Sacramento Housing & Redevelopment Agency

REPORT TO REDEVELOPMENT AGENCY AND HOUSING AUTHORITY
City of Sacramento
915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Consent
May 22, 2007

Honorable Chair and Members of the Agency
Honorable Chair and Members of the Housing Authority

Title: Owner Participation Agreement: Rehabilitation and Modernization for six Housing Authority owned properties in Del Paso Heights

Location/Council District: 637 Grand Avenue, 3812, 3820 & 3832 Alder Street, 3945 Palmetto Street, and 3925 Dry Creek Road; Del Paso Heights Redevelopment Area, Council District 2.

Recommendation: 1) Adopt an **Agency Resolution** authorizing the Executive Director or her designee to a) execute an Owner Participation Agreement (OPA) and related documents with the Housing Authority to modernize and rehabilitate six Housing Authority-owned homes; b) amend the 2007 Sacramento Housing and Redevelopment Agency budget to allocate $752,000 in Del Paso Heights 2003 Tax Exempt Bond funds to the Housing Authority residential revitalization project 2) Adopt a **Housing Authority Resolution** authorizing the Executive Director or her designee to a) execute an OPA and related documents with the Redevelopment Agency for the rehabilitation and modernization of six Housing Authority-owned homes.

Contacts: Lisa Bates, Director, Community Development, 440-1322; Chris Pahule, Assistant Director, Community Development, 440-1350

Presenter: Not applicable

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: This report recommends the Redevelopment Agency (Agency) provide a $752,000 grant for the complete rehabilitation and modernization of six vacant and boarded Housing Authority–owned homes. These properties are currently vacant and in need of extensive upgrades. Due to budget constraints, the Housing Authority does not have available immediate resources to make the necessary improvements to these properties to put them into production.

The six vacant homes are located next to properties that were significantly rehabilitated and sold at an affordable price to homeowners under the Housing Authority's 5H Program. The homes once rehabilitated are planned to remain part of the Housing Authority property inventory because they contain four and five bedroom homes that can accommodate large families, a rarity in public housing.

Policy Considerations: The recommended action is consistent with housing development goals of the Del Paso Redevelopment Area 2003-2007 Implementation Plan, which specifically targets funds to improve public Housing Authority properties

Environmental Considerations: The proposed action is exempt from CEQA review pursuant to CEQA Guidelines Section 15301(d) as the rehabilitation of an existing structure. NEPA does not apply.

Committee/Commission Action: *Del Paso Heights Redevelopment Advisory Committee (RAC):* At its meeting of February 22, 2007 the Redevelopment Advisory Committee approved the staff recommendation for this item. The votes were as follows:

AYES: Painter; Thao; Sample; Anderson, Perry, Scoggins, Ward

NOES: None

ABSENT: Tates, Roberts

Sacramento Housing and Redevelopment Commission: At its meeting of May 2, 2007, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Fowler, Gore, Hoag, Piatkowski, Shah, Stivers

NOES: None

ABSENT: Burns, Coriano

Rationale for Recommendation: The six Housing Authority-owned homes referenced in this report are located in close proximity to homes that underwent a significant transformation through the 5H program. In the case of the Alder Street properties, rehabilitated 5H homes sit next door to the boarded and vacant Housing Authority-owned homes. The complete renovation of the six Housing Authority-owned homes would create a dynamic impact on Alder Street and the other areas near the homes. At completion, the renovated homes will provide housing to six very low income families.

Financial Considerations: The Federal Housing and Urban Development Department has instituted major regulatory changes for public housing programs nationwide. These changes have deeply impacted the Housing Authority's budget and capacity to improve current public housing beyond routine improvements. The Housing Authority determined the cost associated with rehabilitating and modernizing these homes at $752,000. Unfortunately, these properties are not high level priority projects, and funding is not available to complete this project.

The execution of an OPA between the Redevelopment Agency and the Housing Authority includes a $752,000 grant from Del Paso Heights Tax Exempt Bond funds. The proposed funding will cover the development of all the architectural drawings, permits/fees, and all construction/modernization costs associated with improving the six Housing Authority-owned homes.

M/WBE Considerations: Federal funds are not being used and, therefore, no M/WBE requirements apply.

Respectfully Submitted by: _____
ANNE M. MOORE
Executive Director

Recommendation Approved:

