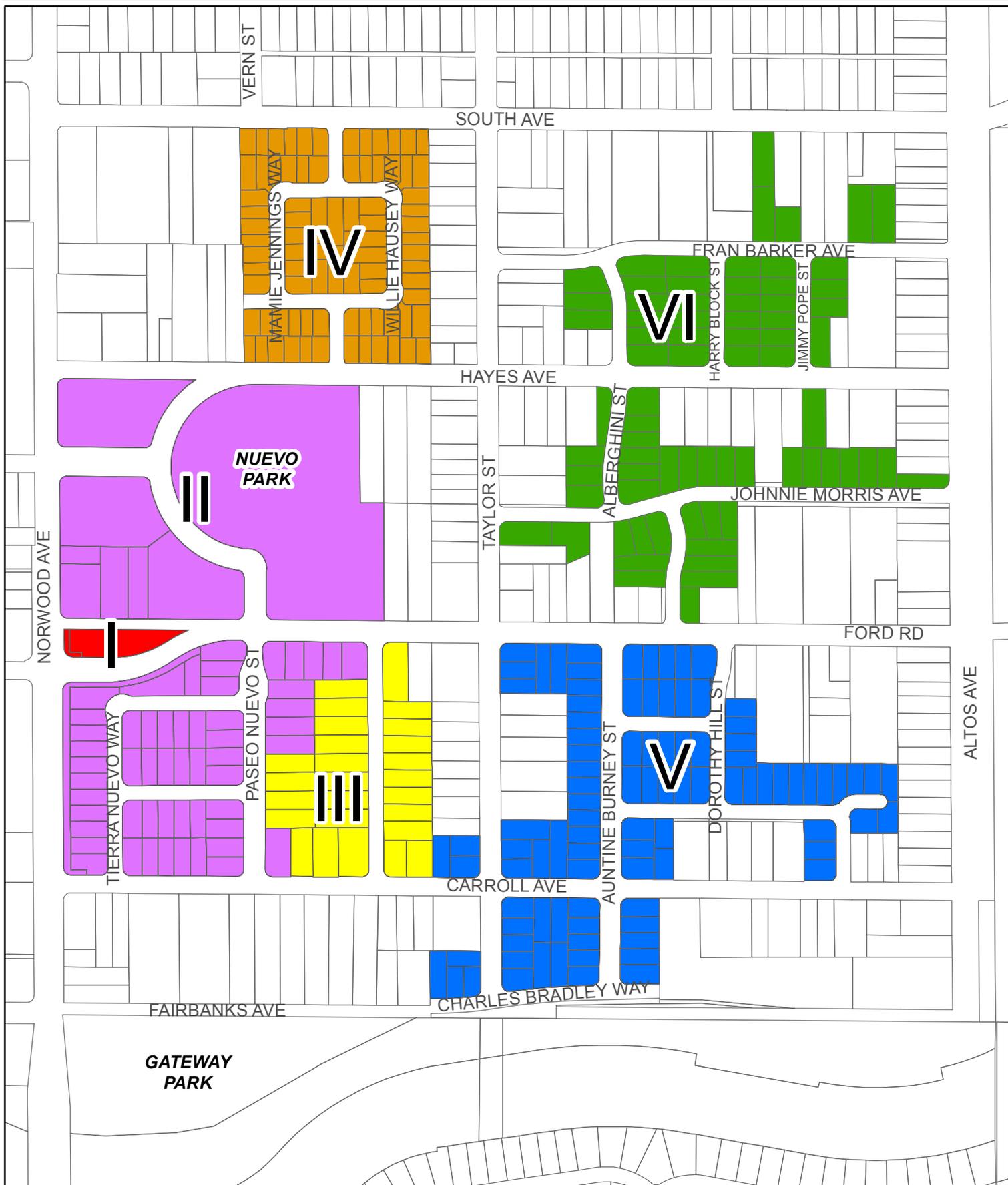
The development team will also include Mutual Assistance Network of Del Paso Heights (MANDP) that will lead the community outreach, homebuyer education, and local hire program coordination. It is anticipated that MANDP will oversee community outreach and local hire programs, enlisting assistance and support from the Greater Sacramento Urban League, SETA, and the Agency-sponsored First Source Program. These organizations will initiate community-oriented employment fairs and seminars, as well as coordinate homebuyer education and down payment assistance classes. In addition, they will sponsor and organize neighborhood activities to foster a sense of community and help ensure a safe and cohesive community environment. MANDP and the Developer will also develop a long-term home maintenance program to educate and assist homebuyers in maintaining the value of their new homes.

### **Phase VI**

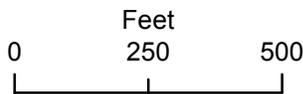
This phase is located in the northeast portion of Del Paso Nuevo. The Agency completed all property acquisitions for Phase VI. Construction of the infrastructure, street improvements, and 72 finished lots was completed by the Agency in August of 2013. The subdivision map was finalized and recorded on June 19, 2014. The Agency is holding and maintaining the properties until such time as the market can absorb additional new home construction in Del Paso Nuevo.



# Del Paso Nuevo Phases I - VI



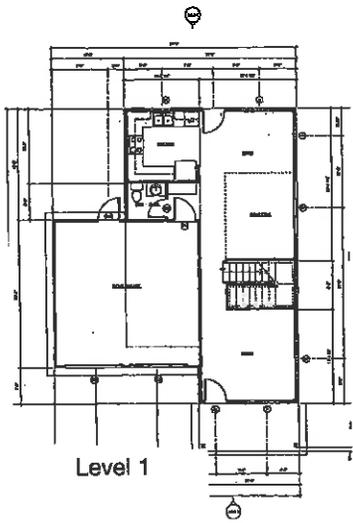
- Phase I
- Phase III
- Phase V
- Phase II
- Phase IV
- Phase VI





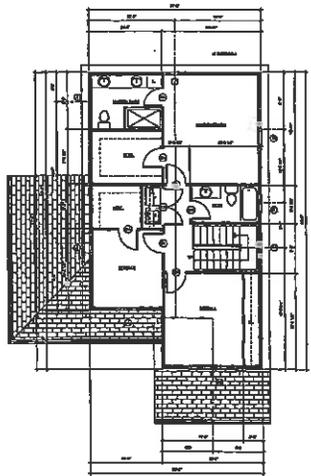
# DPN Phase 5

## Revised Elevation

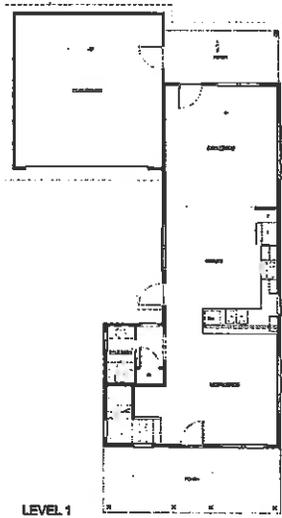


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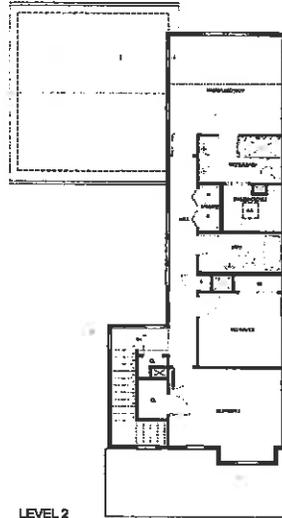
DPN Phase 5  
PLAN 1



Level 2



LEVEL 1



LEVEL 2

DPN Phase 5  
PLAN 2

Jan. 30 2015



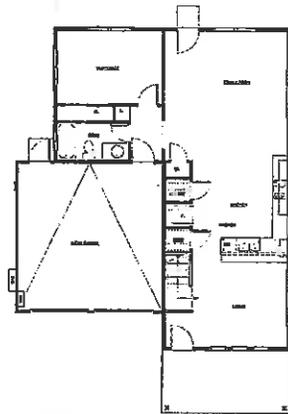
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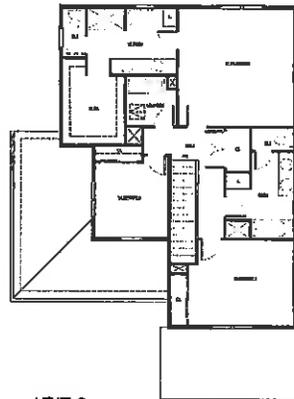
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DPN Phase 5  
PLAN 3

Jan. 30 2015



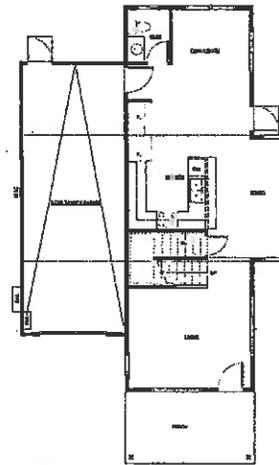
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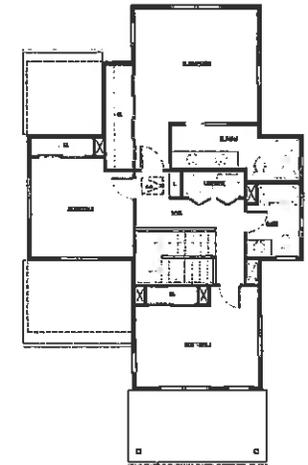
LEVEL 2

DPN Phase 5  
PLAN 4

Jan. 30 2015



LEVEL 1



LEVEL 2

DPN Phase 5  
PLAN 5

Jan. 30 2015

## Del Paso Nuevo Phase V

### Phase 1 Construction

<b><u>Number of Homes</u></b>	<b>15</b> (10 for-sale and 5 models )		
<b><u>Affordability</u></b>	8 homes at or below 80% of AMI* 7 homes unrestricted and sold at market prices *\$76,100 annual income for a family of four		
<b><u>Product Mix</u></b>	<b><u>Square Footage</u></b>	<b><u># of Homes</u></b>	<b><u>Estimated Selling Price</u></b>
Plan 1 - 3 Bed 2.5 Bath	1,550	3	\$ 212,900
Plan 3 - 3 Bed 3 Bath w/Den or 4 Bed 3 Bath	1,660	2	231,900
Plan 5 - 3 Bed 2.5 Bath or 4 Bed 2.5 Bath	1,730	4	241,900
Plan 2 - 3 Bed 2.5 Bath	1,740	2	241,900
Plan 2B - 4 Bed 2.5 Bath	2,010	1	269,900
Plan 3B - 3 Bed 2.5 Bath w/Den or 4 Bed 3 Bath	2,160	1	279,900
Plan 4 - 3 Bed 3 bath w/Den or 4 Bed 3 Bath	<u>2,160</u>	<u>2</u>	<u>274,900</u>
<b>Total</b>	26,860	15	\$ 3,653,500
<b>Average per Home</b>	1,790		\$ 243,567
<b><u>Sources</u></b>	<b><u>Total</u></b>	<b><u>Per Sq.Ft.</u></b>	<b><u>Per Home</u></b>
Existing SHRA Land Loan	\$ 187,500	\$ 6.98	\$ 12,500
New Bank Construction Loan	2,538,000	\$ 94.49	\$ 169,200
Developer Equity	<u>494,500</u>	<u>\$ 18.41</u>	<u>\$ 32,967</u>
<b>Total Sources</b>	\$ 3,220,000	\$ 119.88	\$ 214,667
<b><u>Uses</u></b>	<b><u>Total</u></b>	<b><u>Per Sq.Ft.</u></b>	<b><u>Per Home</u></b>
Land	\$ 187,500	\$ 6.98	\$ 12,500
Construction Costs	1,880,750	70.02	\$ 125,383
Contractor Overhead & General Conditions	188,000	7.00	\$ 12,533
Permits and Fees	345,000	12.84	\$ 23,000
Architecture and Engineering	50,000	1.86	\$ 3,333
Insurance/Marketing/Property Taxes/Other	252,600	9.40	\$ 16,840
Loan Fees and Closing Costs	62,000	2.31	\$ 4,133
Construction Loan Interest	80,000	2.98	\$ 5,333
Land Loan Interest	5,150	0.19	\$ 343
Contingency	94,000	3.50	\$ 6,267
Developer Fee	<u>75,000</u>	<u>2.79</u>	<u>\$ 5,000</u>
<b>Total Uses</b>	\$ 3,220,000	\$ 119.88	\$ 214,667
<b><u>Developer</u></b>	Pacific Housing, Inc.		
<b><u>Borrower</u></b>	PacH DPN-5 Housing Partners LLC PacH Sustainable LLC as managing member		