_____
for RAY KERRIDGE
City Manager

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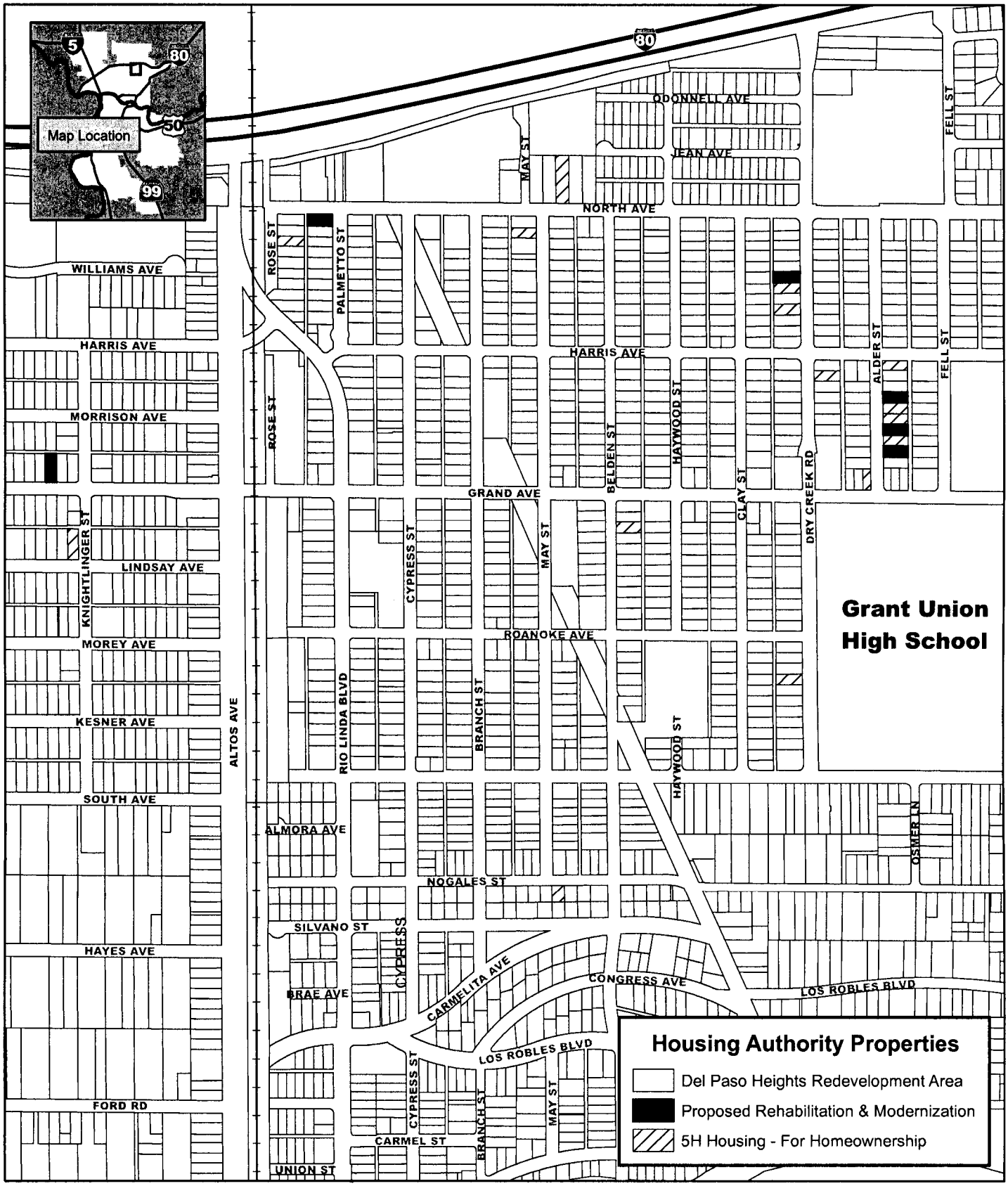
Sacramento Housing & Redevelopment Agency

Proposed Rehabilitation & Modernization Properties
Del Paso Heights Redevelopment Area



RESOLUTION NO. 2007

ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

ON DATE OF

APPROVAL OF AN OWNER PARTICIPATION AGREEMENT (OPA) BETWEEN THE HOUSING AUTHORITY AND REDEVELOPMENT AGENCY FOR THE REHABILITATION AND MODERNIZATION OF SIX HOUSING AUTHORITY OWNED HOMES LOCATED IN THE DEL PASO HEIGHTS REDEVELOPMENT AREA

BACKGROUND

A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Del Paso Heights Redevelopment Plan ("Redevelopment Plan") and the 2003 – 2008 Implementation Plan for the Del Paso Heights Project Area ("Project Area").

B. For the past few years, the Federal Housing and Urban Development Department (HUD) have instituted major regulatory changes for public housing programs nationwide deeply impacting the Sacramento Housing Authority's (HA) budget and ability to rehabilitate and modernize its public housing stock.

C. Six properties in the Del Paso Heights Redevelopment Area were taken out of the public housing inventory due to the chronic need for repairs that made the operation, and maintenance of these units incredibly high. These homes are currently non-performing properties, boarded and vacant with no identified Housing Authority funds for modernization and rehabilitation.

D. Redevelopment Agency Staff recommends Agency financial assistance totaling $752,000 for the rehabilitation and modernization of six currently vacant, and boarded, Housing Authority –owned homes (637 Grand Ave., 3812, 3820 & 3832 Alder St., 3945 Palmetto St. and 3925 Dry Creek Rd).

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

Section 1. It is found and determined that the proposed action is exempt from CEQA review pursuant to CEQA Guidelines Section 15301(d) as the rehabilitation of an existing structure.

Section 2. The Executive Director, or her designee, is authorized to allocate $752,000 in Del Paso Heights Tax Increment bond funds to the Housing Authority Housing revitalization project.

Section 3. The Executive Director is authorized to enter into an OPA with the Housing Authority, substantially in the form attached, as approved by Agency Counsel, for the purpose of providing $752,000 in assistance for the rehabilitation and modernization of six public Housing Authority-owned homes (637 Grand Ave., 3812, 3820 & 3832 Alder St., 3945 Palmetto St. and 3925 Dry Creek Rd).

RESOLUTION NO. 2007

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

APPROVAL OF OWNER PARTICIPATION AGREEMENT BETWEEN HOUSING AUTHORITY AND REDEVELOPMENT AGENCY FOR THE REHABILITATION AND MODERNIZATION OF SIX HOUSING AUTHORITY OWNED HOMES

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Attachment
Exhibit A – Owner Participation Agreement

OWNER PARTICIPATION AGREEMENT

Using Funds from Project Area Tax Exempt Bond Funds

Redevelopment Agency of the City of Sacramento

Del Paso Heights Redevelopment Project Area
Del Paso Heights Housing Authority Improvements Project
637 Grand Avenue, 3812 Alder Street, 3820 Alder Street, 3832 Alder Street,3945 Palmetto Street, and 3925 Dry Creek Road

OWNER PARTICIPATION AGREEMENT

Project Area Tax Exempt Bond Funds

Redevelopment Agency of the City of Sacramento

Del Paso Heights Redevelopment Project Area
Del Paso Heights Housing Authority Improvements Project
637 Grand Avenue, 3812 Alder Street, 3820 Alder Street, 3832 Alder Street,3945 Palmetto Street, and 3925 Dry Creek Road

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and the HOUSING AUTHORITY OF THE CITY OF SACRAMENTO also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of _____ , 2007. For purposed of this Agreement, the capitalized terms shall have the meanings assigned in Section 13.

RECITALS

A. Developer is the owner of real property located at 637 Grand Avenue, 3812 Alder Street, 3820 Alder Street, 3832 Alder Street, 3945 Palmetto Street, and 3925 Dry Creek Road, in the City of Sacramento, California, more particularly described in attached Exhibit A: Property Description, which is incorporated into this OPA by this reference. The Property is located in Del Paso Heights Redevelopment Project Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan.

B. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by property owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 33339).

C. The Agency is participating in this OPA because this OPA is consistent with, and furthers, the Redevelopment Plan and the Implementation Plan. Specifically and without limitation, the Agency has determined that the Project will improve and maintain the supply of low- or moderate-income housing in the community and will further the elimination of the following blighting influences: low or stagnant property values and impaired investment in the Project Area, excessive property vacancies, and the prevalence of deficient buildings and social deterioration. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: The Project improves and assures the continued maintenance of the stock of affordable housing.

D. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

AGREEMENT

NOW THEREFORE, 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. **AGENCY FUNDING.** Agency is providing funding to the Project under the Funding Agreement for development of the Project in accordance with this OPA. If Developer fails to develop the Project as and when required by this OPA, Developer must repay the Agency Funding as provided in the Funding Agreement. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as provided in this OPA, as well as other obligations and restrictions, including without limitation, use restrictions and restrictions on amounts that can be charged on sale or rental of the Property, as evidenced by the Regulatory Agreement.

2. **PROJECT DESCRIPTION**. The Project being assisted with the Agency Funding is the following: The Developer will make improvements to six four and five bedroom residential units and assure their continued availability as housing for very low-income large families.

3. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** This OPA is a financing document of the Agency and not a land use or planning document. Approval of the Project under this OPA by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project, or the aesthetic design of the Project except as an approval by the Agency of the Project design concept as presented in this OPA. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this OPA and approvals given under this OPA. Based upon such review the Agency shall have the right to approve or reject the Plans for reasonable cause. 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 not 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 Preliminary Plans; and (c) to assure that any Agency funds which may be obligated under this OPA are used as intended by the Agency.

3.1. **CONCURRENT REVIEW.** Agency agrees that its review of the Final Plans shall occur prior to or concurrently with City's review of such plans, so as not to delay the commencement and progress of Project development. Agency agrees that its review of the Final Plans is strictly limited to making a determination that the Final Plans conform to the architectural designs (but not the detailed schematics, if any) presented in the Plans, the Scope of Development, the uses permitted on the Property and the Redevelopment Plan.

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

3.3. **PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans which 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 the Preliminary Plans and the Scope of Development. To the extent that the Preliminary Plans and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this OPA. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

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 and shall have clearly marked on its exterior "URGENT: Del Paso Heights Housing Authority Improvements Project PROJECT PLAN REVIEW" or the equivalent.

3.3.1. **DEEMED APPROVAL.** The Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within fifteen (15) days after their proper delivery to Agency.

3.3.2. **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 which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the Preliminary Plans, the Approved Final Plans, the Scope of Development and with any items previously approved under this Section 1. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this OPA 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.

3.4. **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 disagree with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

3.5. **APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLAN.** If the Developer desires to make any substantial changes in the Final Plans as approved by the Agency, the Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final Plans. The Agency shall approve or disapprove the proposed change as soon as practicable. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

3.5.1. **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. For purposes of this Section 3.5.1, a "material change" is a change that is material to the Agency in accomplishing its purposes under this OPA.

a) Material changes in the layout, elevation design, square footage.

b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.

c) Material changes in site development items for the Property that are specified in the Final Plans.

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

e) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

3.5.2. **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.

4. **DEVELOPMENT PROVISIONS.** As stated in detail in this Section 4, Developer shall construct and manage the Project according to the requirements established in this OPA, 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 OPA, the provisions which specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law [commencing at Health and Safety Code Section 33000] shall control.

4.1. **CONSTRUCTION CONTRACTS** Developer shall submit to Agency the Construction Contract for the Project. Agency's review of the Construction Contract shall be only for determining its compliance with this OPA. 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 OPA.

GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this OPA, 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 OPA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the 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 OPA. 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.

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

4.2. **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 3.5, without Agency approval of such changes as provided in Section 3.5.

4.3. **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. Developer acknowledges and agrees that all wage and hour laws and other labor laws as applicable, including without limitation prevailing wage requirements, are the sole responsibility of Developer and Developer's contractors and subcontractors. Developer and its contractors and subcontractors have undertaken to ascertain the applicability of such laws prior to preparation of the final Project budget and have included the costs arising from such laws in the final Project budget. Developer shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations. 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.

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.

PREVAILING WAGES. In accordance with Labor Code Section 1720(c)(4), so long as the sole and only public subsidy for the Project is from the Agency's Low and Moderate Income Housing Fund, the Project is not subject to prevailing wages. Developer represents to the Agency that Developer has obtained no other public subsidy for the Project. If Developer obtains other 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 Contractor or both of them.In accordance with Labor Code Section 1720(c)(6)(E)), so long as the public subsidy for the Project consists of below market rate loans, and the Project restricts occupancy on at least 40% of the units for at least 20 years to individuals or families earning no more than 80% of the area median income, 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 such criteria. 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 Contractor or both of them. The California Department of Industrial Relations has undertaken the aggressive and expansive enforcement of prevailing wage laws for redevelopment projects. The Agency has advised, and the Developer acknowledges, that the Project is subject to the payment of prevailing wages under the laws of the State of California. Developer has had the opportunity to meet with Developer's legal counsel and to request a determination from the Department of Industrial Relations regarding the applicability of prevailing wage requirements to this Project. Developer has made its independent determination of the applicability of prevailing wage laws and has independently implemented such determination. Developer, therefore, 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 Developer's determinations and actions related to prevailing wage obligations for the work of this OPA.