## **RESOLUTION NO. 2015 –**

### **Adopted by the Sacramento City Council**

on the date of

#### **DEL PASO NUEVO PHASE V: APPROVING THE SALE OF PROPERTY BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO TO PACH DPN-5 HOUSING PARTERS LLC; EXECUTION OF DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS WITH DEVELOPER; AND RELATED OTHER AND ENVIRONMENTAL FINDINGS**

#### **BACKGROUND**

- A. The Housing Authority of the City of Sacramento (Housing Authority) as successor to the Redevelopment Agency of the City of Sacramento owns 91 finished lots located in Del Paso Nuevo Phase V (APNs 250-0470-005 through 072 and 250-0480-001 through 023).
- B. On behalf of the Housing Authority of the City of Sacramento, the Sacramento Housing and Redevelopment Agency (Agency) issued a Request for Qualifications on January 6, 2014 for a Single-Family Home Developer to complete Phase V of Del Paso Nuevo by constructing 91 homes on the remaining lots in that phase (Project). On March 25, 2014, a development team led by Pacific Housing, Inc. (Developer) was selected to be awarded the Project.
- C. The Housing Authority of the City of Sacramento and Developer desire to enter into Disposition and Development Agreement (DDA) to convey the Property to Developer for the phased construction of 91 single-family homes with a minimum of 51 percent to be sold at affordable prices to low-income families earning 80 percent or less of Area Median Income as more specifically described in the DDA.
- D. Property will be transferred to the Developer or a related entity in phases. Each phase will require a separate Seller Carry-back Note payable to Housing Authority. The total loan amount for all 91 lots will be One Million One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$1,137,500.00), the fair market value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed less additional demolition and subdivision repair costs incurred by the Developer. The prorated purchase price per lot will be Twelve Thousand Five Hundred Dollars (\$12,500.00). Each separate Note will correspond to the fair market value of the parcels being released for the phased construction of the Project.
- E. The Developer will use a combination of cash equity, existing park fee credits, energy credits, and private financing to complete the phased construction of these homes over a period of three to five years.

- F. The impacts of the entire Del Paso Nuevo project were evaluated in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was adopted for the project on January 11, 2005, by Resolution 2005-002. The recommended actions herein do not constitute a new project or substantive changes or modifications to the project as previously analyzed. The recommended actions do not require further environmental review under CEQA Guidelines Sections 15162 or 15163 as there is neither any new information of substantial importance, nor any substantial changes to the circumstances under which the project will be undertaken.
- G. A finding of 'No Significant Impact' was made pursuant to the National Environmental Policy Act (NEPA) for the Del Paso Nuevo Project and the data and conditions upon which it was based remain unchanged. There is no federal funding associated with this action and there has been no change in the scope of work and there are no new circumstances that would have any direct or indirect effect on the environment that was not previously considered. Therefore, no further action under NEPA is required.
- H. A report under Health and Safety Code Section 33433 ("Section 33433 Report") has been prepared and is attached hereto as Exhibit A, and is filed with the Agency Clerk and made available for public review pursuant to Section 33433. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

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

- Section 1. All of the evidence having been duly considered the facts as presented and stated above, including the environmental facts, are found to be true and correct.
- Section 2. The sale of the Property by the Housing Authority of the City of Sacramento for the phased construction and sale of new single-family homes is consistent with the Implementation Plan for the Del Paso Heights Redevelopment Plan that encourages infill development, enhancing and preserving existing neighborhoods, and expanding affordable housing opportunities in a mixed income development.
- Section 3. The City Council approves the phased sale of the Housing Authority Property to the Developer for the Project pursuant to the terms of the DDA at the fair market value of the Property as set forth in the Section 33433 Report attached to this Resolution.

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

**I. Agreement**

A copy of the Disposition and Development Agreement ("Agreement") disposing of an interest in Agency real property is attached to this Report.

**II. Summary of Terms of Disposition**

<b>AGENCY'S COST OF ACQUIRING THE LAND</b>	
Purchase Price	\$4,058,678
Commissions	
Closing Costs	
Relocation Costs	
Land Clearance Costs	
Financing Costs	
Improvement Costs (e.g. utilities or foundations added)	
Other Costs	
<b>TOTAL</b>	<b>\$4,058,678</b>

<b>ESTIMATED VALUE OF INTEREST CONVEYED</b>	
Value of the property determined at its highest and best use under the redevelopment plan	\$1,137,500

<b>ESTIMATED REUSE VALUE OF INTEREST CONVEYED</b>	
Value of property determined with consideration of the restrictions and development costs imposed by the Agreement	\$1,137,500

<b>VALUE RECEIVED ON DISPOSITION</b>	
The purchase price due to the Agency under the Agreement	\$1,137,500

## 33433 Report

### III. Explanation of Disposition for Less than Full Value

The primary purposes of disposition of the Agency-owned Land (Property) are developing property for uses consistent with the City's Housing Element that encourages infill development, enhancing and preserving existing neighborhoods, and expanding affordable housing opportunities in a mixed income development; and elimination of blighting influences. To accomplish this, the Agreement provides that the Agency will transfer its interest in the Property to the Developer upon the express condition that Developer will develop the Property for the uses described in the Agreement. The Agreement is intended to assure that the Developer will develop the Property and that the Developer is not merely speculating in land.

The Property was originally comprised of various sized parcels that were purchased at various times with a combination of funds including Del Paso Heights Low/Mod Tax Increment, Del Paso Heights Tax Increment, 2006 Del Paso Heights Taxable Bond, and CDBG funds. The majority of the various funding sources used required that the land be disposed of for market value. The Property was sold to a Developer for market value to subdivide the property for construction of 95 for-sale single family homes. After completing construction of all infrastructure, streets, and five homes, a notice of default was filed by the construction lender.

The Property was purchased in bulk at a Trustee sale. By purchasing the property at the Trustee sale the Agency protected the affordability restrictions on Del Paso Nuevo Phase 5 parcels which would have otherwise been lost had the previous developer's construction lender foreclosed and obtained ownership of the property. The Trustee Sale price for the land directly related to the amount owed to the construction lender by the original developer at that time rather than to the market value of the land itself. Market value of these properties is substantially less than the amount paid to the foreclosing lender at Trustee Sale. The amount paid protected the affordability covenants and ensured continued compliance with the HUD funding used by the Agency to begin development of the Del Paso Nuevo community.

### IV. Elimination of Blight

The Property listed in the Agreement consists of 91 vacant lots. The recommended disposition is in keeping with the City's Housing Element that encourages infill development, enhancing and preserving existing neighborhoods, and expanding affordable housing opportunities in a mixed income development. The construction of new single-family homes in Del Paso Nuevo will provide a wide array of housing choices and transportation options near jobs reducing long commutes for a balanced, healthy City. New home construction will exceed current building codes incorporating improved energy efficiency and enhanced green building standards. Each home will exceed base Title-24 energy standards, have Energy Star appliances through-out and be built using sustainable building materials. Each home will also have solar photovoltaic panels. The goal is to create a neighborhood of quality, affordable, energy efficient homes with a minimum of 51% sold to low-income families earning 80% or less of Area Median Income. Completion of construction will transform long-standing vacant land into a community of new, energy efficient, affordable homes in the Del Paso Heights area of the City of Sacramento.

## **RESOLUTION NO. 2015 –**

**Adopted by the Housing Authority of the City of Sacramento**

on the date of

### **DEL PASO NUEVO PHASE V: APPROVING THE SALE OF AGENCY PROPERTY TO PACH DPN-5 HOUSING PARTNERS LLC; EXECUTION OF DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS AND AGREEMENTS; ENVIRONMENTAL AND RELATED OTHER FINDINGS**

#### **BACKGROUND**

- A. The Housing Authority of the City of Sacramento as successor to the Redevelopment Agency of the City of Sacramento owns 91 finished lots located in Del Paso Nuevo Phase V (APNs 250-0470-005 through 072 and 250-0480-001 through 023).
- B. On behalf of the Housing Authority of the City of Sacramento (Housing Authority), the Sacramento Housing and Redevelopment Agency (Agency) issued a Request for Qualifications on January 6, 2014 for a Single-Family Home Developer to complete Phase V of Del Paso Nuevo by constructing 91 homes on the remaining lots in that phase (Project). On March 25, 2014, a development team led by Pacific Housing, Inc. (Developer) was awarded the Project.
- C. The Housing Authority of the City of Sacramento and Developer desire to enter into Disposition and Development Agreement (DDA) to convey the Property in phases to the Developer for the phased construction of a minimum of 91 single-family homes. A minimum of 51 percent of the new homes are to be sold at affordable prices to low-income families earning 80 percent or less Area Median Income, as more specifically described in the DDA.
- D. Property will be transferred to the Developer or a related entity in phases. Each phase will require a separate Seller Carry-back Note payable to the Housing Authority. The total purchase price and loan amount for all 91 lots will be One Million One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$1,137,500), the fair market value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed less additional demolition and subdivision repair costs incurred by the Developer. The prorated purchase price per lot will be Twelve Thousand Five Hundred Dollars (\$12,500.00). The Developer will use a combination of cash equity, park fee credits, energy credits, and private financing to complete the phased construction of these homes over a period of three to five years.
- E. The impacts of the entire Del Paso Nuevo project were evaluated in accordance with the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration was adopted for the project on January 11, 2005, by Resolution 2005-002. The recommended actions herein do not constitute a new project or substantive changes or modifications to the project as previously analyzed. The recommended actions do not require further environmental review under CEQA

Guidelines Sections 15162 or 15163 as there is neither any new information of substantial importance, nor any substantial changes to the circumstances under which the project will be undertaken.