4.4. **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.

4.5. **NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer for itself, Manager, 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.

4.5.1. **EMPLOYMENT**. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, or national origin. 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.

4.5.2. **ADVERTISING**. Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, or national origin.

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

4.7. **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 OPA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

4.8. **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 size of letters used to name any of the other participants.

4.9. **CERTIFICATE OF COMPLETION**. After the Agency has determined that Developer has completed the construction of the Project in accordance with the Final Plans and Developer's obligations under this OPA, the Agency will furnish the Developer with a "Certificate of Completion" certifying such completion. Such certification shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the OPA with respect to the obligations of the Developer to construct the Project as of the Completion Date, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute each Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

4.9.1. Such certification and such determination 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. Such

certification and such determination shall not constitute evidence of compliance with or satisfaction of any provision of this OPA that is not related to construction of the Project.

4.9.2. 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 (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 OPA, 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.

4.10. **CONSTRUCTION PERIOD EXTENSION FEE.** If Developer does not complete the construction of the Project on or before the Completion Date stated in the Schedule of Performances, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning the calendar month following the Completion Date, a construction period extension fee of No Dollars and No Cents Dollars ($0.00) for each day by which the completion of construction is delayed beyond said completion date. Construction Period Extension Fees due for days of delay occurring prior to the first payment date shall be paid in arrears at the time of the first payment under this Section 1. The number of days used in computation of the Construction Period Extension Fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay Construction Period Extension Fees when due is a material default of this OPA. Any unearned portion of an advance payment of any such extension fee shall be refunded by the Agency within thirty (30) days of completion of construction, or of termination of the OPA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to unpaid Construction Extension Fees and to declare Developer in material default of this OPA. In any event, Construction Extension Fees shall not be accepted for a time period greater than six months, at which time Developer shall be deemed in material default of this OPA.

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.

4.11. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure that the respective parties through the Project Documents have the responsibility of notifying the Project contractors, architects and engineers for the Project of the requirements of this OPA. Developer shall include, where applicable, the provisions of this OPA in construction contracts and subcontracts for the Project, and Developer shall undertake the enforcement of such provisions..

4.12. **PROPERTY CONDITION.** Except as provided in this OPA, 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.

4.13. **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 OPA.

4.14. **NO WORK PRIOR TO CLOSE OF ESCROW.** Prior to Close of Escrow, Developer shall not commence any work or take any action that might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

5. **DEVELOPMENT FINANCING.** Developer shall be responsible for and shall pay all costs of developing the Project except as otherwise provided in this OPA. As a condition precedent to Agency's obligation to provide the Agency Funding, Developer shall provide the Agency with a complete and firm Project budget including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, as possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements. To the extent that funds specified in this OPA for the Project are insufficient to fully fund the Project, the Developer shall provide evidence, satisfactory to the Agency, of the additional required construction and permanent financing. Except as expressly provided in this OPA, no party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this OPA or otherwise to make any contribution beyond its obligations stated in this OPA.

5.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 5.3), (b) firm and binding loan commitments (as provided in Section 5.2) from each Lender, in form and content acceptable to Agency, and (c) Agency contribution, if any, as specified in this OPA. 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, request for clarification, further evidence or audited financial reports.

5.2. **COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this OPA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this OPA. The Agency may reject a loan commitment unless such commitments : (a) are 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) contain only usual, customary, and commercially reasonable loan terms; (c) continue in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provide for a Agency Funding term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this OPA, that require amendment of this OPA or that require the

Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

5.3. **EVIDENCE OF DEVELOPER EQUITY.** Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity by any one or more of the following actions: (a) 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 & proper completion; and (c) Developer shall provide 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%) 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.

6. **USE COVENANTS.** Developer shall own and manage the Property in accordance with the provisions of this OPA.

6.1. **NONDISCRIMINATION.** Developer covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that it shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Property and the Project.

6.2. **REGULATORY AGREEMENT.** Developer covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that the Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

7. **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 Developer.

Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency.

This indemnification provision shall survive the termination of this agreement.

8. **INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to (a) the removal, discharge or release of Hazardous Substances on the Property after Developer has taken possession of the Property or (b) the existence of Hazardous Substances on the Property, which were not on the Property prior to Developer's taking possession of the Property.

9. **LIABILITY INSURANCE.** With regard to this OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, 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 OPA.

9.1. **LIABILITY INSURANCE POLICY LIMITS.** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than TWENTY-FIVE THOUSAND DOLLARS ($25,000).

9.2. **WORKER'S COMPENSATION.** Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700,as it may, from time to time, be amended) and having an employer's liability of not less than $1,000,000 or statutory limits, whichever are greater.

9.3. **COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may approved by Agency Counsel). Such insurance shall have limits of liability which are not less than $2,000,000, each occurrence, for bodily injury coverage; $2,000,000 aggregate, for products and completed operations coverage; $1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

9.4. **COMPREHENSIVE AUTOMOBILE LIABILITY**. Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than $1,000,000.

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

9.6. **INSURANCE PROVISIONS**. Each policy of insurance required under this OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

9.7. **ADDITIONAL INSURED**. During the term of construction, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the worker's compensation policy, unless otherwise approved by Agency's legal counsel in writing.

9.8. **SINGLE PROJECT INSURANCE**. It is the intent of the parties that the Project have available all the specified insurance coverages. Developer shall not provide insurance coverages that are considered in aggregate with other Projects which Developer or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective contractor 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.

9.8.1. **CANCELLATION**. Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

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

9.8.3. **BLANKET COVERAGE**. Developer's obligation to carry insurance as required under this Section 10 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished

thereby, and all of the other requirements of this Section 10 with respect to such insurance shall otherwise be satisfied by such blanket policy.

DEFAULTS AND REMEDIES. Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, 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 OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party. After such return of property and funds and termination of the OPA, neither Agency nor Developer shall have any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary

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OTHER RIGHTS AND REMEDIES. Upon the occurrence of any default, 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 OPA as allowed under this OPA, at law or in equity

9.9. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable 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 OPA.

9.10. **ATTORNEY'S FEES AND RELATED.** If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "prevailing party" shall include without limitation, 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. In any event, the prevailing party shall mean the party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such party. Any award of damages following judicial remedy or arbitration as a result of the breach of this 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.

10. **ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, the Developer may, upon written Agency approval, 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. 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 OPA in making the Loan and that Agency's obligations under this OPA are inducements to Lender's making of the Loan. Agency acknowledges that a Lender will rely upon this OPA in making the Loan and that Agency's obligations under this OPA are inducements to Lender's making of the Loan.

10.1. **NOTICES.** If the Agency gives any notice of default to Developer under this OPA, 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 the 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 Owner Participation Agreement dated _____ between the Redevelopment Agency of the **City** of Sacramento and **Housing Authority of the City of Sacramento** ("OPA"). Lender requests, in accordance with Section 21.1 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

10.2. **ASSIGNMENTS AND TRANSFERS OF THE LOAN.** Agency shall not be bound to recognize any assignment of the 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 OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

10.3. **LENDER NOT OBLIGATED TO CONSTRUCT**. Notwithstanding any of the provisions of the OPA, Lender shall not be obligated by the provisions of the OPA to construct or complete the Project. Nothing in this Section or any other provision of the OPA 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 OPA.

10.4. **LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the OPA, 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 OPA. Any Lender who properly completes the Project as provided in the OPA shall be entitled, upon written request made to the Agency, to Certificate of Completion from the Agency in a manner provided in the OPA. 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 OPA 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.

10.5. **DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 21.5 and Lender has failed to cure such default as provided in Section 21.5 provided, however that 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 OPA) shall be tolled if and so long as:

10.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this OPA, 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.

10.5.2. 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, and 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

10.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

10.5.4. 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.

10.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, 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 Owner 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 OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this OPA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's right, title and interest under this OPA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Owner 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 OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this OPA.

10.7. **MODIFICATIONS**. No modification or amendment to the OPA 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.

10.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this OPA 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 OPA and provided such modifications, instruments, and agreements serve a material economic purpose.

10.9. **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 OPA is in full force and effect and a binding obligation of the parties; (ii) this OPA has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this OPA, 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 City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

10.10. **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 OPA 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 23 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Developer and the parties signing the OPA 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.

11. **DOCUMENT INTERPRETATION.** This OPA shall be interpreted in accordance with the following rules.

11.1. **INTEGRATED DOCUMENTS; SEVERABILITY.** This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA including the incorporated documents 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 OPA shall, to any extent, be held invalid or unenforceable, the remainder of this OPA shall remain in full force and effect, and, the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

11.2. **CONFLICTING PROVISIONS.** If conflicts are discovered in provisions of this OPA and such incorporated documents, this OPA shall control with regard to plan review and construction terms, the Funding Agreement shall control with regard to funding terms and the Regulatory Agreement shall control with regard to affordability restrictions. In any event, the conflicts shall be construed so as to meet the intent of this OPA.

11.3. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA 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.

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

11.5. **DRAFTER.** This OPA 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 OPA. All exhibits referred to in this OPA are attached to it and incorporated in it by this reference.

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

11.7. **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 OPA, 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.

11.8. **GOVERNING LAW.** This OPA shall be governed and construed in accordance with California law.

11.9. **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 OPA.

11.10. **OWNERSHIP OF DATA.** If this OPA 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.

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

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

12.1. Addresses for notices are as follows:

12.1.1. Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Raul Carrillo.

12.1.2. Developer:Housing Authority of the City of Sacramento, 630 I Street, Sacramento, California 95814; Attention: LaShelle Dozier.

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

12.2.1. 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;

12.2.2. 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;

12.2.3. 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

12.2.4. Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the

telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Developer or Agency may respectively designate by written notice to the other.

13. **DEFINITIONS.**

13.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

13.2. "Agency Funding" is the funding provided by the Agency under this OPA to Developer for the Project.

13.3. "Agency Funding Agreement" is the Conditional Grant Agreement, a copy of which is attached as **Exhibit 1) Agency Funding Agreement**.

13.4. "Certificate of Completion" is the certificate issued by the Agency certifying Developer's completion of the construction of the Project.

13.5. "CEQA" is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.

13.6. "City" is the City of Sacramento, a political subdivision of the State of California.

13.7. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

13.8. "Completion Date" is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is December 30, 2009.

13.9. "Construction Extension Fee" is the fee payable by Developer for each day by which the completion of construction is delayed beyond the date for completion of construction.

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

13.11. "Developer" is Housing Authority of the City of Sacramento, a public body, corporate and politic. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided

(i) that the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at 630 I Street, Sacramento, California 95814.

13.12. "Escrow" is the escrow for the transactions contemplated by this OPA.

13.13. "Escrow Instructions" means the escrow instructions for the close of the Escrow, a copy of which is attached as **Exhibit 2) Escrow Instructions**.

13.14. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 1, which shall 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 OPA. The Final Plans shall incorporate any related mitigation measures that may be required for compliance with CEQA. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this OPA. 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 OPA, including without limitation, the Preliminary Plans and the Scope of Development.

13.15. "Hazardous Substances" as used in this OPA 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 regulations and promulgations pursuant to said laws.

13.16. "Legal Description" is the legal description of the various parcels of real property affected by this OPA. The Legal Description is attached as **Exhibit 3) Legal Description**.

13.17. "Lender" shall include all holders of any lien or encumbrance as security for a loan on all or any part of the Property. 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, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this OPA.

13.18. "Loan" is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Project.

13.19. "OPA" is this Owner Participation Agreement between Agency and Developer, including all documents incorporated in this OPA by reference.

13.20. "Preliminary Plans" are the Project designs prepared by the Project architect. **Exhibit 4) Preliminary Plans** Not available at this time.