- F. A finding of 'No Significant Impact' was made pursuant to the National Environmental Policy Act (NEPA) for the Del Paso Nuevo Project and the data and conditions upon which it was based remain unchanged. There is no federal funding associated with this action and there has been no change in the scope of work and there are no new circumstances that would have any direct or indirect effect on the environment that was not previously considered. Therefore, no further action under NEPA is required.
- G. A report under Health and Safety Code Section 33433 (Section 33433 Report) has been prepared and is filed with the Agency Clerk and made available for public review pursuant to Section 33433. Proper notice of this action was provided and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:**

- Section 1. All of the evidence having been duly considered, the facts as stated in the Background above are found to be true and correct.
- Section 2. The Housing Authority's sale of the Property for construction and sale of new single-family homes is found to be consistent with the Implementation Plan for the Del Paso Heights Redevelopment Plan that encourages infill development, enhancing and preserving existing neighborhoods, and expanding affordable housing opportunities in a mixed income development. The sale of the Property will assist in the elimination of blight and increase the community's supply of low- and moderate income housing available at affordable housing cost, as stated in the 33433 Report.
- Section 3. As established in the 33433 Report, the consideration for the Housing Authority's conveyance of the Property to Developer is the Developer's obligations under the Disposition and Development Agreement (DDA) and the fair market value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed less demolition and subdivision repair costs is One Million One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$1,137,500.00) in the form of separate Seller Carry-back Notes of differing amounts corresponding to the each phase of lots transferred as established in the DDA and 33433 Report.
- Section 4. The Executive Director is authorized to enter into and execute the Seller Carry-back Loan Commitment Letter attached as Exhibit A and the DDA attached as Exhibit B, the Seller Carry-back Note, and all other documents and agreements as approved to form by Agency Counsel, as well as perform other actions necessary to ensure proper repayment of the Housing Authority funds including without limitation, extensions, and

restructuring of such a loan consistent with the Housing Authority adopted policy and with this resolution.

Section 5. The Housing Authority finds that an economically feasible alternative method of financing on substantially comparable terms and conditions, without subordination is not available. Therefore, the Executive Director is authorized to subordinate the Housing Authority loans to the senior construction loan.

Table of Contents:

Exhibit A – Seller Carry-back Loan Commitment Letter

Exhibit B - DDA

April 23, 2015

Mark A. Wiese  
PacH DPN-5 Housing Partners LLC  
2115 J street Suite 201  
Sacramento, CA 95816

Re: Conditional Seller Carry-back Financing Commitment  
Del Paso Nuevo Phase V – 91 Lots

Dear Mr. Wiese:

On behalf of the Housing Authority of the City of Sacramento ("Agency"), we are pleased to advise you of its Seller Carry-back financing commitment in the total amount of One Million One Hundred Thirty Seven Thousand Five Hundred Dollars (\$1,137,500.00) for the purpose of financing the phased acquisition of 91 finished lots in Del Paso Nuevo Phase V located in Sacramento, California ("Property").

The Agency's decision is based on your application, as well as all representations and information supplied by you in relation to it. If these representations and information change in a material manner without written approval of Agency, this commitment is void. Agency's obligation to make the loan is subject to the satisfaction of all the following terms and conditions and Borrower's execution of documentation in a form and substance satisfactory to the Agency.

The Seller Carry-back loan for each acquisition and construction phase shall be made on standard Agency loan documents (collectively "Loans"). No material loan terms other than those in this funding commitment shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the loan documents, the terms stated in the loan documents shall be deemed to be terms of this commitment.

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

This commitment will expire on September 30, 2015.

1. PROJECT DESCRIPTION: The project is the phased acquisition by Borrower of 91 parcels of land located in Del Paso Nuevo Phase V, Sacramento, California. Acquisition will occur in mutually agreed upon, distinct phases. Each phase will be transferred under a separate seller carry-back promissory note of varying principal amounts depending on the number of lots transferred in each phase. Each note will carry the same rate of interest. A minimum of 51% of the homes constructed in each phase will be affordable to qualifying families earning no more than 80% of AMI.
2. BORROWER: The name of the Borrower is PacH DPN-5 Housing Partners LLC or a similarly named entity in which the managing member will be PacH Sustainable, LLC, a California limited liability company whose sole member will be Pacific Housing, Inc., a non-profit public benefit corporation.
3. PURPOSE OF LOANS: The Seller Carry-back Loans (Loans) for each phase are to be used by Borrower solely for financing the acquisition of the Property.
4. PRINCIPAL AMOUNT: The total principal amount for all 91 lots will be One Million One Hundred Thirty Seven Thousand Five Hundred Dollars (\$1,137,500.00). The prorated purchase price for each lot will be Twelve Thousand Five Hundred Dollars (\$12,500.00). The amount of each loan will be equal to the number of lots transferred multiplied by the per lot purchase price.
5. TERM OF LOANS: The loan for the first phase that contains the five model homes shall mature three (3) to five (5) years from the transfer date. The loan for each subsequent phase will mature 12 months from the close of escrow date but in no instance exceed the five (5) year term of the Disposition and Development Agreement, as may be extended an additional year by mutual written agreement.
6. INTEREST RATE: The Loans shall all bear simple interest of Four Percent (4.0%) at the time of escrow closing. Interest shall be calculated on the basis of a 360-day year and actual days elapsed.
7. LOAN REPAYMENT: Payments will be due and payable from close of escrow on the sale of each newly constructed home in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) plus interest per lot. All payments shall be applied first to accrued interest and thereafter to principal. All outstanding principal and interest is due and payable on the maturity date of each loan.
8. SOURCE OF LOAN FUNDS: The acquisition of the Property will be financed through seller carry-back financing from the Housing Authority of the City of Sacramento. The Agency hereby acknowledges, agrees and represents that the Loans shall be for the market value of the Property and that such Loans shall not trigger prevailing wage. The Loans are conditioned upon Borrower's acceptance of Agency's requirements and conditions related to its lending programs, including among others, the required forms of agreements for the Loans; the requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements, all as mutually agreed to by Agency and Borrower.

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

\_\_\_\_\_ (Borrower Initial)

9. ACCELERATION: Agency shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property except as specifically provided for in the Loan documents.
10. SECURITY: The Loans shall be evidenced by promissory notes secured by deeds of trust with assignment of rents, which shall be subordinate liens subject only to other items as the Agency may approve in writing. The Agency will subordinate said deeds of trust in order to accommodate completion of construction of the Property.
11. PROOF OF EQUITY: Borrower shall provide proof of cash equity in the amount required by the construction lender for each phase of parcels prior to close of escrow.
12. OTHER FINANCING: Borrower, as a requirement of the Loans, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower has obtained the following described financing which may be secured by a lien upon the Property superior to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:
  - (a) As a condition precedent to transfer of each phase of the Property, construction financing from a private lender(s) in an amount(s) sufficient to complete construction of the Property in that phase according to a scope of work as approved by Agency and made for a term not less than that specified in the Schedule of Performances for completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.
13. EVIDENCE OF FUNDS: Prior to the transfer of each phase of the Property, Borrower must demonstrate evidence of adequate and assured funding to complete the development of that phase of the Project in accordance with the Agency's requirements. Borrower's evidence of available funds must include only one or more of the following: a) Borrower equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its reasonable discretion; and c) Agency's contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
14. FINANCING IN BALANCE: Borrower will be required to maintain the financing "in balance". The financing is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders are sufficient, in the sole judgment of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the financing is not "in balance", the Agency may declare the Loan to be in default.

15. PLANS AND SPECIFICATIONS: Final plans and specifications for the project must be in accord with the proposal approved as part of the Loan application. Final plans and specifications will be subject to Agency's final approval prior to the transfer of the Property, whose said approval will not be unreasonably withheld. Borrower must obtain Agency's prior written consent to any change in the approved plans and specifications or any material deviation in construction of the project.
16. ARCHITECTURAL AGREEMENT: The architectural agreement ("Agreement") for the preparation of the plans and specifications and other services shall be subject to Agency's approval.
17. START OF CONSTRUCTION: Borrower shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than 60 days following the close of construction financing.
18. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements on each phase of Property transfer no later than 36 months following the close of construction financing one ach phase.
19. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance or in lieu such insurance, Builder's Risk completed value insurance in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).
20. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower must procure and maintain commercial general and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: (1) Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better with limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project; (2) Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; (3) Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$1,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and (4) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
21. TITLE INSURANCE: Borrower must procure and deliver to Agency an ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as Agency may require,

including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of each Loan, that Agency's Deed of Trust constitutes a second lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.

22. ORGANIZATIONAL AGREEMENTS: Borrower must submit to Agency certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as Agency may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
23. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to Agency within 120 days of the end of each fiscal year either an audited income and expense statement, a balance sheet, and a statement of all changes in financial position, or a copy of the current year's full federal and state tax returns, signed by authorized officers of Borrower. Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing.
24. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loans, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower must promptly deliver to Agency any further documentation that may be required by Agency.
25. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply, in all respects, with this commitment letter.
26. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
27. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's acceptance.

Sincerely,

Housing Authority of the City of Sacramento

La Shelle Dozier  
Executive Director

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

**BORROWER:**

PacH DPN-5 Housing Partners, LLC  
a California limited liability company

By: PacH Sustainable, LLC  
a California limited liability company  
its managing member

By: Pacific Housing, Inc.  
a nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Mark A. Wiese, President

Date: \_\_\_\_\_

NO FEE DOCUMENT:

Entitled to free recording  
per Government Code §§27383 and 6103.

When recorded, return to:

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

## **DISPOSITION AND DEVELOPMENT AGREEMENT**

### **DEL PASO NUEVO PHASE V 91 FINISHED LOTS**

FORMER DEL PASO HEIGHTS NEIGHBORHOOD REDEVELOPMENT PROJECT AREA

**HOUSING AUTHORITY OF THE CITY OF SACRAMENTO**

**PACH DPN-5 HOUSING PARTNERS LLC**

**April 23, 2015**

## DISPOSITION AND DEVELOPMENT AGREEMENT

Del Paso Nuevo Phase V  
91 Finished Lots

THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO, a public body, corporate and politic (Agency) and PACH DPN-5 HOUSING PARTNERS LLC, a California limited liability company (Developer) enter into this Disposition and Development Agreement (DDA) as of April 23, 2015. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 16.

### RECITALS

- A. Agency is the owner of 91 vacant lots located in the former Del Paso Heights Neighborhood Redevelopment Project Area in the City of Sacramento, State of California, commonly referred to as Del Paso Nuevo Phase V and more particularly described in Exhibit 1 – Legal Description (Property).
- B. The Property is subject to the redevelopment plan for the Project Area. Further, Developer acknowledges that Developer is purchasing from the Housing Authority of the City of Sacramento which has assumed the housing assets and housing functions of the former Redevelopment Agency of the City of Sacramento and is acting pursuant to Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*) and that this document is governed by the Community Redevelopment Law. This DDA is consistent with, and furthers, the Redevelopment Plan and the “Implementation Plan” adopted for the Project Area in that it meets the following implementation plan goals: elimination of blight and the provision of affordable housing.
- C. The primary purpose of this DDA is the elimination of the following blighting influences: low values and impaired investment, high vacancy rates and vacant parcels, low property values, low lease rates, inadequate public infrastructure and improper parcelization. In order to accomplish such purpose, the DDA provides that the Agency will transfer the Agency's interests in the Property in phases to Developer upon the express condition that Developer will redevelop the Property in phases for the uses described in this DDA. This DDA is intended to assure that the Developer will redevelop the Property and that the Developer is not merely speculating in land.
- D. Developer desires to purchase and develop the Property on a phased basis, and Agency desires to sell the Property in phases for development of 91 new single-family homes, on the terms and conditions in this DDA.

### AGREEMENT

**NOW THEREFORE**, the parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and in consideration of the following mutual covenants, obligations

and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PERFORMANCE.** The parties shall perform their obligations at the times and in the manner specified in this DDA. The time for performance is stated in this DDA and in the Schedule of Performances; provided, however that such times shall be extended for periods of Unavoidable Delay and/or as mutually agreed upon in writing by both parties to the agreement.
2. **PROJECT DESCRIPTION.** Agency is entering into this DDA and conveying the Property to Developer in phases solely for the purposes of developing the Project. The Project shall be the following: the phased construction of 91 new single family homes on 91 finished parcels in accordance with Exhibit 2 – Scope of Development. A minimum of fifty-one percent (51%) of the completed homes shall be affordable to households earning no more than 80% of the area median income (AMI).
3. **PURCHASE AND SALE.** Agency agrees to the phased sale of these lots and Developer agrees to the phased purchase of the Property subject to the terms and conditions in this DDA. This DDA, if executed by Developer only, constitutes Developer's offer to purchase the Property on the terms and conditions contained in this DDA and subject to the covenants, conditions and restrictions contained in the Regulatory Agreement to be executed by the Agency and Developer and recorded on the Property upon conveyance of the Property to Developer.