13.21. "Plans" shall mean either or both Preliminary Plans and Final Plans as the context may indicate.

13.22. "Project" is all of the work to be accomplished under this OPA.

13.23. "Project Area" is the Del Paso Heights Redevelopment Project Area, as defined the Redevelopment Plan.

13.24. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the City Council of the City on June 17, 1986, by City Ordinance Nos. 86-064, 86-065, 86-066 and 86-067, Fourth Series. A copy of the Redevelopment Plan as initially adopted was recorded on July 29, 1986, in the Official Records of the County of Sacramento, in Book 86-07-29, beginning at pages 1633, 1738, 1690 and 1787, respectively.

"Regulatory Agreement", a copy of which is attached as **Exhibit 5) Regulatory Agreement** is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions, that run with the Property as a condition of Agency Funding.

13.25. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as **Exhibit 6): Schedule of Performances**.

13.26. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as **Exhibit 7): Scope of Development**.

13.27. "Property" is that real property to be developed under this OPA, as more particularly described in the Legal Description. The Property includes all improvements contained within the Property.

13.28. "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 Agency and Developer shall be extended for the period of the enforced delay, as determined by Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Developer 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 OPA in Sacramento, California as of the date first written above.

DEVELOPER :
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

By: _____
Anne Moore
Executive Director

Approved as to form:

_____
Developer Counsel

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
Anne M. Moore, Executive Director

Approved as to form:

_____
Agency Counsel

v:\legal\work\community development\city neighborhoods\delpaso\housing authority improvements\owner participation agreement 041607.doc

NO FEE DOCUMENT:
Entitled to free recording
per Government Code 6103.
When recorded, return to:
SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY
630 "I" Street
Sacramento, CA 95814

REGULATORY AGREEMENT FOR RESIDENTIAL RENTAL PROPERTY CONTAINING COVENANTS AFFECTING REAL PROPERTY

PROJECT NAME:	Del Paso Heights Housing Authority Improvements Project
PROJECT ADDRESS:	637 Grand Avenue, 3812 Alder Street, 3820 Alder Street, 3832 Alder Street, 3945 Palmetto Street, and 3925 Dry Creek Road

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, in addition to Exhibits listed below includes Article II General Provisions, which is attached to and incorporated in this Regulatory Agreement by this reference.

2. **DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in the following table and in the body of the Regulatory Agreement as the context indicates.. (Terms being defined are indicated by quotation marks.)

TERM	DEFINITION		
"Effective Date"	This Regulatory Agreement shall be effective as of the following date:		
"Agency"	Redevelopment Agency of the City of Sacramento		
	The Agency is a public body, corporate and politic.		
"Owner"	Housing Authority of the City of Sacramento		
"Agency Address"	Agency's business address is 630 I Street, Sacramento, California 95814		
"Owner Address"	Owner's business address is as follows:	630 I Street, Sacramento, California 95814	
"Jurisdiction"	City of Sacramento		
"Property"	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as **Exhibit 1 – Legal Description of the Property** and incorporated in this Regulatory Agreement by this reference		
"Funding Agreement"	The Funding Agreement between Agency and Owner as follows:	Titled:	Conditional Grant 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 amount of the Agency Funding, as follows:		$752,000.00

"Proportionate Agency Assistance"	Thee percentage that the Agency Funding bears to the total of the fair market value of the Property before rehabilitation and the total costs of rehabilitation.	_____%
"Funding Requirements"	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in **Exhibit 2 – Funding Requirements.**	
"Approved Use"	The only permitted use of the Property, which is as a residential property available for rent by the general public and containing not less than the following number of units:	6

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

Agency Funding Source:	Affordability Level:	Number of Units:	Restricted Units:	Initial Rent per Unit per Month:
Project Area Tax Exempt Bond Funds	Very Low Income	-5- -1-	Four Bedroom Five Bedroom	$500.00 $500.00

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

Approved Management Company
Developer

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

Provision	Term
None	

5. REPRESENTATIONS. Agency has provided Agency Funding to Owner to develop the Property, subject to the terms of the Funding Agreement. This Regulatory Agreement is a substantial part of the consideration to Agency for making the Agency Funding. [For purposes of this Article II, "Property" shall mean Property or Restricted Unit as the context may indicate.] The funds used by Agency under the Funding Agreement are funds from public funding sources administered by

Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made the Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. Therefore, Agency has made the Agency Funding conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

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

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

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

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

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

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

f. Owner shall not cause and shall not permit discrimination on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease, or rental or in the use or occupancy of the Property. 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.

g. 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.

7. **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.

8. **SUPERSEDING EXISTING COVENANTS, CONDITIONS, & RESTRICTIONS**. This Regulatory Agreement shall supersede any covenants, conditions and restrictions that have been previously recorded by, or on behalf of, the Agency against the Property.

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

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

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

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

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

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

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

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

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

18. **CONTRADICTORY AGREEMENTS.** Owner warrants that he has not, and will not, execute any other agreement with provisions contradictory of or in opposition to, the provisions of this

Regulatory Agreement, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict with this Regulatory Agreement.

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

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

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

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

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

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

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

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

OWNER : HOUSING AUTHORITY OF THE CITY OF SACRAMENTO
By:

_____
Anne Moore
Executive Director

Date:_____

Approved as to form:_____
Developer Counsel

AGENCY: THE SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

By:

_____
Anne M. Moore, Executive Director

Date: _____

Approved as to form:_____
Agency Counsel

TAX INCREMENT FUNDING REQUIREMENTS
FOR HOUSING ASSISTED WITH TI HOUSING FUNDS

These "TI Funding Requirements" are incorporated in the "Regulatory Agreement" to which they are attached. In turn, the Regulatory Agreement is incorporated in the Funding Agreement referenced in the Regulatory Agreement. Pursuant to the Funding Agreement, the Regulatory Agreement (with these TI Funding Requirements) is recorded against the properties assisted with the "Agency Funding" provided under the Funding Agreement. [The capitalized terms used in these TI Funding Requirements shall have the meanings stated below. Terms being defined are indicated by quotation marks. Capitalized terms that are not defined in these TI Funding Requirements are defined in the Regulatory Agreement.]

1. **RECITALS.** Agency is a redevelopment agency organized and operating under the California Community Redevelopment Law (commencing at Health & Safety Code Section 33000).

a. Agency has provided the "Agency Funding" from proceeds of the "Housing Fund" (as defined in Health & Safety Code Section 33334.3) for the "Project Area" named in the Regulatory Agreement and Funding Agreement. The Agency Funding is subject to the provisions of the redevelopment plan for the Project Area and the California Community Redevelopment Law.

b. Agency has approved the Agency Funding on condition that the "Property" named in the Funding Agreement is rehabilitated or developed as the "Project," as residential property for sale to owner-occupants, and that certain Project housing units are regulated in accordance with Health & Safety Code Section 33487. Such regulation is accomplished by recordation of the Regulatory Agreement with these TI Funding Requirements as covenants running with the land, in accordance with Health & Safety Code Section 33334.3(e). The purpose of such regulation is to make the regulated units affordable to persons and households that qualify as moderate-income, low-income or very low-income, in accordance with Health & Safety Code Section 33334.2.

c. The development of the Project benefits and serves the Project Area, and the Project will provide housing for persons who work within the Project Area.

2. TERM. These covenants shall burden and regulate the Restricted Unit for forty-five (45) years.

3. **AFFORDABILITY REQUIREMENTS.** In consideration of Agency's use of the Agency Funding to subsidize Owner's purchase price for the Restricted Unit ("Owner's Purchase Price"), the sale and rental of the Restricted Unit are restricted for the term of the Regulatory Agreement.

a. **SALE.** If Owner elects to sell the Restricted Unit ("Resale"), Owner shall assure that the Restricted Units shall be sold for a price ("Resale Price") or below the following "Affordable Price":

1) Moderate-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty-five percent (35%) of one hundred and ten percent (110%) the Sacramento

Metropolitan Statistical Area median income ("Median Income"), as determined annually by the federal Department of Housing and Urban Development, as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

2) Low-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty percent (30%) of seventy percent (70%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

3) Very Low-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty percent (30%) of fifty percent (50%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

b. **RENTAL.** If Owner elects to rent a Restricted Unit, Owner shall rent the unit only at an "Affordable Rent" as determined in accordance with Health and Safety Code Section 50052.5. Owner shall be responsible to determine the Affordable Rent for the Restricted Units. Within ten (10) days of Owner request, Agency shall provide all information necessary for Owner to compute such Affordable Rent and will assist Owner in determining such amounts.

c. **RECAPTURE ON UNQUALIFIED SALE.** If Owner sells the Property for an amount in excess of that permitted under these TI Funding Requirements or to a purchaser whose household income exceeds the allowable amounts, Owner shall pay Agency an amount that is the same proportionate share of the net sales proceeds as the Proportionate Agency Assistance, as further reduced by a percentage that the is one forty-fifth (1/45) for each full year that the Regulatory Agreement has been in place.

By way of example:

Net Profits X Proportionate Agency Assistance X (Number of Years of Regulatory Agreement/45) = Agency share

CONDITIONAL GRANT AGREEMENT

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, ("Grantor"), whose address is 630 I street, Sacramento, California grants to the Housing Authority of the City of Sacramento, a public body, corporate and politic, ("Grantee"), with its principal office at 630 I Street, Sacramento, California 95814, the principal amount ("Conditional Grant") of SEVEN HUNDRED FIFTY-TWO THOUSAND DOLLARS ($752,000), or so much as may be actually advanced under this agreement ("Grant Agreement") and the Owner Participation Agreement between Grantor and Grantee, dated _____, 2007. This Grant is subject to the terms and conditions of the OPA and to the terms and conditions stated below.

1. **GRANT PURPOSE AND USE OF FUNDS.** The Agency is making this Conditional Grant for the public benefits derived from the use of the proceeds in the following project ("Project"): Dek Paso Heights Housing Authority Improvements Project, a project to improve and maintain six very low-income, large family residential units owned by the Grantee in the Project Area. The proceeds of the Conditional Grant shall be used solely for the Project.

2. **REMOVAL OF CONDITION**. The Conditional Grant shall become unconditional on completion of the Project work, provided that the work is completed not later than the "Completion Date" stated in the OPA; provided that all conditions have then been met and Grantee is not then in default of the OPA or this Grant Agreement. Grantee's obligations regarding repayment of the amount of the Conditional Grant shall cease when the Conditional Grant becomes unconditional. Grantee shall repay the grant if Grantee is in default of any of the following covenants and conditions and has not immediately commenced and diligently cured such default:

3. **DISBURSEMENT**. Agency shall disburse the Conditional Grant proceeds if and when all of the following conditions are met:

a. The proceeds of the Conditional Grant are used solely for the following: Rehabilitation of the Project Units as more particularly described in the OPA.
b. Grantee is not and shall not be in default of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.
c. Grantee is not in default of any provision of this Conditional Grant, subject to the rights of Grantee to cure such default.

4. **PREVAILING WAGES.** Unless stated otherwise above, Agency advises Grantee that the Project is subject to the payment of prevailing wages under California law. Grantee shall inform the General Contractor and shall require the General Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Agency's determination of the applicability of California prevailing wage requirements. Grantee 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. Grantee and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Grantee 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 Grantee or General Contractor or both of them.

5. **DEFAULT OF OPA**. Grantee shall not default in any material provision of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.

6. **NO SALE OR EXCESS REFINANCING**. Grantee shall not, prior to the stated Completion Date and without Agency's written consent, (a) sell or transfer all or any portion of the Site or (b) refinance the Site for an amount greater than One Hundred Percent (100%) of the independently appraised, fair market value of the Site reduced by the amount of this Conditional Grant remaining unpaid. Agency shall not withhold consent to sell to an otherwise financially qualified buyer who assumes Grantees obligations under this Conditional Grant accepts the terms of this Conditional Grant.