3.1. **PURCHASE PRICE.** The Purchase Price for the Property shall be One Million One Hundred Thirty Seven Thousand Five Hundred Dollars (\$1,137,500.00), which is the bulk fair market value of the 91 finished lots less slab demolition on 11 lots and subdivision repair costs to be paid by the Developer necessary to complete construction of the Project. The total purchase price will be prorated in equal installments of \$12,500.00 per lot. The Agency will finance the phased purchase through separate Seller Carry-back Loans for each phase transferred. The total amount due under each separate note will correspond to the number of lots transferred for that phase of construction multiplied by the prorated lot purchase price. The notes are to be repaid on a prorated basis including principal plus accrued interest per lot upon the sale of each newly constructed home in accordance with the terms of the Seller Carry-back Promissory Notes executed as a condition precedent to conveyance of the Property in each phase.

3.1.1. Conveyance of the individual parcels shall be in phases as outlined in **Exhibit 2 - Scope of Development** and the **Exhibit 3 - Schedule of Performances**, attached hereto and incorporated herein.

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

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

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

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

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

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

3.3.5. The conditions precedent in this section are required for each successive phase. Prior to conveyance of Property for a successive phase, Developer shall be 100% completed and 80% sold to eligible buyers consistent with Exhibit 2 - Scope of Development and Exhibit 3 – Schedule of Performances.

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

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

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

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

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

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

3.5.1. **AGENCY'S REPRESENTATIONS AND WARRANTIES.** Agency represents and warrants to Developer that as of the date of this DDA and as of the Close of Escrow, the date for which is set forth on the Schedule of Performances, to the knowledge of Agency's legal

department, its Executive Director, and its staff with responsibility for development of the Property:

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

b) To the best of Agency's knowledge, there are no hazardous substances known to be on or near the Property that would affect the Property or its proposed use.

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

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

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

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

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

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

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

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

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

a) Developer has reviewed the condition of the Property, including without limitation, the physical condition of the Property (above and below the surface) and issues regarding land

use and development of the Property, and if Developer closes Escrow for the acquisition of the Property, Developer shall be deemed to be satisfied that the Property is suitable in all respects for its intended development and uses.

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

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

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

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

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

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

a) Developer covenants by and for itself and assigns, and all persons claiming under or through it, that it shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, sexual orientation or gender identity, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Property and the Project.

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

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

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

e) Developer shall be solely responsible for the cost and acquisition of all 91 parcels of the Project Site.

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

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

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

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

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

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

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

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

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

5. **TERM.** The Term of this DDA shall be five (5) years from the date of this DDA with the option to extend the DDA by one (1) year if both parties mutually agree. Any extension beyond the combined six (6) years shall require the approval of the Agency's governing board at its sole discretion. Any phase or parcel upon which the construction of the home has not commenced shall revert to the Agency in accordance with Section 12.1 below.

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

6.1. **EXTENT AND CHARACTER OF PLAN REVIEW.** Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications. Agency's approval of Plans is neither a representation of nor an assurance of their adequacy or correctness. Agency has reserved approval rights solely (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the Final Plans conform to the Plans; and (c) to assure that Agency's purposes are fulfilled and any Agency funds which may be obligated under this DDA are used as intended by the Agency. This DDA is a financing document and not a land use or planning document. Approval of the Project and Plans under this DDA is only an approval by Agency of the Project design "concept" as presented in this DDA. Such approval by Agency is not and shall not be considered an approval of land use entitlements, structural design of the Project, or the aesthetic design of the Project. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of its respective jurisdiction, including without limitation, departments, staff, boards and commissions of the City.

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

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

6.4. **PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other

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

**6.5. DELIVERY.** Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Agency Clerk at the address for notices and shall have clearly marked on its exterior "URGENT: Del Paso Nuevo V PROJECT PLAN REVIEW" or the equivalent.

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

**6.5.2. AGENCY DISAPPROVAL.** If Agency disapproves, in whole or in part, the Final Plans or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes that the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with this DDA, including without limitation, the Plans, the Final Plans, the Scope of Development and with any items previously approved in accordance with this DDA. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this DDA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

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

**6.7. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLANS.** If the Developer desires to make any substantial changes in the Final Plans, Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Agency shall approve or disapprove the proposed change as soon as practicable but in no instance later than 15 business days from receipt of the

substantial changes. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final Plans under this section. The Final Plans shall be construed to include any such changes. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

**6.7.1. SUBSTANTIAL CHANGE.** A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements:

- a) Material changes in the layout, elevation design, functional utility or square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Any change that reduces the effectiveness of any mitigation measure required for CEQA approval of the Project.
- d) Material changes in site development items for the Property that are specified in the Final Plans.
- e) Material changes in the type, location, visibility, accessibility, size, design or artist for any artwork shown in the Final Plans or otherwise accepted by the Agency under the Art in Public Places Program.
- f) Material changes in quality of project or landscaping materials.
- g) Any change in public amenities specified in the Final Plans.
- h) Any changes requiring approval of, or any change required by, any city, county or state board, body, commission or officer.
- i) Any change that would preclude or materially reduce the ability to use the Project as intended by this DDA.

**6.7.2. MISREPRESENTATION.** If the Agency's approval of the Final Plans is reasonably based upon a material misrepresentation to Agency by Developer or by anyone on Developer's behalf, the Agency may, within a reasonable time after discovery of the misrepresentation, take any action permitted by law with regard to any such misrepresentation, notwithstanding Agency's prior approval, including without limitation, rescission of the approval or such other equitable remedies as may then be appropriate to such rescission.

**7. DEVELOPMENT PROVISIONS.** As stated in detail in this Section 7, Developer shall construct and manage the Project according to the requirements established in this DDA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the

Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this DDA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law (commencing at Health and Safety Code Section 33000) shall control.

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

**7.2. CONSTRUCTION CONTRACTS.** Developer shall submit to Agency the construction contract or contracts for the Project. Agency's review of the construction contract shall be only for determining its compliance with this DDA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer's cost, the construction of the Project in accordance with this DDA. If the property is revested in the Agency pursuant to Section 12.1, Developer shall assign all rights under the construction contracts to Agency.

**7.3. GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this DDA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this DDA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the City's Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable. Conditions to the project imposed by the City shall be considered obligations of the Developer under this DDA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

**7.4. ART IN PUBLIC PLACES EXEMPTION.** The Project improves and increases the stock of affordable housing in the community. Imposition of the Art in Public Places Program would increase the cost of the Project substantially and reduce either the number of affordable units available in the Project or the affordability of those units. Therefore, the Aesthetic Improvement Policy requirements are not applicable.

**7.5. SUBSTANTIAL CHANGES.** Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, as described in Section 5.7, without Agency approval of such changes as provided in Section 6.7.

**7.6. LOCAL, STATE AND FEDERAL LAWS.** The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Agency shall cooperate in securing certifications and permits which require consent of the owner of the property. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

**7.7. PREVAILING WAGES.** Agency is conveying the Property to Developer at the Property's appraised fair market value. The Project is not subject to prevailing wages. Developer represents to the Agency that Developer has obtained no public subsidy for the Project that does not meet the criteria for exemption. If Developer obtains other non-qualifying public subsidy, Developer shall pay prevailing wages for the Project. Therefore, Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or Developer's General Contractor or both of them. Developer and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them.

**7.8. PUBLIC SAFETY PROTECTIONS.** Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the Property or Developer's activities in connection with the Property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

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

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

religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

7.9.2. **ADVERTISING.** Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, gender identity or sexual orientation, marital status, national origin, ancestry, language proficiency, familial status, medical condition or disability.

7.9.3. **ECONOMIC OPPORTUNITY EMPLOYMENT REQUIREMENTS.** The contract requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents in and around the area of the project. The Developer will instruct its General Contractor and its subcontractors to utilize lower income project area residents as employees to the greatest extent feasible by using the First Source Program and related programs:

- (a) Identifying the number of positions in the various occupational categories including skilled, semi-skilled, and unskilled labor, needed to perform each phase of phase of the Project;
- (b) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;
- (c) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are not currently occupied by regular permanent employees;
- (d) Establishing the positions described in Paragraph (3) of this Section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower income residents of the Section 3 covered project area; and
- (e) Making a good faith effort to fill all of the positions identified in Paragraph (4) of this Section with lower income project area residents, first and foremost, through the First Source Program.

7.9.4. **MONITORING PROVISIONS.** Developer, Contractor and subcontractors shall comply with the requirements of the Agency for monitoring the anti-discrimination and all applicable labor requirements including but not limited to the Economic Opportunity Employment Requirements.

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

7.11. **AGENCY ACCESS TO THE PROPERTY.** Developer shall permit Agency representatives access, without charge, to the entire Property at any time and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under the DDA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

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

7.13. **CERTIFICATE OF COMPLETION.** After the Agency has determined that Developer has completed the construction of each phase of the Project in accordance with the Final Plans and Developer's obligations under this DDA, the Agency will furnish the Developer with the Certificate of Completion certifying such completion as to the completed phase. The Agency's issuance of the Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDA with respect to the obligations of the Developer to construct the Project as of the Completion Date specified in the Schedules of Performances, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute the Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County. In addition to Agency's issuance of a Certificate of Completion in accordance with this Section 6.14, Agency shall issue Certificates of Partial Completion as to each specific parcel on which Developer has constructed a residential unit ("Completed Parcel") and Agency's issuance of a Certificate of Partial Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this DDA with respect to the obligations of the Developer as to the Completed Parcel to which it applies. Agency shall prepare and execute a Certificate of Partial Completion in a form suitable for recording in the Official Records of Sacramento County with respect to each Completed Parcel.

7.13.1. The Certificate of Completion shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any provision of this DDA that is not related to construction of the Project.

7.13.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional fifteen (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in

accordance with the provisions of the DDA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

7.14. **REPORTS.** During the period of construction, the Developer shall submit to the Agency a written report of the progress of the work as and when reasonably requested by the Agency, but not more often than once each month.

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

7.16. **PROPERTY CONDITION.** Developer, at Developer's expense, shall conduct any Property investigation beyond those provided by Agency under this DDA and which Developer may consider necessary to determine the condition of the Property for the development of the Project. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of such investigations. Except as provided in this DDA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency. Agency shall not be responsible for removing any surface or subsurface obstructions, or structures of any kind on or under the Property.

7.17. **ZONING OF THE PROPERTY.** Agency exercises no authority with regard to zoning of the Property. Developer shall assure that zoning of the Property at the time of development shall be such as to permit the development and construction, use, operation and maintenance of the Project in accordance with the provisions of this DDA.

7.18. **HAZARDOUS SUBSTANCES.** Developer shall obtain such Hazardous Substances assessments as Developer deems reasonably necessary to assure the development of the Project in accordance with all applicable laws, rules and regulations; provided, however that such assessments are prepared by a qualified environmental specialist in accordance with nationally recognized standards to determine the existence of and to quantify the extent of Hazardous Substances on the Property. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of any Hazardous Substances investigations obtained by Developer. If Hazardous Substances are known to be on the Property, Developer shall remediate such Hazardous Substances on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer, Developer

shall remediate all Hazardous Substances on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer and the cost to remediate such Hazardous Substances is reasonably estimated to exceed Twenty Five Thousand Dollars (\$25,000), Developer may elect to terminate this DDA, upon reconveyance of the Property to Agency and return of all monies and properties delivered pursuant to or in furtherance of this DDA. Developer shall of the costs related to such remediation.

**6.19. CONTINGENCY PERIOD.** The Contingency Period shall begin on the date of this DDA and terminated forty five (45) days from that date during which the Developer shall undertake at Developer's expense an inspection of the Property which may include a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property. The Contingency Period shall not be tolled or extended for any reason, except by written extension signed by the Agency.

6.19.1 Within five (5) days following the full execution of this DDA by both parties, Agency shall make available to Developer copies of all available documents pertaining to the physical condition of the Property that are owned and possessed by Agency.

6.19.2 If Developer disapproves of the results of the inspection and review, Developer may elect, prior to the last day of the Contingency Period, to terminate this DDA by giving Agency written notification prior to the last day of the Contingency Period, and the Deposit together with all interest shall be returned to Developer. If Developer fails to properly notify Agency of the intent to terminate this DDA, Developer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this DDA pursuant to this provision.

6.19.3 Developer's access to the property during this contingency period shall be subject to requirement of Section 6.20 below.

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

Developer shall not commence any work on the Property without Agency's written approval of the work to be done, and in any event, Developer shall not commence any work which might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

7. **RELOCATION.** Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Agency and Developer acknowledge and agree that Developer this Project consists of new construction of homes on vacant parcels and there are no tenants or occupants to be relocated related to this Project.

8. **DEVELOPMENT FINANCING.** Except as specifically provided in this DDA, Developer shall be responsible for and shall pay all costs of developing the Project in accordance with this DDA. As a condition precedent to Agency's conveyance of each phase of parcels to Developer, Developer shall provide the Agency with a complete and firm budget covering each phase of the Project being conveyed including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, as possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements. In addition, prior to conveyance of each phase the Developer shall provide evidence, satisfactory to the Agency, of the required construction and permanent financing to complete the phase being conveyed. Except as expressly provided in this DDA, no party shall have the right of reimbursement for any funds expended by them for any phase of the Project, whether prior to execution of this DDA or otherwise. Agency is not obligated by this DDA or otherwise to make any contribution beyond its obligations stated in this DDA.

8.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds, as required in the preceding section, must include only the following: (a) Developer equity (as provided in Section 8.3); (b) firm and binding loan commitments (as provided in Section 8.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this DDA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, requests for clarification, further evidence or audited financial reports.

8.2. **COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this DDA, Developer shall assure that the loan documents for each phase of the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this DDA. The Agency may reject a loan commitment unless such commitment: (a) is subject only to Lender's reasonable conditions of title and Developer's execution of standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contains only usual, customary, and commercially reasonable loan terms; (c) continues in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provides for a construction loan term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of each phase of the Project funds that are

different from those approved by Agency. The Agency may also reject any commitment that requires changes to the phasing of the Project which conflict with this DDA, that require amendment of this DDA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

**8.3. EVIDENCE OF DEVELOPER EQUITY.** Unless otherwise agreed in writing by the Agency, Developer may provide evidence of cash equity in the minimum amount required by Agency and construction lender to complete each phase by any one of the following actions: (a) deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely and proper completion; or (c) Developer's provision of financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) of the amount of the required equity. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

**9. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its officers, directors, council members and supervisors, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, fines, penalties and claims (including without limitation court, mediation or arbitration costs, attorneys' fees, witnesses' fees, and investigation fees) related to the existence of Hazardous Substances on the Property that were not on the Property prior to Agency's transfer of possession of the Property to Developer or that were related to the removal or discharge of Hazardous Substances by Developer, or its employees, agents or contractors, during Developer's remediation of the Property pursuant to this Section.

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

**10. INDEMNIFICATION.** Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability

claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency.

This indemnification provision shall survive the termination of this Agreement.

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

**11.1. LIABILITY INSURANCE POLICY LIMITS.** Developer shall obtain all insurance under this Section 11 written with a deductible of not more than Twenty Five Thousand Dollars (\$25,000) or an amount approved by Agency, and for limits of liability which shall not be less than the following:

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

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

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

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

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

**11.6.1. ADDITIONAL INSURED.** Developer shall obtain an endorsement to the policy in ISO form CG 20 33 or better, naming Agency as a named additional insured under the Commercial General Liability Policy. The insurance afforded to such additional insured shall apply to the fullest extent permitted by law and shall be at least as broad as as the afforded to the named insured.

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

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

11.6.4. **CANCELLATION.** Developer will provide the Agency with the cancellation clause and/or any amendatory endorsements that modify or change the policy cancellation clause of the insurance policies in force. It is the Developer's responsibility to notify the Agency of any notice of cancellation, non-renewal or non-payment of premium in accordance with your policy provisions. In the event insurance is cancelled or not renewed, the Developer shall notify the Agency within forty eight (**48**) hours of such cancellation or non-renewal.

11.6.5 Developer is in material breach of this DDA for so long as Developer fails to maintain all of the required insurance. Agency has the right, but not the obligation, to pay any delinquent insurance premiums and any other charges to reinstate or maintain the required insurance policies and coverage. Upon Agency's demand, Developer must immediately reimburse Agency for any and all costs incurred by Agency in so obtaining or maintaining insurance. If Agency does incur such costs, Agency shall have the right to withhold such amount from any payment due to Developer under this DDA and to reduce the compensation payable to Developer under this DDA by such amount.

11.6.6 **FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this DDA, the Agency shall have the right, but not the obligation, to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest at the maximum rate permissible under the law until paid. Failure to maintain the insurance required by this Section 11 shall be a default under this DDA (see Section 12.3 below).

11.6.7 **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 11 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 11 with respect to such insurance shall otherwise be satisfied by such blanket policy.

12. **DEFAULTS AND REMEDIES.** Except as otherwise provided in the DDA, if either party defaults in its obligations under this DDA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party, provided that the defaulting party shall promptly begin and diligently pursue such cure to completion. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by this DDA, a failure or delay by a party to perform any term or provision of this DDA constitutes a default of this DDA. As a condition precedent to termination of the DDA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party, other than funds

properly retained as liquidated damages. After such return of property and funds and termination of the DDA, neither Agency nor Developer shall have any further rights against or liability to the other under the DDA except as expressly set forth in this DDA to the contrary.

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

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

**12.1.2. AGENCY REIMBURSEMENT.** Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Property (but less any net income derived by Agency from the Property after such re-vesting); all taxes, assessments, and water and sewer charges with respect to the Property (or,

in the event the Property is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have been payable if the Property were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Property at the time of such revesting or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to completion of the Project; and any amounts otherwise owing the Agency by the Developer.

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

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

**12.2. LIQUIDATED DAMAGES.** IF DEVELOPER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF DEVELOPER, AGENCY SHALL BE RELEASED FROM AGENCY'S OBLIGATION TO SELL THE PROPERTY TO DEVELOPER, AND AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW. IF THE PROPERTY HAS BEEN CONVEYED TO DEVELOPER, DEVELOPER HAS COMMITTED A DEFAULT SUFFICIENT FOR REVESTMENT OF THE PROPERTY UNDER SECTION 12.1, AND DEVELOPER HAS NOT VOLUNTARILY RECONVEYED THE PROPERTY TO AGENCY, AGENCY MAY REVEST THE PROPERTY OR TAKE ANY AVAILABLE ACTION TO RECONVEY THE PROPERTY TO THE AGENCY. IN SUCH EVENT, AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION, DEVELOPER AND AGENCY AGREE THAT IN THE EVENT THAT DEVELOPER FAILS TO PURCHASE THE PROPERTY: (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES RELATED TO THE FAILURE TO PURCHASE THE PROPERTY; COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY TO AGENCY; (B) AN AMOUNT EQUAL TO THE DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO AGENCY ON ACCOUNT OF THE FAILURE TO PURCHASE THE PROPERTY AND FOR AGENCY COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY (WITHOUT LIMITING AGENCY'S RIGHTS TO RECOVERY DAMAGES OR SEEK ANY OTHER REMEDY FOR ANY OTHER DEFAULT UNDER THIS DDA OR ITS CONSTITUENT DOCUMENTS); (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO AGENCY SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF AGENCY FOR THE FAILURE OF DEVELOPER TO PURCHASE THE PROPERTY; (D) AGENCY MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO AGENCY AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED

DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

\_\_\_\_\_ Developer's Initials  
\_\_\_\_\_ Agency's Initials

**12.3. OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default not subject to the preceding liquidated damages provision, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this DDA as allowed under this DDA, at law or in equity.

**12.4. NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable under this DDA to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this DDA.

**12.5. FEES AND COSTS ARISING FROM DISPUTE.** If an action is commenced between the parties, the Prevailing Party in that action shall be entitled to recover from the nonprevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law.

**13. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, if Developer has obtained Agency's prior written approval, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this DDA, the Developer may obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this DDA in making the Loan and that Agency's obligations under this DDA are inducements to Lender's making of the Loan.

**13.1. NOTICES.** If the Agency gives any notice of default to Developer under this DDA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in such request for notice. Any such default notice that is not so delivered to Lender shall not be effective or

binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Disposition and Development Agreement dated March 24, 2015 between the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO and PACH DPN-5 HOUSING PARTNERS LLC (“DDA”). Lender requests, in accordance with the DDA, that if any default notice shall be given to Developer under the DDA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

**13.2. ASSIGNMENTS AND TRANSFERS OF THE LOAN.** Agency shall not be bound to recognize any assignment of Lender’s Loan or related encumbrance of the Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this DDA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

**13.3. LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the DDA, Lender shall not be obligated by the provisions of the DDA to construct or complete the Project. Nothing in this Section or any other provision of the DDA shall be construed to permit or authorize Lender to devote the Property to any uses, or to construct any improvements on the Property, other than those uses or improvements provided or permitted in the DDA.

**13.4. LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the DDA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the DDA. Any Lender who properly completes the Project as provided in the DDA shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency in a manner provided in the DDA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Developer's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the DDA by the Developer shall not apply to the part of the Property to which such Certification relates. Nothing in this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

**13.5. DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this DDA unless and until the Agency has given notice to Lender of such default, and Lender has failed to cure such default.

13.5.1. If such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this DDA) shall be tolled if and so long as, all of the following are true: (a) Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this DDA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer; (b) Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property; (c) if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and (d) upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default in accordance with this DDA.

13.5.2. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

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

13.7. **MODIFICATIONS.** No modification or amendment to the DDA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

13.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this DDA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this DDA and provided such modifications, instruments, and agreements serve a material economic purpose.

13.9. **ESTOPPEL CERTIFICATE.** Any party may, at any time, request in writing of any other party to certify in writing that, to the knowledge of the certifying party, (i) this DDA is in full force and effect and a binding obligation of the parties; (ii) this DDA has not been amended or modified, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this DDA, or, if in default, describing the nature and extent of any such defaults. A party receiving such a request shall execute and return such certificate to the requesting party, or give a detailed written response explaining why it will not do so, within ten (10) days following its receipt. The Agency's designee shall be authorized to execute any such certificate requested by Developer from the Agency.

13.10. **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this DDA or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer without the prior written consent of Agency. The transfer or assignment, pursuant to this Section, requires the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer. Such a transfer as permitted in this Section shall not relieve Developer, or any other party bound in any way by the DDA, from any of its obligations under the DDA. With respect to this provision, the Developer and the parties signing the DDA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision.

14. **CONCURRENT AGREEMENTS.** The following agreements are to be executed and delivered to each party at Close of Escrow:

14.1. **REGULATORY AGREEMENT - PROJECT.** A regulatory agreement containing among other things affordability and re-sale restrictions in the form of **Exhibit 4 – Regulatory Agreement**. The Regulatory Agreement sets out certain provisions of this DDA which shall survive the completion of the Improvements.

15. **DOCUMENT INTERPRETATION.** This DDA shall be interpreted in accordance with the following rules.

15.1. **ENTIRE DDA; SEVERABILITY.** This DDA integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this DDA shall, to any extent, be held invalid or unenforceable, the remainder of this DDA shall not be affected; provided that the intent of the DDA may then be reasonably fulfilled.

15.2. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this DDA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this DDA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

15.3. **CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this DDA are for the convenience of the parties to this DDA. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this DDA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

15.4. **DRAFTER.** This DDA shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this DDA. All exhibits referred to in this DDA are attached to it and incorporated in it by this reference.

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

15.6. **TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this DDA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

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

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

between Agency and Developer other than that of a governmental entity regulating the development of private property, and the owner of such private property.

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

15.10. **INSPECTION OF BOOKS AND RECORDS.** Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Property as reasonably necessary to carry out its purposes under this DDA.

15.11. **OWNERSHIP OF DATA.** If this DDA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency any and all data acquired for development of the Property. Agency shall have full ownership and rights to use such data.

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

15.12.1. Addresses for notices are as follows:

a) Agency: Housing Authority of the City of Sacramento, 801 12th Street, Sacramento, California 95814 Attention: Bern Wikhammer.

b) Developer: PACH DPN-5 HOUSING PARTNERS LLC, 2115 J Street, Suite 201, Sacramento, CA 95816 Attention: Mark Wiese.

15.12.2. Notices may be delivered by one of the following methods:

a) Certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail;

b) A nationally recognized overnight courier, by priority overnight service, in which case notice shall be deemed delivered one (1) business day after deposit with that courier;

c) Hand delivery with signed receipt for delivery from a person at the place of business of the receiving party and authorized to accept delivery for the receiving party, in which case notice shall be deemed delivered upon receipt, or

d) Telecopy or facsimile, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Developer or Agency may respectively designate by written notice to the other.

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

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

16.1. "Agency" is the Housing Authority of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Housing Authority Law of the State of California. The principal office of the Agency is located at 801 12th Street, Sacramento, California 95814. Agency as used in this DDA includes the Housing Authority of the City of Sacramento and any assignee of or successor to its rights, powers and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

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

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

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

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

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

16.7. "Completion Date" is the date for completion of construction of the Project to the satisfaction of the Agency, which date shall be not sooner than the issuance of a certificate of occupancy for the entire Project. The Completion Date is stated in the Schedule of Performances.

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

16.9. "Developer" is PACH DPN-5 HOUSING PARTNERS LLC, a California limited liability company . The principal office of the Developer is located at 2115 J Street, Suite 201,

Sacramento, CA 95816. The managing member of the Developer is Pacific Housing, Inc., a nonprofit, public benefit corporation. The principal of the managing member is Mark A. Wiese.

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

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

16.12. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under this DDA. The Final Plans include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this DDA. The Final Plans shall incorporate all applicable mitigation measures which may be required for compliance with approvals under the California Environmental Quality Act (commencing at Public Resources Code Section 21000) and the rules and regulations promulgated under such act. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this DDA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this DDA.

16.13. "Funding Agreement" is the document that states the terms of Agency Funding for the seller carry back loan to Developer for the purchase of the Property.

16.14. "Grant Deed" is the grant deed for the transfer of the Property to Developer under this DDA. The Grant Deed contains covenants that run with the land, easements and a reverter provision. The Grant Deed is attached as **Exhibit 5: Grant Deed**.

16.15. "Hazardous Substances" as used in this DDA shall include, without limitation to, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C. '1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. '9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. '6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory) and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all rules and regulations promulgated pursuant to said laws.

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

16.17. "Plans" are the Project designs and elevations, prepared by the Project architect Ellis Architects, a portion of which (consisting of various elevations) is attached to the staff report for approval of this DDA. Agency has approved the Plans concurrently with the approval of this DDA.

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

16.19. "Project Area" is the Del Paso Heights Neighborhood Area, as defined in the Redevelopment Plan.

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

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

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

16.23. "Redevelopment Plan" is the former redevelopment plan for the Project Area.

16.24. "Regulatory Agreement" is the agreement that sets out the certain provisions of this DDA that shall survive the completion of the Project. The Regulatory Agreement is attached as **Exhibit 4: Regulatory Agreement.**

16.25. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this DDA must be performed and on which conditions must be satisfied. The Schedule of Performances is attached as **Exhibit 3: Schedule of Performances.**

16.26. "Scope of Development" is the detailed description of the construction parameters for the Project. The Scope of Development is attached as **Exhibit 2: Scope of Development.**

16.27. "Title Company" is Placer Title Company. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 301 University Avenue, Suite 120, Sacramento, CA 95825.

16.28. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of

subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of the parties shall be extended for the period of the enforced delay, as determined by the Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after it has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

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

**DEVELOPER** : PACH DPN-5 HOUSING PARTNERS LLC, a California limited liability company

**AGENCY: THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO**, a public body corporate and politic

By: PacH Sustainable, LLC  
a California limited liability company  
its managing member

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

By: Pacific Housing, Inc.  
a nonprofit public benefit corporation  
its sole member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark A. Wiese, President

Approved as to form:

Date: \_\_\_\_\_

\_\_\_\_\_  
Agency Counsel

Approved as to form:

\_\_\_\_\_  
Developer Counsel

**EXHIBIT 1**

**Legal Description**

THE LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 5 THROUGH 95, INCLUSIVE, AS SHOWN ON THE FINAL MAP ENTITLED "DEL PASO NUEVO UNIT 5", FILED FOR RECORD IN BOOK 360 OF MAPS, MAP NO. 4, SACRAMENTO COUNTY RECORDS.

A.P.N. 250-0470-005 THROUGH 072

A.P.N. 250-0480-001 THROUGH 023

## EXHIBIT 2

### Scope of Development

Developer has submitted and the City has approved plans for single family homes consistent with the Del Paso Nuevo Design Guidelines. Housing mix will consist of three and four bedroom homes ranging in size from approximately 1,550 square feet to 2,160 square feet. A minimum of five floor plans, two elevations and four color schemes will be provided. All homes are to include two-car garages, a minimum of two full bathrooms, and other features and amenities as provided in Developer's proposal for the Project. The City has determined that the homes meet Special Planning District Development Guidelines for Del Paso Nuevo. Developer will construct and shall maintain a model home complex with four model homes that represent each floor plans being constructed. Developer will also construct a parking lot adjacent to and for use by the model home complex until no longer needed at which time it will be replaced by construction of a new home.

A minimum of 51% of all of the units shall be sold at affordable prices to families earning no more than 80% of the Sacramento Metropolitan Statistical Area median income (AMI), as determined annually by the federal Department of Housing and Urban Development. For purposes of this agreement, an affordable housing price shall be deemed to be a price for which the monthly payments for principal, interest, taxes, and insurance do not exceed thirty-five percent (35%) of the income of a family earning not more than 80% of the AMI as previously defined, as adjusted for family size appropriate to the size and number of bedrooms in the unit.

Developer will construct a minimum of 91 homes, including the five model homes, on the 91 finished lots in Del Paso Nuevo Phase 5. Of the 91 homes constructed, a minimum of 51% (46 homes) will be sold as affordable homes previously described. Of these 46 affordable homes, a total of 10 will be regulated for 45-years and 36 will be regulated for 20-years. With the exception of the model homes which will eventually be sold at market prices as non-regulated units, regulated and market rate homes will at all times be constructed in proportion to each other. Lots will be transferred and homes will be constructed in phases. Construction of each successive phase will not begin until 100% of the homes in the previous phase have been completed and at least 80% of those homes have been sold. The two phases are described as follows:

Phase 1: Lots 5 – 10 and 66 - 75.

This phase will include 15 or 16 parcels which will contain five model homes, 10 for-sale homes, and possibly one lot for construction staging. A minimum of eight (8) of the 15 homes constructed will be affordable to low-income families. Of these eight a minimum of two (2) must be regulated for 45-years and the balance will be regulated for 20 years.

Phase 2: Lots 11 – 20 and 61 – 65.

This phase includes 15 for-sale homes. There will be a minimum of eight (8) homes affordable to low-income families. Of these eight, a minimum of two (2) must be regulated for 45-years and the balance regulated for 20-years.

Subsequent lots will released in phases of up to 15 parcels per phase as described above depending on market conditions (demand and absorption) at the time of release and as mutually agreed upon by Agency and Developer. Upon written request by Developer, additional parcels may be released per phase in subsequent phases subject to review and written approval by Agency.

**EXHIBIT 3**

**Schedule of Performance**

	Task	Target Dates
1.	Approval of Building Permits	06/15/15
2.	Construction Start – Five Models, 10 For-Sale, Parking Lot	06/30/15
3.	Construction Completion	01/31/16
4.	Sale of All 10 For-sale Homes in 1 <sup>st</sup> Phase	02/28/16
5.	Construction Start – Next 15 homes	03/01/16
6.	Construction Completion – 2 <sup>nd</sup> Phase	09/30/16
7.	Sale of All Homes in 2 <sup>nd</sup> Phase	10/30/16

- Mutually acceptable Schedules of Performances will be established for all subsequent phases prior to release of each subsequent phase.
- Target Dates represent the dates by which each task is anticipated to be completed and assumes prompt execution of loan documents and no unanticipated delays in the permit or construction processes. These dates may be extended at the discretion of the Agency upon mutual written agreement.
- Construction of all 91 homes in Del Paso Nuevo Phase V must be completed within five years of the effective date of the Disposition and Development Agreement at which time the agreement will be terminated, unless the term is extended an additional year upon mutual written agreement between the Agency and Developer and prior to the termination date.

**EXHIBIT 4**

**Regulatory Agreement**

**NO FEE DOCUMENT:**

Entitled to free recording  
 per Government Code 27383.  
 When recorded, return to:  
 SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY  
 801 12<sup>th</sup> Street  
 Sacramento, CA 95814

**REGULATORY AGREEMENT FOR DEVELOPMENT OF HOMEOWNERSHIP PROPERTY  
 INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS RUNNING WITH THE LAND**

**INCLUDING CONDITIONS PRECEDENT TO RESALE**

<b>PROJECT NAME:</b>	Del Paso Nuevo Phase V <b>Phase 1</b> (Lots 5 - 10 and 71 - 75)
<b>PROJECT ADDRESSES:</b>	3357 Auntie Burney St., 3363 Auntie Burney St., 3369 Auntie Burney St., 3375 Auntie Burney St., 3381 Auntie Burney St., 641 Dora Huntzing Ave., 653 Dora Huntzing Ave., 661 Dora Huntzing Ave., 667 Dora Huntzing Ave., 673 Dora Huntzing Ave., 612 Ford Rd, 640 Ford Rd, 654 Ford Rd, 660 Ford Rd, 668 Ford Rd, 674 Ford Rd, Sacramento, CA
<b>EFFECTIVE DATE:</b>	
<b>APNs:</b>	250-0470-005, 250-0470-006, 250-0470-007, 250-0470-008, 250-0470-009, 250-0470-010, 250-0470-043, 250-0470-044, 250-0470-045, 250-0470-046, 250-0470-047, 250-0470-048, 250-0470-049, 250-0470-050, 250-0470-051, and 250-0470-052.

***NOTICE:*** THIS REGULATORY AGREEMENT IMPOSES COVENANTS, CONDITIONS AND RESTRICTION ON THE PROPERTY WHICH STAY WITH THE PROPERTY FOR MANY YEARS, INCLUDING RESTRICTIONS ON THE RESALE PRICE AND THE USE AND MAINTENANCE OF THE PROPERTY.

***WARNING:*** A SALE IN VIOLATION OF THIS REGULATORY AGREEMENT IS VOID.

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

1. **GENERAL.** This Regulatory Agreement incorporates the Exhibits listed below, which are attached to this Regulatory Agreement.

2. **DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in the following Definitions Table and as defined in the body of the Regulatory agreement, which terms being defined are indicated by quotation marks.

<b>TERM</b>	<b>DEFINITION</b>
“Effective Date”	This Regulatory Agreement shall be effective as of the following date:
“Agency”	Housing Authority of the City of Sacramento
	A public body, corporate and politic

Disposition and Development Agreement

“Owner” and “Developer”	PacH DPN-5 Housing Partners LLC A California limited liability company	
“Agency Address”	Agency’s business address is as follows:	801 12 <sup>th</sup> Street, Sacramento, CA 95814
“Owner Address”	Owner’s business address is as follows:	2115 J Street Suite 201, Sacramento, CA 95816
“Jurisdiction”	City of Sacramento	
“Property”	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as <b>Exhibit 1 – Legal Description</b> .	
“Funding Agreement”	The Funding Agreement between Agency and Owner, named and dated as follows:	Disposition and Development Agreement dated
“Agency Funding”	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property	
“Agency Funding Amount”	The total amount of the Agency Funding, as follows:	\$200,000.00 seller carry-back land loan from Agency for these 16 lots.
“Funding Requirements”	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in <b>Exhibit 2 – Funding Requirements</b> .	
“Project Development Funds”	The total of all funds expended to develop the Project (and for a mixed use project, for the residential portion of the Project only), including without limitation payments for land acquisition, costs of financing, costs of predevelopment, and, as applicable, the costs of development or rehabilitation.	Approximately \$19,565,000 for development of all 91 lots in Del Paso Nuevo Phase V. Approximately \$3,100,000 for development of the first 15 lots.
“Unit Development Funds”	Project Development Funds expended for each unit as indicated in Section 3.b below. [Generally, for units which are substantially equivalent, the Unit Development Funds are equal to the Project Development Funds divided by the number of residential units in the Project. However, for Projects with significant variations in unit square footage, the number may be determined on a relative square footage basis)	
“Restricted Units”	The individual housing parcels within the Property that are to be subject, by this Regulatory Agreement to affordability restrictions that limit the price for which they may be sold and resold. The units shall be restricted for the period of years stated in the Funding Requirements.	
“Individual Regulatory Agreement”	The agreement containing conditions, covenants and restrictions running with the land and restricting the use and resale of the Restricted Units as provided in this Regulatory Agreement, the form of which is attached as <b>Exhibit 3 – Individual Regulatory Agreement</b> .	
“Approved Use”	The only permitted use of the Property, which is as a residential property available for sale to the general public and containing not less than the following number of units:	Property to be used for construction of 16 for-sale residential homes.

3. **RESTRICTED UNITS:** All 16 finished parcels shall be restricted by this regulatory agreement. Agency and Developer agree that as homes are constructed and sold this regulatory agreement will be partially released as to each home sold. Of the 16 parcels covered by this agreement, five (5) will be used for construction of model homes for the entire 91-lot Del Paso Nuevo Phase V project. Of the 15 new homes constructed, seven (7) will be sold without restrictions and eight (8) will be sold to low to moderate income owner-occupants earning 80% or less of Sacramento Metropolitan Statistical Area median income and an Individual Regulatory Agreement shall be recorded against those properties. Of these eight (8) regulated homes, a minimum of two will be restricted for a term of forty-five (45) years and the remainder the regulated homes will be restricted for a term of twenty (20) years.

a. If the applicable Sacramento Metropolitan Statistical Area median income is adjusted by the federal Department of Housing and Urban Development prior to the sale of a Restricted Unit or if other factors considered in making the determination of the following prices (in accordance with Agency policy and practice) change prior to the sale of a Restricted Unit, then the income and pricing restrictions shall be adjusted to assure compliance with the Funding Requirements as of the date when the Restricted Unit is sold.

b. For purposes of this Regulatory Agreement, the sales price is the amount actually paid to Developer by the purchaser (“Buyer”), including all additions or reductions (for changes to the Restricted Unit or otherwise) made to the initial purchase price shown in the purchase and sale agreement between Developer and the Buyer.

4. **RESTRICTION ON SALES.** In order to assure that the proper number and types of units have been sold in accordance with this Regulatory Agreement, Developer is prohibited from selling any Restricted Unit within the Project unless and until (a) the Agency has reviewed and determined that the sale complies with the Funding Requirements, (b) that the sales price to be paid by the buyer on sale is an “Affordable Price” as required by the Funding Source and (c) that the Buyer has executed and the parties have recorded an Individual Regulatory Agreement with all terms applicable to such Restricted Unit. A purported sale to a third party in violation of this Regulatory Agreement is voidable by Agency at any time upon notice to Developer.

5. **NO RENTAL.** Developer shall not rent the Restricted Units without the prior written approval of the Agency. Agency may withhold such approval if the proposed rental would violate provisions of the Funding Restrictions.

6. **RECAPTURE.** If Developer rents a Restricted Unit without Agency authorization or sells a Restricted Unit at a price that exceeds the Affordable Price, Developer shall repay to Agency, as “Recapture”, all of the Agency Funding allocable to the Restricted Unit, plus interest from the date of this Regulatory Agreement until paid, at then market rate for construction loans for projects similar to the Project, as reasonably determined by the Agency.

7. **TERMINATION OF COVENANTS.** If the Agency is paid the Recapture, the covenants, conditions and restrictions contained in this Regulatory Agreement shall terminate, except as to covenants which provide otherwise, including without limitation, the covenant against discrimination, all of which continue in effect. Representations. Agency has provided Agency Funding, subject to the terms of the Funding Agreement, in consideration of the property interests conveyed to Agency under this Regulatory Agreement. The funds used by Agency under the Funding Agreement are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made the Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. This Regulatory Agreement represents a portion of this entire transaction. Therefore, Agency has made the Agency Funding conditioned upon Owner’s agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

8. **PROHIBITION ON SALE WITHOUT APPROVAL; CONDITION PRECEDENT.** Owner is prohibited from selling the Property including the Restricted Unit unless and until (a) the Agency has reviewed and determined that the sales price complies with the Funding Requirements and (b) that the purchaser of the Property has acknowledge and accepted the Individual Regulatory Agreement. For purposes of determining such compliance, the sales price is amount actually paid to Owner by the purchaser, including all additions or reductions made to the initial purchase price shown in the purchase and sale agreement between Owner and the purchaser. Owner shall receive no consideration for additions or improvements made to the Property, except those improvements (such as the addition of bedrooms) that affect the affordability calculations of the Funding Requirements. Pursuant to Section 9.a below, the foregoing is a condition precedent to any resale of the Property.

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

a. Owner shall comply with the foregoing covenant prohibiting resale without Agency approval. Such compliance is a condition precedent to any such resale. If Owner fails to comply with said covenant, such resale shall be null and void, and the purported purchaser and anyone claiming any interest in the Property on account of such resale, including without limitation trustors and beneficiaries under deeds of trusts or others claiming lien or mortgage interests in the Properties, shall have no interests in or rights regarding the Property.

b. Owner shall use and permit others to use the Property only for the Approved Use.

c. Owner shall assure full compliance with the Funding Requirements.

d. Owner shall not transfer or encumber any of the Property or permit the conveyance, transfer, or encumbrance of the Property unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of this Regulatory Agreement.

e. Owner shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Funding Agreement.

f. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable housing quality standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible.

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

h. Owner shall assure compliance with the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act) prohibiting the Agency funding of federal, state or local benefits to persons who are not citizens or qualified aliens as defined in the such act.

**10. NATURE OF COVENANTS.** The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

**11. TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. Of the eight regulated homes in this phase, a minimum of two will be restricted for a term of forty-five (45) years and the remainder of the regulated homes will be restricted for a term of twenty (20) years.

**12. RECORDKEEPING AND REPORTING.** Upon written request of Agency, Owner shall promptly provide any additional information or documentation to verify Owner's compliance with the provisions of this Regulatory Agreement. At the written request of the Agency, Owner shall, within a reasonable time following receipt of such request, furnish reports and shall give specific answers to questions regarding the income, assets, liabilities, contracts, operations, and condition of the property and their compliance with the Funding Agreement and this Regulatory Agreement.

**13. AUDIT AND INSPECTION.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related items shall at all times be maintained in reasonable condition for audit and

shall be subject to examination by the Agency or its agents. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles. Owner shall provide Agency access to the Property and its tenants during reasonable hours for the purpose of reviewing Owner's compliance with this Regulatory Agreement.

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

**15. CHANGES WITHOUT CONSENT OF TENANTS, LESSEES, OR OTHERS.** Only Agency and its successors and assigns, and Owner and its successors and assigns (subject to the reasonable approval of Owner's lender) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Agreement. Such changes or termination shall not require the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site.

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

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

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

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

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

Disposition and Development Agreement

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

20. **SEVERABILITY.** If any term or provision of this Regulatory Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Regulatory Agreement shall not be affected; provided that the intent of the Regulatory Agreement may then be reasonably fulfilled. In any event, the term or provisions shall be deemed to be invalid only as to the entity and circumstance for which it was held to be invalid.

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

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

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

**OWNER :**  
PACH DPN-5 HOUSING PARTNERS LLC, a California  
limited liability company

**AGENCY:**  
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO,  
a public body, corporate and politic

By: PacH Sustainable, LLC  
a California limited liability company  
its managing member

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

By: Pacific Housing, Inc.  
a nonprofit public benefit corporation  
its sole member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark A. Wiese, President

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

Date: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Developer Counsel

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**EXHIBIT 5**

**Grant Deed  
Phase 1 (15 Lots)**

**NO FEE DOCUMENT:**

Entitled to free recording  
per Government Code §§6103 and 27383.  
Recording Requested by the  
SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY  
801 12<sup>th</sup> Street  
Sacramento, California 95814  
Attention: Portfolio Management

Mail Tax Statements to:  
PacH DPN-5 Housing Partners LLC  
2115 J Street Suite 201  
Sacramento, CA 95816

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**GRANT DEED**

(WITH REVESTMENT PROVISIONS, COVENANTS, RESTRICTIONS AND RESERVATIONS)

For valuable consideration, receipt of which is hereby acknowledged,

The Housing Authority of the City of Sacramento, a public body, corporate and politic, successor to the Redevelopment Agency of the City of Sacramento (the "Grantor"), acting to carry out the Redevelopment Plan, (the "Redevelopment Plan"), for the Redevelopment Project known as the Del Paso Heights Project Area, the ("Project"), under the Community Redevelopment Law of California, hereby grants to PacH DPN-5 Housing Partners LLC (the "Grantee"), the real property, (the "Property"), described in Exhibit 1- Legal Description which is attached to, and incorporated in this Deed by this reference, subject to the covenants, restrictions and reservations set forth below which covenants, restrictions and reservations shall inure to the benefit of, and bind, each and every successor, assign or successor in interest of the parties, including any heirs, executors, administrators, transferees or any other person or entity claiming through the parties.

The Property is conveyed in accordance with, and subject to, (i) the Del Paso Heights Redevelopment Plan which was adopted by the City Council of the City and duly recorded in the Office of the County Recorder of Sacramento County, California; and (ii) the Disposition and Development Agreement (the "Disposition and Development Agreement") entered into by and between Grantor and Grantee on April 23, 2015.

The Grantee covenants and agrees that the Property shall be devoted only to the uses specified in the applicable provisions of the Redevelopment Plan for the Project (including all Redevelopment Plan amendments, except amendments from which Grantee may be exempt by the doctrine of vested rights), this Deed and any and all instruments recorded pursuant to the Disposition and Development Agreement, including such Agreement, duly recorded by Grantor and affecting the Property. The Property is conveyed to Grantee at a purchase price (the "Purchase Price") determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees that the Grantee, such successors and such assigns shall develop, use, and maintain the Property as follows:

## Disposition and Development Agreement

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new construction of single family homes, 51% of which are to be sold to households with incomes not exceeding eighty percent (80%) of the Area Median Income (AMI).

1. Grantee acknowledges and agrees that the Property shall be subject to the Regulatory Agreement between Grantor and Grantee, recorded on the Property promptly following recordation of this Grant Deed.

1.1. As provided in the Disposition and Development Agreement, Grantee shall promptly commence and complete development of the Property in accordance with plans and specifications approved by Grantor. Construction of improvements and development of the Property (the "Improvements") required by the Disposition and Development Agreement shall commence and be prosecuted diligently to completion at the time specified in, and subject to the terms of, the Disposition and Development Agreement.

1.2. Grantee shall maintain the Improvements and any other improvements on the Property in good condition and order, shall keep the Property free from accumulation of debris and waste materials and shall permit no action or inaction on the Property such that the Property detracts from the surrounding neighborhood in any substantial manner.

1.3. All obligations imposed upon Grantee herein shall bind any and all successors of Grantee; provided, however, that upon sale or conveyance of the Project, the party selling or conveying shall be relieved of any such obligation to the extent that such obligation arises after the date of sale or conveyance.

2. Grantee covenants and agrees that prior to recordation of any Certificate of Completion for the Property:

2.1. The Grantor shall have the additional right, at its option, to re-enter and take possession of the Property and all improvements on the Property and to terminate and revest the Property in the Grantor if the Grantee or its successors in interest shall, in accordance with and subject to the terms of the Disposition and Development Agreement:

2.1.1. Fail to commence or complete the construction of the Improvements when required by the Disposition and Development Agreement and after sixty days written notice from the Grantor of Grantee's failure to timely commence or complete construction, provided that the Grantee shall not have obtained an extension or postponement to which Grantee may be entitled or that Grantee or Grantee's lender for the project have commenced and are diligently proceeding to cure such default; or

2.1.2. Abandon or substantially suspend construction of the Improvements for more than sixty days after written notice from the Grantor to continue such construction, provided that Grantor shall not have obtained an extension or postponement to which Grantee may be entitled or that Grantee or Grantee's lender for the project have commenced and are diligently proceeding to cure such default; or

2.1.3. Transfer, or suffer any involuntary transfer, of all or any part of, or interest in, the Property, in violation of the Disposition and Development Agreement or this Grant Deed.

2.2. The right to re-enter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

2.2.1. Any mortgage or deed of trust permitted by the Disposition and Development Agreement or this Deed and duly approved by the Grantor; or

2.2.2. Any rights or interests provided for the protection of the holders of such mortgages or deed of trust.

2.3. The right to re-enter, repossess, terminate and revest with respect to the Property shall terminate when the Certificate of Completion has been recorded by the Grantor.

2.4. In the event title to all or any part of the Property is revested in the Grantor as provided in this Section 2, the Grantor shall, pursuant to its responsibilities under California Law, use its best efforts to resell the Property or part as soon and in such manner as the Grantor shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to the Grantor and in accordance with the uses specified for such Property or part in the Redevelopment Plan. Upon such resale of the Property the proceeds thereof shall be applied as follows:

2.4.1. First, the Grantor shall be reimbursed, on its own behalf or on behalf of the City of Sacramento, California for all costs and expenses incurred by the Grantor, including but not limited to salaries of personnel incurred in connection with the recapture, management and resale of the Property or part (but less any income derived by the Grantor from the Property in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part (or, in the event the Property is exempt from taxation, assessment or such charges during the period of Grantor's ownership thereof, an amount equal to such taxes, assessments or charges as determined by the assessing official as would have been payable if the Property were not exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part at the time of revesting of title in the Grantor or to discharge or prevent such encumbrances or liens from attaching or being made by any subsequent successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Improvements; and any amounts otherwise owed to the Grantor by the Grantee and its successors or transferee; and

2.4.2. Second, to the extent possible, the Grantee shall be reimbursed in an amount not to exceed the sum of (1) the Purchase Price paid to the Grantor by the Grantee for the Property (or allocable to the part thereof); (2) the costs incurred for the development of the Property and for the improvements existing on the Property at the time of the reentry and repossession, (3) less any gains or income withdrawn or made by the Grantee from the Property or the Improvements; and

2.4.3. Third, any balance remaining after such reimbursements shall be retained by the Grantor.

2.4.4. To the extent that this right of reverter involves a forfeiture, it must be strictly interpreted against the Grantor, the party for whose benefit it is created. This right of reverter shall, however, be interpreted in light of the fact that the Grantor is by this deed conveying the Property to the Grantee for development and not for speculation in undeveloped land and that such development is a material element of the consideration received by Grantor for the Property.

3. The Grantee covenants and agrees that:

3.1. There shall be no discrimination against or segregation of any person on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property hereby conveyed or any part thereof. Grantee covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

All advertising (including signs) for sale and/or rental of the whole or any part of the Property shall include the legend "Equal Opportunity Houser" in type or lettering of easily legible size and design. The word "Project" or "Development" may be substituted for the word "Houser" where circumstances require such substitution.

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust made in good faith and for value; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. All covenants contained in this Deed shall be covenants running with the land and equitable servitudes thereon. The covenants contained in Section 2 of this Deed shall terminate upon issuance of a Certificate of Completion for the Property. Every covenant contained in this Deed not previously terminated shall terminate thirty (30) years from the date of recordation in the official records of Sacramento County, except that the covenants against discrimination contained in Section 3 of this Grant Deed shall remain in perpetuity.

6. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor, its successors and assigns, the City of Sacramento, California, any successor in interest to the Property, the owner of any other land (or of any interest in such land) in Project which is subject to the land use requirements and restrictions of the Redevelopment Plan, and the covenants against discrimination contained in Section 3 shall be binding for the benefit of the Grantor, the City of Sacramento and the United States of America and such covenants shall run in favor of the Grantor, the City of Sacramento and the United States of America, for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor and the City of Sacramento, is or remains an owner of any land or interest therein to which such covenants relate. The Grantor, in the event of any breach of any such covenant, and the City of Sacramento (and the United States of America, in the event of any such breach of the covenants in Section 3), shall have the right to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach against Grantee, its successors to and assigns of the Property or any part or interest in the Property, any subcontracting party or parties or other transferees under the Disposition and Development Agreement, and any party in possession or occupancy of all or any part of the Property.

7. Both before and after issuance of a Certificate of Completion, the Grantor and Grantee and their successors and assigns only shall have the right to mutually consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or other restrictions contained in this Deed or to subject the Property to additional covenants, easements, or other restrictions, and Grantor and Grantee may do so without the consent of any tenant, lessee, easement holder, licensee, or any other such person or entity having any interest less than a fee in the Property. Amendments to the Redevelopment Plan applying to other property in the Project shall not require the consent of Grantee by virtue of this Deed.

8. The covenants contained in this Deed shall not be construed as conditions which might result in forfeiture of title, except for the covenants and conditions contained in Section 2 of this Grant Deed.

9. Promptly after the issuance of a Certificate of Occupancy from the City of Sacramento Building Department and completion of the Improvements in accordance with the provisions of the construction plans approved pursuant to the Disposition and Development Agreement and fulfillment of the related obligations of the Grantee under the Disposition and Development Agreement, the Grantor shall furnish the Grantee with an appropriate instrument (the "Certificate of Completion") certifying such completion and stating that the Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Disposition and Development Agreement and in this Deed obligating the Grantee with respect to the construction of the Improvements and the dates for beginning and completion thereof.

With respect to such individual parts or parcels of the Property which, if so provided in the Disposition and Development Agreement, the Grantee may convey or lease as the Improvements thereon are completed, the Grantor shall also, upon proper completion of the Improvements relating to any such part or parcel and prior to such conveyance or lease, issue a Certificate of Completion with regard to such part of parcel. Such certification shall mean and provide (1) that any party purchasing or leasing such individual part or parcel with required authorization shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or parcel or to any other part or parcel of the Property; and (2) that neither the Grantor nor any other party shall thereafter have or be entitled to exercise with respect to any such individual part or parcel so sold (or, in the case of lease, with respect to the leasehold interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of the Disposition and Development Agreement or of this Deed by the Grantee or any successor in interest or assign, unless (i) such default or breach be by the purchaser or lessee, or any successor in interest to or

## Disposition and Development Agreement

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assign of such individual part or parcel with any other of the covenants contained and referred to in this Deed and the Declaration of Restrictions and (ii) the right, remedy or control relates to such default or breach.

The Certificate of Completion shall be in a form acceptable for recordation in the proper office for the recordation of deeds and other instruments pertaining to the Property. If the Grantor shall refuse or fail to provide the Certificate of Completion, the Grantor shall, within thirty (30) days after written request by the Grantee provide the Grantee with a written statement, indicating in what respects the Grantee has failed to duly complete said Improvements and what measures or acts will be necessary, in the opinion of the Grantor, for the Grantee to take or perform in order to obtain such certification.

10. The Grantor certifies that Grantor has complied with all conditions precedent to the valid execution and delivery of this Deed required on its part and that all things necessary to constitute this Deed and its valid, binding and legal agreement on the terms and conditions and for the purposes set forth herein have been done and performed and have happened, and that the execution and delivery of this Deed on its part have been and are in all respects authorized in accordance with law. The Grantee similarly certifies with reference to its execution and delivery of this Deed.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective and duly authorized officers, on the following dates, effective as of \_\_\_\_\_, 2015.

Housing Authority of the City of Sacramento  
a public body, corporate and politic

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

Date: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Agency Counsel

Grantee hereby accepts, concurs in and agrees to all the covenants, conditions, easements, reservations and restrictions set forth in this Grant Deed.

PacH DPN-5 Housing Partners LLC,  
a California limited liability company

By: PacH Sustainable, LLC  
a California limited liability company  
its managing member

By: Pacific Housing, Inc.  
a nonprofit public benefit corporation  
its sole member

By: \_\_\_\_\_  
Mark A. Wiese, President

Date: \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION**

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

LOTS 5 THROUGH 10, INCLUSIVE, AND LOTS 66 THROUGH 75, INCLUSIVE, AS SHOWN ON THE FINAL MAP ENTITLED "DEL PASO NUEVO UNIT 5", FILED FOR RECORD IN BOOK 360 OF MAPS, MAP NO. 4, SACRAMENTO COUNTY RECORDS.

A.P.N. 250-0470-006 THROUGH 010

A.P.N. 250-0470-043 THROUGH 052