7. **LOW INCOME TENANTS AND HOUSING CHOICE VOUCHER TENANTS** Grantee shall not permit discrimination against tenants because of their status as low-income tenants or as tenants receiving "Housing Choice Voucher" rental assistance or any other assistance from the U.S. Department of Housing and Urban Development or from any other federal, state or local program of housing or income assistance.

8. **MAINTAIN LOANS.** Grantee shall comply with the provisions of all loans secured by the Site and shall promptly and timely cure any default in said loans.

9. **ADEQUATE RESERVES.** Grantee shall maintain, or cause to be maintained, adequate capital, operational and regular and deferred maintenance reserves for the Project in accordance with ordinary and usual business practices of a prudent property owner. Funds in said reserve accounts shall be used solely for the designated purposes unless such use has first been approved in writing by Agency.

10. **NO NUISANCE.** Grantee shall permit no activity on the Site that may be construed to be a nuisance to any tenant on the Site, to any adjacent tenants or property owners or to the general public. In the event that such a nuisance is occurring on the Site, Grantee shall take immediate action to stop such nuisance and to prevent future occurrences of such nuisance.

11. **OCCUPANCY.** Grantee shall not permit the occupancy of any residential unit on the Site to exceed the occupancy limits established by the U.S. Department of Housing and Urban Development for subsidized housing units.

12. **PROJECT MAINTENANCE** Grantee shall assure that the following maintenance and use provisions for the Site shall be enforced:

a. **BUILDING UPKEEP**. Building Upkeep Grantee shall keep the exterior appearance of all buildings and structures in a clean and attractive condition. Grantee shall perform refinishing of surfaces immediately when observed to be needed due to damage or deterioration.

b. **GROUNDS UPKEEP**. Grantee shall maintain all grounds and landscaped areas within the Site and those adjacent to the Site, which the Grantee may control or otherwise maintain, in a condition consistent with first-quality landscape care. Grantee shall assure that shrubs and trees are to be properly and consistently pruned and that all landscaped areas are kept free of weeds, undesirable plants and trash.

c. **TRASH STORAGE**. Grantee shall assure that all trash, including lawn, shrub and tree cuttings are placed in a screened enclosure when stored for pickup and that collected trash of any kind is not allowed to stand outside of an enclosure for more than eight (8) hours.

d. **STORAGE AND REPAIRS**. Grantee shall assure that .4 Storage and Repairsno painting, repairing or storage of personal property is permitted in any open parking area, balcony area, or common area or any other area visible to the public.

13. **INDEMNITY**. Grantee indemnifies, and will hold harmless and defend, the Agency, its officers, directors, commissioners, employees and agents against all claims, demands, penalties, judgments, awards, orders, expenses and liabilities related to the Property, Grantee's activities on the Property or arising from Grantees rights and obligations under this Grant Agreement. Such liabilities include without limitation, strict liability in tort or liability resulting from a finding that Agency or Grantee are engaged in a joint venture or partnership. Such expenses include without limitation, court costs, arbitration or mediation fees, witness fees, investigator fees and attorney's fees, whether or not litigation is commenced. The indemnity provisions of this Section 13 shall survive the termination of this Grant Agreement, whatever the reason for such termination.

14. **ATTORNEY'S FEES AND COSTS**. If a party institutes any action (including without limitation, arbitration, mediation, motions, hearings, suits and appeals) to enforce a provision of this Grant Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its fees, costs and expenses in connection with such action, including without limitation, the prevailing party's expert witness fees, investigator fees and attorney's fees. Payment of such fees shall include payment for such services whether provided by employee's of the prevailing party or independent providers. Prevailing party shall mean the party who obtains a more favorable result than that offered by it in settlement of the issues, or in the absence of such settlement offer, the party obtaining a favorable result.

15. **NOT ASSIGNABLE**. Grantee shall have no right to, and shall not, assign this Conditional Grant, whether directly, by operation of law, or otherwise.

16. **BOOKS AND RECORDS**. Grantee shall maintain such books and records related to the operation of the Project as are considered reasonable and necessary under generally accepted accounting principals and shall permit Agency to view said books and records at any time during regular business hours

17. **INTERPRETATION**. This Grant Agreement incorporates the OPA in this document by this reference. This Grant Agreement 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. As the context may indicate, the singular and plural forms each include the other and gender references include all other genders. If any provision of this Grant Agreement is held invalid for any reason, the other provisions shall be given full force and effect to the extent that the purpose and intent of this Conditional Grant can then be met.

18. **WAIVERS AND AMENDMENTS**. All waivers of the provisions of this Grant Agreement must be in writing and duly executed by the waiving party. All amendments to this Grant Agreement must be in writing and duly executed by the Agency and the Developer.

19. **CUMULATIVE RIGHTS AND REMEDIES**. No right, power or remedy given to Agency by the terms of this Grant Agreement or the OPA is intended to be exclusive of any other right , power or remedy, and each such right , power or remedy will be cumulative and in addition to every other right , power or remedy given to the Agency by the terms of any instrument, by any statute or otherwise.

20. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES**. No member, official or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any obligations under the terms of this Grant Agreement.

21. **NOTICES AND DEMANDS**. A notice, demand or other communication under this Grant Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail postage or prepaid, return receipt requested, or delivered personally or by national courier service, delivery charges prepaid, to the address set out above, or at such other address for the receiving party as has been duly noticed under this Section 21.

EXECUTED AT SACRAMENTO, CALIFORNIA, as of the date first written above.

GRANTEE: HOUSING AUTHORITY OF THE CITY OF SACRAMENTO	Grantor: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
By: Anne Moore	By: Anne Moore Executive Director
	Agency Counsel approval as to form: