

## **RESOLUTION NO. 2007-031**

Adopted by the Redevelopment Agency  
of the City Of Sacramento

June 12, 2007

### **APPROVAL OF DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE NEWS AND REVIEW FOR CONVEYANCE OF REAL PROPERTY AND REHABILITATION OF A COMMERCIAL STRUCTURE AT 1124 AND 1132 DEL PASO BOULEVARD**

#### **BACKGROUND**

- A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the North Sacramento Redevelopment Plan ("Redevelopment Plan") and Implementation Plan (2005-2009 ) for the North Sacramento Project Area ("Project Area").
- B. Agency owns certain real property generally described as being located at 1124 and 1132 Del Paso Boulevard (APN 275 0165 002, 275 0165 003, 275 0165 016, 275 0165 017 and 275 0165 0018) in the Project Area ("Property").
- C. Before the sale of the property, the Agency has additional due diligence in order to complete hazardous mitigation, stabilization, building code fulfillment, and security and maintenance of the existing building.
- D. The Chico Community Publishing, Inc., or an affiliate organization to be formed and named, subject to approval of Agency Counsel, ("Developer") desires to enter into a Disposition and Development Agreement ("DDA") with the Agency to convey the property to Developer for rehabilitation into useable office space and on-site parking; as more specifically described in the DDA, and which would require the improvements of the Property, as further described in the DDA (collectively, "Project"), a copy of which is on file with the City Clerk.
- E. In accordance with the California Environmental Quality Act ("CEQA") and its implementing regulations, the sale of the Property and the Project are exempt under CEQA Guidelines Section 15301 as an Existing Facilities as described in the accompanying staff report.
- F. A report under Health and Safety Code Section 33433 ("Section 33343 Report") has been prepared, filed with the Agency Clerk, and made available for public review pursuant to Section 33433.

- G. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.
- H. The public and private portions of the Project are architecturally and functionally interconnected and interrelated. To be consistent and compatible with the timely redevelopment of the Property, the demolition of obsolete and deteriorating tenant improvements shall be removed and upgraded by the Developer. The interrelationship of the public and private work of the Project would create serious difficulties in the coordination and scheduling of work between multiple contractors, in the storage of materials and equipment and in the location of construction operations facilities

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

- Section 1. The Executive Director is directed to prepare a Notice of Exemption based on the findings presented in accordance with CEQA Guidelines Section 15301.
- Section 2. The sale of the Property and rehabilitation of the Project pursuant to the DDA is consistent with the goals and objectives of the Redevelopment Plan to remove blight and strengthen the economic base of the Project Area. The sale of the Property and construction of the Project pursuant to the DDA is consistent with the Implementation Plan. The Project will assist in the elimination of blight as stated in the 33433 Report. The DDA shall be deemed an implementing document approved in furtherance of the Redevelopment Plan and Implementation Plan for the Project Area, and all applicable land use plan, studies, and strategies.
- Section 3. The Report as required under Health and Safety Code Section 33433 is hereby approved.
- Section 4. To amend the Agency budget to use \$350,000 from Development Assistance Program to secure and stabilize the building, which will be reimbursed with proceeds from and after the sale of the property.
- Section 5. The consideration for the Agency's conveyance of the Property to Developer is the Developer obligations under the DDA, and the fair reuse value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed, is \$1,550,000.
- Section 6. To amend the Agency budget to loan \$955,000 to the News and Review at 6% interest over 25 years from program income received through the proceeds of the sale of the property.

Section 7. The Disposition and Development Agreement is approved and the Executive Director is authorized to execute the DDA and related conveyance documents including without limitation the Grant Deed, Escrow Instructions as described in the DDA, substantially in the form on file with the Agency Clerk, and to perform other actions as necessary to implement the terms of the DDA.

Section 8: The Agency finds and determines that the public improvements are so interwoven with the developer's improvements that they cannot practically be done by separate contract and competitive bidding would result in greater public costs.

**Table of Contents:**

Exhibit A – Disposition and Development Agreement and related documents

Adopted by the City of Sacramento Redevelopment Agency on June 12, 2007 by the following vote:

Ayes: Members Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters and Chair Fargo.

Noes: None.

Abstain: None.

Absent: None.

  
Chair Heather Fargo

Attest:

  
Shirley Concolino, Secretary

Exhibit A

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

**Disposition and Development Agreement  
1124 and 1132 Del Paso Boulevard, Sacramento, California 95815  
North Sacramento Redevelopment Project Area**

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

RED VOLCANO PRODUCTIONS, LLC,

\_\_2007

## DISPOSITION AND DEVELOPMENT AGREEMENT

1124 and 1132 Del Paso Boulevard, Sacramento, California 95815  
North Sacramento

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and RED VOLCANO PRODUCTIONS, LLC, also called Agency and Developer, respectively, enter into this Disposition and Development Agreement, also called DDA, as of \_\_\_\_\_, 2007. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 18.

### RECITALS

- A. Agency is the owner of real property located at 1124 and 1132 Del Paso Boulevard, Sacramento, California 95815 in the City of Sacramento, State of California, more particularly described in the Property Description.
- B. The Property is located in the North Sacramento Redevelopment Project Area and is subject to the redevelopment plan for the Project Area. Further, Developer acknowledges that Developer is purchasing the Property from Agency which is a Redevelopment Agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*) and that this document is governed by the Community Redevelopment Law. This DDA is consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it meets the following implementation plan goals: This project furthers the Redevelopment Plan and the Implementation Plan adopted for the North Sacramento Redevelopment Project Area in that it will remediate blight by creating jobs in the neighborhood and forging public and private sector partnerships that encourage new private investment, and, eliminating barriers to redevelopment by preventing the spread of blight and deterioration
- C. The primary purpose of this DDA is the elimination of the following blighting influences: low values and impaired investment, high vacancy rates and vacant parcels, deficient buildings and improper parcelization. In order to accomplish such purpose, the DDA provides that the Agency will transfer the Agency's interests in the Property to Developer upon the express condition that Developer will redevelop the Property for the uses described in this DDA. This DDA is intended to assure that the Developer will redevelop the Property and that the Developer is not merely speculating in land.
- D. Developer desires to purchase and develop the Property, and Agency desires to sell the Property for development, on the terms and conditions in this DDA.
- E. It is necessary to suspend public bidding, under Public Contracts Code Section 20688.2, for the public portions of the Project, for the following reasons:
- 1) The public and private portions of the Project are architecturally and functionally interconnected and interrelated in the following respects: the demolition of existing, obsolete and deteriorating tenant improvements along with abatement of hazardous materials on the public

property shall be done by the Developer so as to be consistent and compatible with the timely redevelopment of the Property.

2) The interrelationship of the public and private work of the Project would create serious difficulties in the coordination and scheduling of work between multiple contractors, in the storage of materials and equipment and in the location of construction operations facilities.

3) Upon completion, the Project will be operated primarily as a privately-owned facility for private purposes.

4) Agency funding of these improvements and deferred maintenance is necessary for Developer to obtain the financing for the remainder of the Project.

#### **AGREEMENT**

**NOW THEREFORE**, the parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PERFORMANCE.** The parties shall perform their obligations at the times and in the manner specified in this DDA. The time for performance is stated in this DDA and in the Schedule of Performances; provided, however that such times shall be extended for periods of Unavoidable Delay.

2. **PROJECT DESCRIPTION.** Agency is entering into this DDA and conveying the Property to Developer solely for the purposes of developing the Project. The Project shall be the following: significant rehabilitation of interior space and façade improvements to the building to reuse it to suit the needs of the News and Review and its operation of its weekly newspaper. The project includes the design and construction renovated interior walls, electrical, plumbing, and mechanical systems. It also includes a new exterior façade, landscaping and improvements to the onsite parking lot

3. **IRREVOCABLE OFFER OF DEDICATION.** Developer agrees to provide an irrevocable offer of dedication for up to and including two feet of property from the existing property line along Del Paso Boulevard to accommodate the installation of public streetscape improvements. The actual amount of land dedication will be determined when and if streetscape improvements are implemented. A survey will be conducted at that time to determine the actual amount of land required.

4. **PURCHASE AND SALE.** Agency agrees to sell and Developer agrees to purchase the Property subject to the terms and conditions in this DDA. This DDA, if executed by Developer only, constitutes Developer's offer to purchase the Property on the terms and conditions contained in this DDA and subject to the covenants, conditions and restrictions contained in the Regulatory Agreement to be executed by the Agency and Developer and recorded on the Property upon conveyance of the Property to Developer.

5. **PURCHASE PRICE.** The Purchase Price for the Property shall be One Million Five Hundred Fifty Thousand Dollars and No Cents (\$1,550,000.00) and shall be payable as follows: The unpaid portion of the Purchase Price shall be payable prior to the conveyance of the Property to Developer as a condition precedent to its conveyance.

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

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

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

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

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

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

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

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

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

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

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

5.4. **GENERAL COVENANTS.** The parties make the following covenants regarding the Property and the Project:

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

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

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

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

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

e) Prior to the Developer's occupancy of the property, the Agency will complete or have Developer complete subject to a Reimbursement Agreement, improvements to the building including but not limited to asbestos abatement, electrical system upgrade, a new roof, a heating, ventilation and air conditioning system totaling approximately \$350,000.

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

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

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

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

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

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

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

Developer shall comply with all provisions of the Regulatory Agreement, and cause any subsequent purchaser of the property to so comply. Among other requirements and restrictions found in the Regulatory Agreement, the property will be used as offices for a minimum of five years from the date of transfer.

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

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

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

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

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

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

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

**7. LOT LINE ADJUSTMENT/PARCEL MERGER.** Agency shall have the five separate parcels comprising the Property merged into a single parcel prior to the Close of Escrow. All other entitlements are to be obtained and are the responsibility of the Developer.

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

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

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

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

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

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

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

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

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

**8.7. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLANS.** If the Developer desires to make any substantial changes in the Final Plans, Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the Final Plans under this section. 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.

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

- a) Material changes in the layout, elevation design, functional utility or square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Any change that reduces the effectiveness of any mitigation measure required for CEQA approval of the Project.
- d) Material changes in site development items for the Property that are specified in the Final Plans.
- e) Material changes in the type, location, visibility, accessibility, size, design or artist for any artwork shown in the Final Plans.

f) Material changes in quality of project or landscaping materials.

g) Any change in public amenities specified in the Final Plans.

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

i) Any change that would preclude or materially reduce the ability to use the Project as intended by this DDA.

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

**9. CONTINGENCY PERIOD.** The Contingency Period for this DDA shall begin at mutual execution of DDA. The Contingency Period shall terminate one hundred eighty (180) calendar days from the mutual execution of this DDA. During this Contingency Period, Developer shall undertake at Developer's expense an inspection of the Property; which may include a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, and Hazardous Substances, if any, affecting the Property. Developer shall also conduct an investigation of the financial cost of remodeling the Property to Developers proposed use. The contingency Period shall not be tolled or extended for any reason, except by written extension signed by the Agency.

Within ten (10) days following the full execution of this DDA by both parties, Agency shall make available to Developer copies of all available documents pertaining to the physical condition of the Property that are owned and possessed by Agency.

If Developer disapproves of the results of the inspection and review, or finds that the Property cannot be remodeled for the costs contemplated by Developer, Developer may elect, prior to the last day of the Contingency Period, to terminate this DDA by giving Agency written notification prior to the last day of the Contingency Period, and the Deposit together with all interest shall be returned to Developer. If Developer fails to properly notify Agency of the intent to terminate this DDA, Developer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this DDA pursuant to this provision.

**10. DEVELOPMENT PROVISIONS.** As stated in detail in this Section 9, Developer shall construct and manage the Project according to the requirements established in this DDA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this DDA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law (commencing at Health and Safety Code Section 33000) shall control.

**10.1. NOTICE TO PROCEED.** Developer shall not enter the Property or begin work on the Project until the Agency has issued to Developer a written notice to proceed with the

work. Agency will issue a notice to proceed after Agency approval of the Final Plans, City's issuance of a building permit for substantially more than the Project foundations, Developer's compliance with all governmental requirements for start of construction, Developer's provision of required policies of insurance, and Developer's provision of proof of construction financing in an amount adequate to begin the Project work.

**10.2. CONSTRUCTION CONTRACTS.** Developer shall submit to Agency the construction contract or contracts for the Project. Agency's review of the construction contract shall be only for determining its compliance with this DDA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer's cost, the construction of the Project in accordance with this DDA. If the property is revested in the Agency pursuant to Section 16.1. Developer shall assign all rights under the construction contracts to Agency.

**10.3. GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this DDA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within 180 days of the signing of this DDA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the City's Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable but in no case longer than 180 days from this Agreement.. Conditions to the project imposed by the City shall be considered obligations of the Developer under this DDA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission Agency.

**10.4. ART IN PUBLIC PLACES.** To the extent that this Project is substantially a rehabilitation project, the Project is exempt from the Art in Public Places Program.

**10.5. SUBSTANTIAL CHANGES.** Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, as described in Section 8.7, without Agency approval of such changes as provided in Section 8.7.

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

**10.7. PREVAILING WAGES.** The transaction, as contemplated by this DDA, is a market rate transaction and does not by itself require prevailing wages. Developer and Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them.

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

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

**10.9.1. 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.

**10.9.2. 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.

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

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

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

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

**10.13. 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 DDA, the Agency will furnish the Developer with the Certificate of Completion certifying such completion. The Agency's issuance of the Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDA with respect to the obligations of the Developer to construct the Project as of the Completion Date specified in the , subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute the Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

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

10.13.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the DDA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

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

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

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

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

**10.18. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Agency has obtained a Phase I and Phase II environment assessment. To the best of Agency's actual knowledge, Agency has disclosed to Developer any and all information which Agency has regarding the environmental condition with respect to hazardous substances of the Property. Attached hereto as Exhibit \_\_\_ is a list of environmental reports concerning the Property that Agency has provided to Developer. Based upon the information in the reports identified in Exhibit \_\_ it is Agency's belief that there are currently no hazardous substances on, or emanating from, the Property. Therefore, Agency shall indemnify, protect and defend Developer, its officers, directors, employees, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to (a) the removal, discharge, or release of Hazardous Substances caused by Agency, or its officers, employees, agents or contractors or (b) the existence of Hazardous Substances on the Property at any time prior to transfer of possession of the Property pursuant to this DDA. 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 pursuant to this DDA, 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

**10.19. DEVELOPER ACCESS TO PROPERTY.** Prior to the conveyance of the Property by Agency to Developer, the Agency shall permit representatives of Developer to have access, without charge, to the Property, at all reasonable times for the purpose of obtaining data and making various tests necessary to carry out Developer's obligations under the DDA; provided, however, that Developer shall not enter the Property except (a) after execution by Developer and Agency of Agency's standard "Permit for Entry" and (b) after Developer has obtained insurance coverage then required by Agency. No work shall be performed on

the Property until a "Notice of Nonresponsibility" has been recorded and posted in accordance with applicable laws, assuring that Agency interest in the Property shall not be subject to mechanic's liens related to such work. Developer shall not commence any work on the Property without Agency's written approval of the work to be done, and in any event, Developer shall not commence any work which might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

**10.20. RELOCATION.** Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Developer shall comply fully with all relocation laws that are the obligation of Agency or are otherwise applicable to the Project. Agency and Developer, however, agree and affirm that there are no occupants on the Property eligible for relocation.

**11. DEVELOPMENT FINANCING.** Except as specifically provided in this DDA, Developer shall be responsible for and shall pay all costs of developing the Project in accordance with this DDA. As a condition precedent to Agency's conveyance of the site to Developer, 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 DDA 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 DDA, no party shall have the right of reimbursement for any funds expended by them for the Project, whether prior to execution of this DDA or otherwise. Agency is not obligated by this DDA or otherwise to make any contribution beyond its obligations stated in this DDA.

**11.1. EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds, as required in the preceding section, must include only the following: (a) Developer equity (as provided in Section 11.3), (b) firm and binding loan commitments (as provided in Section 11.2) from each Lender, in form and content acceptable to Agency, and (c) Agency contribution, if any, as specified in this DDA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, request for clarification, further evidence or audited financial reports.

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

uses of 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 DDA, that require amendment of this DDA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

**11.3. EVIDENCE OF DEVELOPER EQUITY.** Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) by any one of the following actions: (a) deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely & proper completion; or (c) Developer's provision of financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) 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.

**12. GENERAL REPRESENTATIONS AND WARRANTIES.** The parties make the following representation and warranties regarding the Property and the Project.

**12.1. AGENCY'S REPRESENTATIONS AND WARRANTIES.** Agency represents and warrants to Developer that as of the date of this DDA and as of the Close of Escrow, to the knowledge of Agency's Legal Department, its Executive Director, and its staff with responsibility for the Property:

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

12.1.1. Agency has provided to Developer all information, records, and studies in Agency's possession concerning Hazardous Substances on the Property.

There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.

12.1.2. Any information that Agency has delivered to Developer, either directly or through Agency's agents, is accurate to the best of Agency's knowledge and Agency has disclosed all material facts concerning the operation, development, or condition of the Property that are known to the Agency. Among others, Agency has provided all of the documents regarding Hazardous Substances on and adjacent to the Property.

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

12.1.4. The persons executing this DDA on Agency's behalf are authorized to do so, and on execution of this DDA, this DDA shall be valid and enforceable against Agency in accordance with its terms.

**12.2. DEVELOPER'S REPRESENTATIONS AND WARRANTIES.** Developer represents and warrants to Agency that as of the date of this DDA and as of the Close of Escrow:

12.2.1. Developer has reviewed and accepts the Hazardous Substances documents provided by Agency. If Developer desires further information regarding Hazardous Substances on the Property, including without limitation, a formal "Phase I Investigation", Developer agrees that it will obtain them at its own expense.

12.2.2. Developer has reviewed the condition of the Property, including without limitation, physical condition of the Property and issues regarding land use and development of the Property, and Developer is satisfied that the Property is suitable in all respects for its intended development and uses.

12.2.3. There is no pending or threatened litigation, administrative proceeding or other legal or governmental action with respect to Developer which would affect its ability to fulfill its obligations under this DDA and purchase the Property.

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

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

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

12.2.7. Developer acknowledges that it is purchasing the property in an "as-is" condition.

12.2.8. The persons executing this DDA on Developer's behalf are authorized to do so, and on execution of this DDA, this DDA shall be valid and enforceable against Developer in accordance with its terms.

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

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

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

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 Developer.

This indemnification provision shall survive the termination of this Agreement.

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

motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this DDA.

**15.1. LIABILITY INSURANCE POLICY LIMITS.** Developer shall obtain all insurance under this Section 15 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Agency, and for limits of liability which shall not be less than the following:

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

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

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

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

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

**15.6.1. ADDITIONAL INSURED.** Developer shall obtain a policy in ISO form CG 20 33 or better, naming Agency as additional insured under the Commercial General Liability Policy.

**15.6.2. 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 or subcontractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Developer shall immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

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

**15.6.4. 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.

**15.6.5. FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this DDA, the Agency shall have the right 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.

**15.6.6. 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 15 with respect to such insurance shall otherwise be satisfied by such blanket policy

**16. DEFAULTS AND REMEDIES.** Except as otherwise provided in the DDA, if either party defaults in its obligations under this DDA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party, provided that the defaulting party shall promptly begin and diligently pursue such cure to completion. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to

any extension of time permitted by this DDA, a failure or delay by a party to perform any term or provision of this DDA constitutes a default of this DDA. As a condition precedent to termination of the DDA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party, other than funds properly retained as liquidated damages. After such return of property and funds and termination of the DDA, neither Agency nor Developer shall have any further rights against or liability to the other under the DDA except as expressly set forth in this DDA to the contrary.

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

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

**16.1.2.AGENCY REIMBURSEMENT.** Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Property (but less any net income derived by Agency from the Property after such re-vesting); all taxes, assessments, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have

been payable if the Property were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Property at the time of such reversioning or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to completion of the Project; and any amounts otherwise owing the Agency by the Developer.

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

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

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

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

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

**17. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, if Developer has obtained Agency's prior written approval, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this DDA, the Developer may obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. Each lender shall be a federal or state chartered

financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this DDA in making the Loan and that Agency's obligations under this DDA are inducements to Lender's making of the Loan.

**17.1. NOTICES.** If the Agency gives any notice of default to Developer under this DDA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in such request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Disposition and Development Agreement dated \_\_\_\_\_ between the Redevelopment Agency of the City of Sacramento and **Red Volcano Productions, LLC**, ("DDA"). Lender requests, in accordance with the DDA, that if any default notice shall be given to Developer under the DDA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

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

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

**17.4. LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the DDA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the DDA. Any Lender who properly completes the Project as provided in the DDA shall be entitled, upon written request

made to the Agency, to a Certificate of Completion from the Agency in a manner provided in the DDA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Developer's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the DDA by the Developer shall not apply to the part of the Property to which such Certification relates. Nothing in this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

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

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

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

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

appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the right to assign or transfer Developer's right, title and interest under this DDA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this DDA.

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

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

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

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

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

**18.1. ENTIRE DDA; SEVERABILITY.** This DDA integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this DDA shall,

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

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

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

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

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

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

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

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

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

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

18.10.1. Addresses for notices are as follows:

a) Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Molly Oser.

b) Developer: Red Volcano Productions, LLC, 1015 20th Street Sacramento, California 95814, Attention: Jeff von Kaenel and Deborah Redmond.

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

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

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

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

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

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

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

19.1. "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 DDA 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.

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

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

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

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

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

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

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

19.9. "Developer" is Red Volcano Productions, LLC,, corporation. The principal office of the Developer is located at 1015 20th Street Sacramento, California 95814. The principals of Developer Jeff von Kaenel.

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

19.11. "Escrow Instructions" are the escrow instructions for the close of the Escrow for this DDA, a copy of which are attached as **Exhibit 6: Escrow Instructions**.

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

"Funding Agreement" is the document that states the terms of Agency Funding, a copy of which is attached as **Exhibit 7: Funding Agreement**.

19.13. "Grant Deed" is the grant deed for the transfer of the Property to Developer under this DDA. The Grant Deed contains covenants that run with the land, easements and a reverter provision. A copy of the Grant Deed is attached as **Exhibit 2: Grant Deed**.

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

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

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

19.16.“Project Area” is the North Sacramento Area, as defined in the Redevelopment Plan.

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

19.17.“Property Description” is the legal description of the various parcels of real property affected by this DDA. The Property Description is attached as **Exhibit 1: Property Description**.

19.18.“Purchase Price” is the purchase price for the Property as set out in Section 4.

19.19.“Redevelopment Plan” is the redevelopment plan for the Project Area (as it may be amended from time to time)

19.20.“Regulatory Agreement” a copy of which is attached as **Exhibit 3: Regulatory Agreement**, is the agreement, which sets out the certain provisions of this DDA that shall survive the completion of the Project.

19.21.“Schedule of Performances” is the schedule that establishes the dates by which obligations of the parties under this DDA must be performed and on which conditions must be satisfied. The Schedule of Performances is attached as **Exhibit 4: Schedule of Performances**.

19.22.“Scope of Development” is the detailed description of the construction parameters for the Project. The Scope of Development is attached as **Exhibit 5: Scope of Development**.

19.23. "Title Company" is North American Title Company. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 1610 Arden Way, Suite 110, Sacramento, California 95815.

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

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

**DEVELOPER : RED VOLCANO PRODUCTIONS, LLC, a California limited liability company**

**AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO**

By:

By:

\_\_\_\_\_  
Jeff von Kaenel  
Managing Member

\_\_\_\_\_  
Anne M. Moore, Executive Director

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

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

Approved as to form:

Approved as to form:

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

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

**EXHIBIT 1**

**Property Description**

**ALL THAT REAL PROPERTY SITUATE IN THE CITY OF SCARMENTO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:**

**ALL THAT PORTION OF SECTION 1 OF "RANCHO DEL PASO", ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA ON MARCH 4, 1911, IN BOOK "A" OF SURVEYS, MAP NO. 94, DESCRIBED AS FOLLOWS:**

**BEGINNING AT POINT IN THE SOUTHEASTERLY LINE OF DEL PASO BOULEVARD LOCATED SOUTH 58° 34' WEST ALONG SAID SOUTHEASTERLY LINE A DISTANCE OF 1703.3 FEET FROM THE SOUTHWEST CORNER OF LOT 7, BLOCK 2, OF NORTH SACRAMENTO SUBDIVISION NO. 1, AS SHOWN ON THE PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SACRAMENTO COUNTY, ON DECEMBER 15, 1910, IN BOOK 11 OF MAPS, MAP NO 26; THENCE ALONG THE SOUTHERLY RIGHT OF WAY OF DEL PASO BOULEVARD SOUTH 58° 36' WEST 280.02 FEET; THENCE LEAVING SAID RIGHT OF WAY SOUTH 31° 24' EAST 150.00 FEET TO THE NORTH LINE OF THE EXISTING ALLEY; THENCE ALONG THE NORTH LINE OF THE EXISTING ALLEY NORTH 58° 36' EAST 495.64 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF SOUTHGATE ROAD; THENCE ALONG THE WESTERLY RIGHT OF WAY OF SOUTHGATE ROAD NORTH 61° 07' WEST 172.71 FEET TO THE POINT OF BEGINNING.**

**EXHIBIT 2**

**Grant Deed**

NO FEE DOCUMENT:

Entitled to free recording  
per Government Code 6103.

Recording Requested by the  
SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY

630 "I" Street

---

Sacramento, California 95814

Attention: Legal Department

---

**GRANT DEED**

(WITH REVESTMENT PROVISIONS, COVENANTS, RESTRICTIONS AND RESERVATIONS)

For valuable consideration, receipt of which is hereby acknowledged,

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, of the State of California (the "Grantor"), acting to carry out the Redevelopment Plan, (the "Redevelopment Plan"), for the Redevelopment Project known as the North Sacramento Project Area, the ("Project"), under the Community Redevelopment Law of California, hereby grants to RED VOLCANO PRODUCTIONS, LLC, (the "Grantee"), the real property, (the "Property"), described in Exhibit 1 which is attached to, and incorporated in this Deed by this reference, subject to the covenants, restrictions and reservations set forth below which covenants, restrictions and reservations shall inure to the benefit of, and bind, each and every successor, assign or successor in interest of the parties, including any heirs, executors, administrators, transferees or any other person or entity claiming through the parties.

The Property is conveyed in accordance with, and subject to, (i) the North Sacramento Redevelopment Plan which was adopted by the City Council of the City and duly recorded in the Office of the County Recorder of Sacramento County, California; and (ii) the Disposition and Development Agreement (the "Disposition and Development Agreement") entered into by and between Grantor and Grantee on \_\_\_\_\_, 2007.

The Grantee covenants and agrees that the Property shall be devoted only to the uses specified in the applicable provisions of the Redevelopment Plan for the Project (including all Redevelopment Plan amendments, except amendments from which Grantee may be exempt by the doctrine of vested

rights), this Deed and any and all instruments recorded pursuant to the Disposition and Development Agreement, including such Agreement, duly recorded by Grantor and affecting the Property. The Property is conveyed to Grantee at a purchase price (the "Purchase Price") determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees that the Grantee, such successors and such assigns shall develop, use, and maintain the Property as follows: offices and publishing .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Grantee covenants and agrees that:

3.1. There shall be no discrimination against or segregation of any person on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property hereby conveyed or any part thereof. Grantee covenants by and for 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. The foregoing covenants shall run with the land.

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

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

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

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

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

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

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

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

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

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

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

\_\_\_\_\_  
Anne Moore  
Executive Director

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

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

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

RED VOLCANO PRODUCTIONS, LLC,  
A California limited liability company

\_\_\_\_\_  
By: Jeff von Kaenel  
Managing Member

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

[ACKNOWLEDGMENTS]

County of Sacramento

State of California

ss.

On

before  
me,

\_\_\_\_\_

Date

\_\_\_\_\_

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Anne Moore, Executive Director  
of Redevelopment Agency of the City of Sacramento

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

\_\_\_\_\_

Signature of Notary Public

County of Sacramento

State of California

ss.

On

before  
me,

\_\_\_\_\_

Date

\_\_\_\_\_

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Jeff von Kaenel, Managing Member of Red Volcano Productions,  
LLC, a California limited liability company

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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

WITNESS my hand and official seal.

\_\_\_\_\_

**EXHIBIT "1"**

That certain real property situated in the City of Sacramento, County of Sacramento, California, described as follows:

**EXHIBIT 3**

**Regulatory Agreement**

**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 NON-RESIDENTIAL DEVELOPMENT  
INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS RUNNING WITH THE LAND**

<b>PROJECT NAME:</b>	News & Review/Del Paso Boulevard
<b>PROJECT ADDRESS:</b>	1124 and 1132 Del Paso Boulevard, Sacramento, California

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

---

**ARTICLE I TERMS AND DEFINITIONS.**

---

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

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

<b>TERM</b>	<b>DEFINITION</b>
-------------	-------------------

“Effective Date”	This Regulatory Agreement shall be effective as of the following date:		
“Agency”	Redevelopment Agency of the City of Sacramento		
	The Agency is a public body, corporate and politic.		
“Owner” and “Developer”	Red Volcano Productions, LLC,		
“Agency Address”	Agency’s business address is 630 I Street, Sacramento, California 95814		
“Owner Address”	Owner’s business address is as follows:	1015 20th 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 <b><u>Exhibit 1 – Legal Description of the Property.</u></b>		
“Funding Agreement”	Agency is conveying fee title to the Property to Developer, subject to the terms of the DDA. This Regulatory Agreement is subject to an Owner Participation Agreement, which is considered the Funding Agreement . Also Funding Agreement includes, the Construction and Permanent Loan Agreement between Agency and Owner, dated as follows:		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:	Amount of Funding	\$955,000.00
		Source of Funding	Project Area Tax Increment
“Funding Requirements”	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in <b><u>Exhibit 2 – Funding Requirements.</u></b> In consideration of the Agency Funding, the Agency has purchased the covenants, conditions and restrictions contained in the Regulatory Agreement.		
“Term”	The Term of each of the respective covenants, conditions and restrictions contained in this Regulatory Agreement is the term stated in the Funding Agreement, this Regulatory Agreement and in the absence of such provision, the term of the Redevelopment Plan.		
“Special Provisions”	None.		
“Approved Use”	Owner shall assure that the property is used only for the following Approved Uses: commercial offices and/or publishing		
“Disapproved Uses”	Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses:		
	Liquor store/bar; Adult store/film; Vet office/kennel; Funeral; Video arcade/pool hall; Bowling alley; Manufacturing; Repair facility ; Service stations; Hazardous materials; warehousing facilities; Tattoo and or piercing establishment; store sublet to multiple vendors; second-hand or thrift store; pawn shop; Check cashing or paycheck advance business; Passive activity (switching station); and Nuisances		

3. **RECAPTURE.** If Developer fails or refuses to comply with the Regulatory Agreement, and fails to cure such breach within thirty (30) days after notice from Agency to Developer of such breach, Developer shall repay to Agency, on demand a proportionate share of the Agency Funding. Said proportionate share shall be in the same ratio that the term of the Regulatory Agreement remaining (from the date of the Agency's notice) bears to the full term of the Regulatory Agreement.

4. **TERMINATION OF COVENANTS.** If the Agency is paid the Recapture, the covenants, conditions and restrictions contained in this Regulatory Agreement shall terminate, except as to covenants which provide otherwise, including without limitation, the covenant against discrimination, all of which continue in effect.

5. **REPRESENTATIONS.** Agency has provided good and valuable consideration. The funds used by Agency for the Project 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. This Regulatory Agreement represents a portion of a larger transaction, and is an inextricable part of the larger transaction. Therefore, Agency has undertaken its obligations conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory 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 of Agency otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Funding Requirements.

Owner shall use and shall permit others to use the Property only for the Approved Uses, and with the Redevelopment Plan for the Project Area.

a. Owner shall not use and shall not permit others to use the Property for any of the Disapproved Uses.

b. Owner shall assure full compliance with the Special Provisions, if any.

c. 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 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.

d. Owner shall not cause and shall not permit discrimination on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for 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.

e. 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. RESTRICTION ON SALES AND LEASES.** Developer is prohibited from selling or leasing the Property unless and until the buyer or lessee has executed and the parties have recorded an acknowledgment and acceptance of this Regulatory Agreement. In any event, any and all successors in interest to the Property are subject to this Regulatory Agreement.

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

**9. SUPERSEDING EXISTING COVENANTS, CONDITIONS, & RESTRICTIONS.** Excepting the conditions, covenants and restrictions of the Funding Agreement, 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.

**10. 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. In the absence of a term in the Funding Requirements, the term shall be thirty (30) years from the Effective Date.

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

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

**13. INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS.** Owner shall indemnify and hold Agency, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to comply with the covenants, conditions and restrictions contained in this Regulatory Agreement and its failure to comply with all other laws, rules, regulations and restrictions related to the use of any Agency funds. Without limitation, such indemnity shall include 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.

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

**15. DEFAULT.** Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. To the extent reasonable under the circumstance, in the event of any breach, the Agency and Owner shall reasonably endeavor to identify a remedy for such breach by conference and conciliation. If such violation is not corrected to the satisfaction of Agency within thirty (30) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, for money damages or for such other relief as may be appropriate. The injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

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

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

**16. 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.

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

**18. 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 or 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 party making such settlement offer.

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

**20. 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.

**21. 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 date first written above.

**OWNER : RED VOLCANO PRODUCTIONS,  
LLC,**

**AGENCY: REDEVELOPMENT AGENCY OF  
THE CITY OF SACRAMENTO**

By:

By: \_\_\_\_\_  
Anne M. Moore, Executive Director

\_\_\_\_\_  
Jeff von Kaenel  
*Managing Member*

Approved as to form:

Approved as to form:

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

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

**EXHIBIT 4 and 5**

**Schedule of Performances and Scope of Work**

Scope of Work and Schedule of Performances

This is an interior and exterior remodel of an existing 18,500 (approx.) square foot concrete block building for use and occupancy by Sacramento News & Review. The News & Review plans to utilize, to the extent feasible, sustainable energy-efficient design and construction. The scope of work involves the design and construction of a mixture of private offices conference rooms, a staff break room, computer rooms, and several open office areas, as well as a lobby.

Architectural and Construction Drawings	160 days
Entitlements and Permit	60 days
Demolition	14 days
Roof, gutters, penetrations	45 days
Storefront improvements, glazing, doors, paint, lighting	60 days
Mechanical installation	45 days
Electrical (upgrades and wiring)	60 days
Interior framing, drywall, insulation	60 days
Interior Finishes: paint, ceiling, flooring, cabinets, doors	120 days
Plumbing	30 days
Telephone, data line installation, point of use electrical	60 days
Site work, exterior lighting and landscaping	45 days
Total Project Timeline	24 months

**EXHIBIT 6**

**Escrow Instructions**

**JOINT ESCROW INSTRUCTIONS  
FOR AGENCY LOAN**

“Effective Date”	
------------------	--

Agency and Borrower execute these Escrow Instructions as of the Effective Date. This document, including attachments and any amendments and additions, shall constitute the joint escrow instructions of Agency and Borrower for the Agency loan secured by the Property.

**ARTICLE I. GENERAL TERMS.**

22. **GENERAL.** These Escrow Instructions, in addition to items listed below includes Article II General Provisions, which is attached to and incorporated in this Regulatory Agreement by this reference.

23. **DEFINITIONS.** The capitalized terms in these Escrow Instructions shall have the meanings assigned in Article I General Terms and as defined in Article II Instructions. (Terms being defined are indicated by quotation marks.)

<b>“Title Company”</b>	North American Title Company			
	<b>Address</b> :	1610 Arden Way, Suite 110, Sacramento, California 95815		
<b>“Escrow with Title Company”</b>	<b>Escrow Number</b> :	54806-700003627	<b>Attention:</b>	Julie Morotti
	<b>“Agency”</b>	Redevelopment Agency of the City of Sacramento		
	<b>Address</b> :	630 I Street, Sacramento, CA 95814		
	<b>Attention:</b>	Molly Oser		
<b>“Borrower”</b>	Red Volcano Productions, LLC			
	<b>Address</b> :	1015 20th Street, Sacramento, California 95814		
	<b>Attention:</b>	Jeff von Kaenel		
<b>“Closing Date”</b>				
<b>“Property”</b>	<b>Address</b> :	1124 and 1132 Del Paso Boulevard, Sacramento, California 95815	<b>APN:</b>	275-0165-002, 275-0165-003, 275-0165 016, 275-0165-017, 275-0165-0128

<b>Description of the transaction</b>	This is a market rate loan pursuant to a Construction and Permanent Loan as the Funding Agreement to a DDA.
---------------------------------------	---

<b>“Recorded Documents”- The following documents are to be recorded in the order listed (top being first in priority). Copies of the Recorded documents are attached.</b>	<b>Documents:</b>	<b>Marked for return to:</b>
	Disposition and Development Agreement Regulatory Agreement Grant Deed Deed of Trust	
<b>“Agency Items”</b>	Promissory Note for subject loan	
	Loan Agreement for the subject loan	
	Authorizing resolutions for all Borrower signatories	
	Disposition and Development Agreement	
<b>“Borrower Items”</b>		
	Grant Deed, conformed copies of the recorded documents.	

<b>“Special Provisions”:</b>	Title Policy shall, in addition to customary endorsements, bear the following endorsements: ALTA 101.1 Mechanic’s Lien Endorsement For the Regulatory Agreement - CLTA 124.1
------------------------------	---

<b>“Agency Title Policy” in the form of an ALTA Agency’s Policy insuring that the following are valid liens against the property:</b>	<b>Documents:</b>	<b>Coverage amount:</b>	
	Regulatory Agreement and Trust Deed	In the amount of the loan secured (\$955,000)	
<b>The title policies shall be subject only to the following “Conditions of Title”:</b>	Items 1-5	<b>Dated:</b>	December 15, 2006
		<b>Number :</b>	54806-700003627

THE PARTIES HAVE EXECUTED THESE ESCROW INSTRUCTIONS in Sacramento, California as of the date first written above.

**BORROWER: RED VOLCANO  
PRODUCTIONS, LLC,  
By:**

\_\_\_\_\_  
Name: Jeff von Kaenel  
Managing Member, Authorized signatory

**AGENCY: REDEVELOPMENT AGENCY OF  
THE CITY OF SACRAMENTO**

By:

\_\_\_\_\_  
Anne Moore

Executive Director

## ARTICLE II. INSTRUCTIONS

1. **CLOSING DATE.** Escrow shall close on or before the Closing Date as it may be changed from time to time by written agreement of Borrower and Agency.

2. **CONDITIONS TO CLOSE OF ESCROW.** "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date. The following are conditions to the Close of Escrow:

2.1.1. The conditions precedent to performance stated in the Recorded Documents are satisfied as of the Closing Date.

2.1.2. Simultaneously with the Close of Escrow, Title Company shall issue the Agency Title Insurance to Agency (at Borrower's cost) in the amount stated. The Agency Title Insurance shall include all usual and customary endorsements and any endorsements and other commitments as Agency may reasonably require. The Agency Title Insurance shall show the Recorded Documents marked for return to Agency as valid liens against the Property in favor of the Agency, subject only to the Conditions of Title, and securing, as applicable, Borrower's performance of its obligations and repayment of Agency Funding.

2.1.3. Prior to the Closing Date, the parties shall duly execute (in Escrow or prior to deposit in Escrow) each such document and shall execute those to be recorded in a manner suitable for recording.

2.1.4. On or before the Closing Date, Agency shall also deposit with Title Company the Borrower Items and any Loan Amount then to be disbursed under this Agreement, but not less than closing costs, fees and charges required for Close of Escrow.

2.1.5. On or before the Close of Escrow, Borrower shall also deposit with Title Company the Agency Items and Borrower's share of closing costs and fees.

2.1.6. Title Company is satisfied that all required funds have been deposited in Title Company's account for the Escrow, have cleared the originating bank and are available for transfer by Title Company's check or wire transfer to the appropriate party.

2.2. **TRUST DEED FORM.** If no exhibit setting out the form of the Trust Deed form is attached, the Title Company shall draw the Trust Deed on the Title Company's Long Form Deed of Trust. Title Company shall assure that the Trust Deed includes a standard clause giving Agency the option to accelerate the Loan upon the sale, conveyance, transfer or further encumbrance of the Property, whether voluntary or involuntary. Title Company shall also affix the following provision to the Trust Deed and incorporate it in the Trust Deed by reference:

*"The Loan Agreement requires the filing of the "Regulatory Agreement" that is defined in the Loan Agreement. The Regulatory Agreement contains covenants running with the land and is recorded against the Property. If Developer does not*

*comply with the requirements of the Regulatory Agreement and fails to come into compliance with the Regulatory Agreement within thirty (30) days after Agency's written notice to Developer of such failure, the principal balance of the Loan shall, at Agency's option, be immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds."*

**2.3. UPON CLOSE OF ESCROW.** The Close of Escrow shall take place on the Closing Date. On the Closing Date, Title Company shall complete the Close of Escrow as follows and in the following order (unless otherwise stated, all recorded documents are recorded with the Sacramento County Recorder):

2.3.1. Assure fulfillment of the Special Provisions;

2.3.2. Assure all documents are complete and affix legal descriptions of the Property as necessary to complete them;

2.3.3. Obtain full execution of all unexecuted documents;

2.3.4. Date all undated documents as of the Closing Date;

2.3.5. Record the Recorded Documents in the priority listed;

2.3.6. Determine all closing costs and fees; including without limitation, all charges, fees, taxes and title insurance premiums payable under this Agreement on Close of Escrow and any other fees and charges approved for payment from Escrow by both parties and deduct such fees from the Loan proceeds deposited by Agency in Escrow;

2.3.7. Deliver the Agency Items to Agency and the Borrower Items to Borrower; and

2.3.8. Prepare and deliver to Borrower and Agency, respectively, one signed original of all documents included for delivery to either party and not delivered for recording, one signed original of Title Company's closing statement showing all receipts and disbursements of the Escrow, and one conformed copy of each of the recorded documents.

**2.4. INABILITY TO CLOSE.** If Title Company is unable to simultaneously perform all of the preceding instructions, Title Company shall notify Borrower and Agency, and upon each of their directions return to each party all documents, items and funds deposited in Escrow by such party (less fees and expenses incurred by the respective party) and bill the respective parties for any unpaid fees and expenses incurred in Escrow. If Escrow fails to close on the Closing Date because Borrower has not complied with Borrower's obligations under this Loan Agreement, then Borrower shall pay the costs incurred through Escrow to the date the Escrow is terminated, including the cost of any preliminary title report and any cancellation fees or other costs of this Escrow. If Escrow fails to close on or before the Closing Date because Agency has not complied with Agency's obligations under this Loan Agreement, such costs shall be paid by Agency. If Escrow fails to close on or before the Closing Date for any other reason, such costs shall be divided equally between the parties.

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

/ / / / / / / /

**ACCEPTANCE OF ESCROW INSTRUCTIONS**

Your acceptance of this escrow shall create a contractual obligation by you with Agency and Borrower for complete compliance with these instructions. Agency and Borrower reserve the right to jointly revoke this escrow at any time upon their payment to you of your fees and reimbursement to you of your expenses in accordance with the terms of these escrow instructions. Your obligations as Escrow Holder under these escrow instructions shall be subject to the following provisions:

You are not responsible as to the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow nor as to the authority or rights of any person executing such instrument. Except as otherwise provided in these escrow instructions, your duties as Escrow Holder are limited to the proper handling of monies and the proper safekeeping of instruments and other items received by you as Escrow Holder, and for the performance of your obligations as specifically provided under these escrow instructions. You are responsible for the sufficiency of any instruments or documents prepared by you for this escrow.

Borrower agrees to indemnify and hold you harmless from damages incurred as a result of your good faith and diligent performance of your duties under these escrow instructions.

Upon your acceptance of these escrow instructions return the executed counterparts of these escrow instructions to Agency and Borrower, respectively.

Escrow Holder acknowledges receipt of the foregoing escrow instructions and agrees to act as Escrow Holder and to comply with the terms and conditions of said escrow instructions.

Dated: \_\_\_\_\_

13.1.1.1.1.1.1.1.

13.1.1.1.1.1.1.2.

**TITLE COMPANY  
NORTH AMERICAN TITLE COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Its authorized agent and signatory

**EXHIBIT 7**

**Funding Agreement**

**Construction and Permanent Loan Agreement  
News And Review /Del Paso Boulevard**

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

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

“EFFECTIVE DATE”		Being the date as of which this Loan Agreement shall be effective.
“LENDER”	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	630 I Street, Sacramento CA 95814	
“BORROWER”	The borrower of the Loan funds whose name, legal status and address are:	
Name	Red Volcano Productions, LLC	
Legal Status	A California limited liability company	
Principal Address	1015 20th Street, Sacramento, California 95814	
“LOAN”	The Loan made by this Loan Agreement.	
“LOAN COMMITMENT”	Lender’s loan commitment, made by letter dated as of	
“LOAN PROGRAM”	Lender’s Loan Program, commonly known as	North Sac Project Area Tax Increment
“LOAN AMOUNT”	Nine Hundred Fifty-Five Thousand Dollars and No Cents (\$955,000.00)	
“INTEREST RATE”	The interest rate is 6% per year, simple interest.	
“PAYMENT START DATE”	The first day of the 1st calendar month following the Effective Date.	
“MATURITY DATE”	The first day of the 300th calendar month following the Effective Date.	

“PAYMENT SCHEDULE”	Payable monthly, in equal monthly installments commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the Maturity Date.	
“BORROWER EQUITY”	Two Hundred Thousand Dollars and No Cents(\$200,000.00)	Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Borrower is investing in the Project.
	***Developer Non-cash Equity*** (\$***Developer Non-cash Equity***)	Which is Borrower’s non-cash contribution to the Project (such as deferred Developer fees).
“SPECIAL TERMS”	No special terms, this is a market rate loan.	
“PROJECT”	Which is the Project to be developed on the Property with the Loan funds, described as:	The Project shall be the following: significant rehabilitation of interior space and façade improvements to the building to reuse it to suit the needs of the News and Review and its operation of its weekly newspaper. The project includes the design and construction new interior walls, electrical, plumbing and other mechanical systems. It also includes a new exterior façade, landscaping and improvements to the onsite parking lot

<b>B. “COLLATERAL”</b> The Collateral securing repayment of the Loan, which Collateral consists of the following:		
“PROPERTY”	The following described real property, which is security for the Loan and the site of the Project:	
Address	1124 and 1132 Del Paso Boulevard, Sacramento, California	
Assessor’s Parcel Number	275-0165-002; 275-0165-003; 275-0165-016; 275-0165-017; and 275-0165-018	
“Legal Description”	The Property is situated in the State of California, County of Sacramento, and is more particularly described in <b>Exhibit: Legal Description</b> attached and incorporated by reference.	
Borrower’s Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.	
“ADDITIONAL COLLATERAL”	The Additional Collateral securing repayment of the Loan is any additional security required by Lender under this Loan Agreement, including without limitation the following items, if any	
“PERSONAL PROPERTY”	Borrower’s interest in the following personal property, tangible and intangible, and all other such property listed as security in this Loan Agreement	Materials and supplies for the Project

OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	
-----------------------------	--	--

<b>C. "ESCROW INFORMATION":</b>		
"Title Company" and "Escrow Agent"	North American Title Company	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow
"Escrow"	The escrow with Escrow Agent	
"Closing Date"		Which is the date for close of the Escrow, as it may be extended

<b>D. "List of Exhibits" (THE FOLLOWING ARE ATTACHED AND INCORPORATED IN THIS LOAN AGREEMENT):</b>	
EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Scope of Development</u>	"Scope of Development"
<u>Exhibit 3: Note Form</u>	"Note"
<u>Exhibit 4: Trust Deed Form</u>	"Trust Deed"
<u>Exhibit 5: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 6: Escrow Instructions</u>	"Escrow Instructions"

<b>E. "Approval Documents" BORROWER SHALL SUBMIT THE FOLLOWING DOCUMENTS FOR LENDER APPROVAL:</b>
Construction Agreements for the Project
Architectural Agreement for the Project
Borrower's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project
Evidence of financing as described in Article II of this Loan Agreement
Plans and Specifications as defined in Article II of this Loan Agreement

<b>F. "Assigned Documents" BORROWER SHALL ASSIGN THE FOLLOWING DOCUMENTS TO LENDER:</b>
Construction Contract
Architectural Contract

<b>G. "Construction Information":</b>		
"Completion Date"		Which is the date on or before which the Completion of the Project must occur.
"General Contractor"	Sunseri Associates, Inc.	Which is the general contractor for construction of the Project
"Project Architect"	Allan Hoshida	Which is the architect for design of the Project

"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursement:	Ten Percent (10%)
		Percentage of Loan:	Ten Percent (10%)

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

This Loan is made pursuant to the OPA. This Loan Agreement is subject to the OPA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.

Loan funds shall be used solely for Project construction. No Loan funds shall be used for predevelopment costs, except as provided in an approved Lender budget. Unless otherwise noted in said budget, predevelopment costs are not subject to the withholding as Retention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.19. “Personalty” means, whether or not listed as Additional Collateral, all of Borrower’s interest in all accounts, contract rights, and general intangibles (specifically including any insurance

proceeds and condemnation awards) arising out of the ownership, development, or operation of the Property, and all furniture, furnishings, equipment, machinery, construction materials and supplies, leasehold interests in personal property, and all other personal property (other than Fixtures) of Borrower now or later located about the Property, together with all present and future attachments, accessions, replacements, substitutions, and additions, and the cash and noncash proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.12. **PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by the Lender and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Borrower or its agents

and employees, and to the best of Borrower's knowledge, no violation of any Governmental Requirement exists.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7. RELOCATION.** Lender is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Lender and Borrower, however, agree that there are no occupants on the Property and therefore no one shall person or business shall be displaced by this Project.

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

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

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

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

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

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

**9.4.1.** Lender, at any time, may require Borrower to obtain a lien waiver with respect to each payment to the General Contractor and each payment by the General Contractor or Borrower to each of the various subcontractors and material suppliers, Lender, at any time, may require Borrower to make any payments for the Project by joint check made payable to

the General Contractor and subcontractor for whose account the payment is to be made, as joint payees.

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

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

9.6. **OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, if any, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

9.6.1. **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

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

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

9.9. **PREVAILING WAGES.** The transaction as contemplated in the DDA does not trigger prevailing wages. It is a market rate transaction and the Agency providing funding through a market rate loan. Borrower 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. Borrower and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Borrower indemnifies, holds harmless and defends the Lender from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper

application of California prevailing wage laws to the Project by Borrower or General Contractor or both of them.

## **10. LOAN DISBURSEMENT PROCEDURES.**

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

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

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

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

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

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

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

**10.2. CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** After Borrower has expended all of Borrower's equity, Borrower may request Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 10.1 have been met:

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

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

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

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

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

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

10.3. **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 10.1 have been met:

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

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

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

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

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

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

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

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

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

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

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

10.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 10.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

10.5. **OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, if any, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

10.5.1. **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

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

## 11. DEFAULT

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

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

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

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

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

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

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

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

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

## 12. REMEDIES

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

12.1.1. Terminate its obligation to make disbursements.

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

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

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

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

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

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

12.4. **GRANT OF POWER.** Borrower irrevocably appoints Lender as its attorney-in-fact, with full power and authority, including the power of substitution, exercisable on the occurrence of an Event of Default, to act for Borrower in its name, place, and stead as provided in this Loan Agreement to take possession of the Property and Project, remove all employees, contractors, and agents of Borrower, to complete or attempt to complete the work of construction, and to market, sell, or lease the Property and Project; to make any additions, changes, and corrections in the Plans as may be necessary or desirable, in Lender's sole discretion, or as it deems proper to complete the Project; to employ any contractors, subcontractors, suppliers,

architects, inspectors, consultants, property managers, and other agents that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property or Personalty, or for the protection of Lender's interests, to employ security guards to protect the Property and Project from injury or damage; to pay, settle, or compromise all bills and claims then existing or later arising against Borrower that Lender, in its sole discretion, deems proper for the completion of the Project, for the protection or clearance of title to the Property, or for the protection of Lender's interests; to prosecute and defend all actions and proceedings in connection with the Property or Project; and to execute, acknowledge, and deliver all other instruments and documents in the name of Borrower that are necessary or desirable, to exercise Borrower's rights under all contracts concerning the Property or Project, and to do all other acts with respect to the Property or Project that Borrower might do on its own behalf, in each case as Lender in its reasonable discretion deems proper.

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

**13.1. LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 15 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

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

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

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

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

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

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

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

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

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

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

13.8. **BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 16 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Lender shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 15 with respect to such insurance shall otherwise be satisfied by such blanket policy.

#### 14. MISCELLANEOUS

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

14.2. **SUBORDINATION.** Agency will subordinate this Loan to the senior loan, provided that the senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement, and that the senior loan does not require modification of this Loan Agreement, Agency's execution of any agreements containing new or modified Loan terms or Agency's execution of any agreement creating a contractual relationship between Lender and the senior lender including obligations or liabilities between Lender and the senior lender.

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

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

disbursement made by Lender. The representations and warranties that are made to the best knowledge of Borrower have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BORROWER :**  
**RED VOLCANO PRODUCTIONS, LLC, a**  
**California limited liability company**

**LENDER:**  
**REDEVELOPMENT AGENCY OF THE CITY OF**  
**SACRAMENTO**

By:

\_\_\_\_\_

\_\_\_\_\_  
Jeff von Kaenel  
Managing Member

By:

\_\_\_\_\_

\_\_\_\_\_  
Anne M. Moore, Executive Director

Date:

\_\_\_\_\_

—

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_  
Borrower Counsel

Date:

\_\_\_\_\_

—

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_  
Lender Counsel

## EXHIBIT 8

### Reimbursement Agreement

#### REIMBURSEMENT AGREEMENT

13.1.1.1.1.1.3. THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, ("Agency"), and Red Volcano Productions, LLC, a California limited liability company, ("Developer"), enter into this Reimbursement Agreement ("Agreement") as of \_\_\_\_\_, 2007, whereby the Agency will reimburse Developer for certain, specified building stabilization, systems upgrade, and abatement work pursuant to the terms and conditions, below.

#### RECITALS

13.1.1.1.1.1.4. A. The Agency is agreeing to this Reimbursement for the public benefits derived from the use of the proceeds in the following project ("Project"): News and Review and subject to a Disposition and Development Agreement between Agency and Developer ("DDA").

13.1.1.1.1.1.5. B. The removal, upgrade and abatement work of Hazardous Substances is an Agency obligation but this work is architecturally and functionally interconnected and interrelated to the redevelopment work that the Developer is to perform in the following respects: the removal, upgrade and stabilization of existing, obsolete building systems with abatement of hazardous materials on the public property shall be done by the Developer so as to be consistent and compatible with the timely redevelopment of the Property. Having the Developer perform the work within the premises facilitates the engineering and architectural work necessary for the redevelopment Project. The interrelationship of the public and private work of the Project would create serious difficulties in the coordination and scheduling of work between multiple contractors, in the storage of materials and equipment and in the location of construction operations facilities. Upon completion, the Project will be operated primarily as a privately-owned facility for private purposes.

13.1.1.1.1.1.6. C. In its approval of this Agreement, the Agency finds and determines that its work is so interwoven with the Developers work that it would be impractical and result in greater cost and delay to separately have the Agency's work competitively bid.

#### AGREEMENT

13.1.1.1.1.1.7. The parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **TERM.** The term of this Agreement shall be for one hundred eighty (180) days following the date of approval as indicated above; provided, however, such time shall be extended for periods of Unavoidable Delay as defined in Section \_\_\_\_.

2. **REIMBURSEMENT AMOUNT.**

2.1.1. **MAXIMUM.** The maximum reimbursement amount pursuant to this Agreement shall be in an amount not to exceed Three Hundred and Fifty Thousand (\$350,000), or so much as may be actually advanced under this Agreement (the "Maximum Reimbursement") Agency shall be released of any further obligations hereunder.

3. **SCOPE OF WORK.** Roof Replacement, upgrade of electrical system, installation of heating, ventilation and air conditioning system. This work will be accomplished per plans and specifications as supplied by Developer. As part of the roof replacement, hazardous materials will be removed. The specified heating, ventilation and air conditioning system will be installed as part of the roof replacement. The obsolete and insufficient electrical system will also be upgraded to correspond with code requirements for an office related use.

4. **DISBURSEMENT.** Payments to Developer under this Agreement shall be disbursed upon execution by each party and delivery to the other party of this Agreement and subject to the following conditions and procedures:

4.1 **CONDITIONS TO DISBURSEMENT.** Agency shall not be obligated to disburse any of the Reimbursement proceeds unless and until all of the conditions are met with respect to each such disbursement:

4.1.1. Developer shall provide to Agency the contractor's estimate for the proposed work and Agency shall approve the contractor, scope of work and bid prior to issuance of permits. Developer shall acquire at least two bids. Requests for changes in the scope of work and costs, shall be reviewed and approved by the Agency prior to commencement of work for these changes.

4.1.2. The proceeds of the Reimbursement are used solely for the following Project Activities: soft demolition and abatement of hazardous building materials within the building, including but not limited to: (i) cost of contractors and subcontractors, including Asbestos Containing Building Materials licensed removal contractors, and other environmental specialists as reasonably needed; (ii) removal and replacement of the roof, installation of a new heating, ventilation and air conditioning system, upgrade of electrical system (iii) costs of disposal of ACBMs or other toxic or hazardous substances or materials found on the Property at approved disposal facilities.

4.1.3. Developer is not and shall not be in default of the DDA, subject to the rights of Developer to cure such default as provided in the DDA.

4.1.4. Developer has fully complied with the disbursement procedures of Section 5.

5. **DISBURSEMENT PROCEDURES.** Agency shall disburse the Reimbursement proceeds according to the following procedures:

5.1. Developer has made written demand for disbursement stating the amount requested and the intended use of the proceeds to be disbursed.

5.2. Developer has provided receipts for expenditures that qualify for use of the Reimbursement proceeds.

5.3 Developer has provided evidence of approved construction plans, drawings and specifications that comply with this Agreement and of necessary building or demolition permits from governmental entities having jurisdiction of the Project.

5.4 Agency has determined that the work, for which disbursement is requested has been satisfactorily completed.

5.5 Developer has advised Agency that no mechanics liens have been filed or recorded on the Property.

5.6 The Agency shall pay Developer the amount of an approved payment request within thirty (30) days of approval.

**6. REPRESENTATIONS AND WARRANTIES.** Agency hereby makes the following representations and warranties concerning the Hazardous Substances condition of the Property:

6.1 Agency is the sole owner of the Property and has the full right and authority to enter into this Agreement and to complete the transactions contemplated herein; each person signing this Agreement on behalf of Agency is authorized to so sign. The execution, consent or acknowledgment of no other party is necessary in order to validate Agency's execution, delivery and performance of this Agreement; Agency's entry into this Agreement and performance of its obligations hereunder do not contravene or constitute a breach of any agreement binding on Agency; and this Agreement constitutes a legal, valid and binding obligation of Agency, enforceable against Agency in accordance with its terms.

6.2 Agency agrees that it has or will promptly deliver to Developer any and all documents and materials in its possession and control relating to the Property, including without limitation, plans, specifications, blue prints, environmental surveys and reports and any other documents reasonably requested by Developer. The documents delivered by Agency to Developer will be true, correct and complete copies of such document.

6.3 None of the representations or warranties of Agency in this Agreement contains or will contain any untrue statement of material fact or will omit any material fact, the omission of which would be misleading.

6.4 If Agency receives any notice or knowledge of any information or facts affecting Agency's representations or warranties after the date of this Agreement, then Agency shall immediately notify Developer in writing of same. If Developer receives written notice from Agency pursuant to this section which contains any information or facts that would change Agency's representations and warranties contained in this Agreement, then Developer may elect to terminate this Agreement, without limiting Developer's other rights and remedies.

**7. PREVAILING WAGES.** Agency advises Developer that the Project is subject to the payment of prevailing wages under California law. Developer 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. Developer and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or General Contractor or both of them.

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

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

**10. 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.

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

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 Developer.

13.1.1.1.1.1.8. This indemnification provision shall survive the termination of this Agreement.

13.1.1.1.1.1.9. **12. INSURANCE COVERAGE REQUIREMENTS.** During the Term of this Agreement, Developer shall maintain, or cause its general contractor to maintain the following insurance coverage from insurance providers licensed to do business in California and having an industry rating that is reasonably acceptable to Agency. Failure to maintain the required insurance is a material breach of this Agreement. Before beginning any work under this Agreement, Developer must provide Agency with certificates of insurance and copies of the insurance policies demonstrating the required coverage. Developer must assure that such certificates are in a form reasonably acceptable to the Agency and reflect fulfillment of all of the requirements of this Agreement. Agreement must assure that the coverage afforded under the policies can only be canceled after thirty (30) days prior written notice to the Agency of the pending cancellation.

13.1.1.1.1.1.10. The required insurance coverage is the following: (i) One Million Dollars (\$1,000,000) or more of comprehensive general liability coverage including, without limitation, coverage for contractual liability, public liability and property damage and having a deductible of Fifty Thousand Dollars (\$50,000) or less; (ii) if motor vehicles are used in connection with this Agreement, Three Hundred Thousand Dollars (\$300,000) or more of automobile liability coverage having a deductible of Five Thousand Dollars (\$5,000 ) or less; and statutory limits or more of workers compensation coverage for all employees of Contractor and all others performing work pursuant to this Agreement.

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

**13. NO NUISANCE.** Developer 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, Developer shall take immediate action to stop such nuisance and to prevent future occurrences of such nuisance.

**14. REMEDIES AND TERMINATION.** The provisions of the DDA regarding termination of the DDA and remedies upon breach of the DDA shall apply to an action under this Agreement in the same manner as for an action under the DDA.

**15. LIENS AND CLAIMS.** If any mechanic's, laborer's or materialman's lien or any security interest at any time shall be filed against the Property or any part thereof arising out of the soft demolition or abatement activities by Developer, or if any lien of any





**17.7. ASSIGNMENT.** The Developer shall not assign this Agreement or delegate the performance of all or any of the obligations under it without the prior written consent of the Agency which shall not be unreasonably withheld, conditioned or delayed. In no event shall any assignment by the Developer release the Developer from its obligations under this Agreement unless such assignment has been approved in writing by the Agency. This Section shall in no way prevent or limit the Developer from entering into any contracts with the General Contractor, subcontractors or materialmen that may be necessary or desirable in the performance of the Developer's responsibilities under this Agreement.

**17.8. ENFORCEABILITY.** If any provision of this Agreement is held to unenforceable by a court of law, it shall be deemed to be unenforceable only with regard to the party and circumstance, and this Agreement shall remain in full force and effect in all other regards.

**17.9. NO THIRD PARTY RIGHTS.** Except as expressly stated in this Agreement, nothing in this Agreement shall create or shall give to third parties any claim or right of action against the Agency or the Developer.

**17.10. MODIFICATION OF AGREEMENT.** No change in or modification, termination or discharge of this Agreement shall be valid or enforceable unless it is in writing and signed by the party to be charged or its duly authorized representative; except as otherwise provided this Agreement.

**17.11 ENTIRE AGREEMENT.** The Public Improvement Documents constitute the entire Agreement between the parties and incorporate all prior understandings in connection with the subject matter of this Agreement.

**17.12. 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 by the Agency or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

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

**DEVELOPER:**

**AGENCY:**

**REDEVELOPMENT AGENCY OF  
THE CITY OF SACRAMENTO**

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

Approval as to form:

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

13.1.1.1.1.1.1.14.

**EXHIBIT 9**

**Promissory Note**

**Promissory Note  
For News and Review/1124-1132 Del Paso Boulevard  
Construction and Permanent Loan Agreement**

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

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

DEFINED TERM:	DEFINITION:	
“Effective Date”		
“Lender”	Redevelopment Agency of the City of Sacramento	
“Borrower”	Red Volcano Productions, LLC	
“Borrower Legal Status”	a California limited liability company	
“Loan Agreement”	The Loan Agreement between the Borrower and Lender as of the Effective Date for making of the loan (“Loan”) evidenced by this Note.	
“Principal Amount”	Nine Hundred Fifty-Five Thousand Dollars and No Cents (\$955,000.00)	
“Interest Rate”	The interest rate is 6% per year, simple interest.	
“Accrual Date”	Interest shall accrue starting on the following “Accrual Date”:	The Effective Date
“Special Terms”	none, this is market rate loan	

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

“Maturity Date”	The first day of the 300th calendar month following the Effective Date.	
“Payment Start Date”	After construction is completed and a certificate of occupancy is issued. The final payment shall be a lump sum on the Maturity Date.	
“Payment Amount(s)”	The Loan balance shall be payable monthly, in equal monthly installments commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the three hundredth (300th) month. The unpaid balance of the Loan, including without limitation principal and interest, shall be all due and payable on the Maturity Date, including without limitation all unpaid principal, interest, fees and charges.	
	Payment Month	Payment Amount
	1st through 300th.	\$6,454.00

////

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

1. This Note evidences the obligation of Borrower to Lender for repayment of funds loaned to Borrower under a loan agreement between Borrower and Lender dated as of the Loan Date ("Loan Agreement"). The terms and covenants of the Loan Agreement are incorporated in this Note by reference. The Loan Agreement provides for and incorporates the Regulatory Agreement ("Regulatory Agreement"), the making of which is further consideration for this Note.

Borrower shall make payments monthly in the amounts shown in the Payment Schedule, on the first day of each month, beginning on the First Payment Date and continuing for the number of payments shown in the Payment Schedule. On the Maturity Date, the unpaid balance of said principal sum, if any, together with all unpaid interest, fees and charges due, if any, shall become due and payable. All payments on this Note shall be applied first to fees and charges due under the Loan Agreement, if any, then interest and then to the principal due on this Note. Borrower shall make the payments to the Lender at 630 "I" Street, Sacramento, CA 95814-2490, or to such other person or organization as may be designated by Lender to Borrower and noticed as provided in the Loan Agreement.

2. If any installment under this Note is not received by Lender within fifteen (15) calendar days after the installment is due, Borrower shall pay to Lender a late charge of five percent (5%) of such installment. Such late charge shall be immediately due and payable without demand by Lender.

3. This Note is secured by a Deed of Trust with Assignment of Rents against the real property described in the Loan Agreement ("Property"), recorded in the office of the County Recorder of Sacramento County ("Trust Deed"). The Trust Deed securing this Note provides that Lender may at its option, declare all funds secured by the Trust Deed immediately due and payable, if any interest in the real property is sold, transferred or conveyed to any person, whether voluntarily or involuntarily. The Trust Deed further provides that if Borrower does not comply with the requirements of the Regulatory Agreement and fails to come into compliance with the Regulatory

Agreement within thirty (30) days after Lender's written notice to Borrower of such failure, Lender may at its option, declare all funds secured by the Trust Deed immediately due and payable.

4. Lender and Borrower shall comply with and fulfill the Special Terms.

5. Upon occurrence of any one or more of the following, Lender may, at its sole discretion, declare all unpaid principal immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds, subject to applicable cure periods, if any:

a. Borrower defaults in the payment of any principal or interest when due.

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

c. Lender discovers that Borrower has made any misrepresentations or has intentionally withheld any fact in the making of this Loan, the knowledge of which could have affected the decision of Lender to make the Loan.

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

e. Borrower fails to perform any covenant, term or condition in any instrument creating a lien upon the Property which is the security under the Trust Deed, or any part thereof, which lien shall have priority over the lien of the Trust Deed securing this Note

f. The sale, transfer of title, conveyance or further encumbrance of the Property, whether by sale, exchange, gift, inheritance or other means, without prior written consent of Lender.

g. The occurrence of any of the following:

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

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

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

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

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

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

8. This Loan is a non-recourse loan, and notwithstanding any provision of this Note or any document evidencing or securing this Loan, Borrower, and Borrower's principals, members,

partners, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan.

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

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

**Borrower:**

Red Volcano Productions, LLC.

By:

---

Jeff von Kaenel  
Managing Member  
Authorized Representative

**EXHIBIT 10**

**Construction Loan Agreement**

**Construction and Permanent Loan Agreement  
News And Review /Del Paso Boulevard**

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

**15. LOAN.** The Lender is making the Loan pursuant to the terms and conditions of this Loan Agreement. Lender and Borrower have entered this Loan Agreement as of the Effective Date.

**16. DEFINITIONS TABLES.** The capitalized terms in this Loan Agreement shall have the meanings assigned in the following Definitions Tables and in Section 3 Definitions. Terms being defined are indicated by quotation marks. If an item in the Definitions Table is marked “None”, “Not Applicable”, “N/A” or equivalent or is left blank, that defined term is not applicable to this Loan or the referenced item is not required or is not included in this Loan as the context may indicate.

“EFFECTIVE DATE”		Being the date as of which this Loan Agreement shall be effective.
“LENDER”	The following public agency that is making the Loan, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	630 I Street, Sacramento CA 95814	
“BORROWER”	The borrower of the Loan funds whose name, legal status and address are:	
Name	Red Volcano Productions, LLC	
Legal Status	A California limited liability company	
Principal Address	1015 20th Street, Sacramento, California 95814	
“LOAN”	The Loan made by this Loan Agreement.	
“LOAN COMMITMENT”	Lender’s loan commitment, made by letter dated as of	
“LOAN PROGRAM”	Lender’s Loan Program, commonly known as	North Sac Project Area Tax Increment
“LOAN AMOUNT”	Nine Hundred Fifty-Five Thousand Dollars and No Cents (\$955,000.00)	
“INTEREST RATE”	The interest rate is 6% per year, simple interest.	
“PAYMENT START DATE”	The first day of the 1st calendar month following the Effective Date.	
“MATURITY DATE”	The first day of the 300th calendar month following the Effective Date.	

"PAYMENT SCHEDULE"	Payable monthly, in equal monthly installments commencing on the Payment Start Date and continuing on the first day of each calendar month thereafter, through and including the Maturity Date.	
"BORROWER EQUITY"	Two Hundred Thousand Dollars and No Cents(\$200,000.00)	Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Borrower is investing in the Project.
	***Developer Non-cash Equity*** (\$***Developer Non-cash Equity***)	Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees).
"SPECIAL TERMS"	No special terms, this is a market rate loan.	
"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	The Project shall be the following: significant rehabilitation of interior space and façade improvements to the building to reuse it to suit the needs of the News and Review and its operation of its weekly newspaper. The project includes the design and construction new interior walls, electrical, plumbing and other mechanical systems. It also includes a new exterior façade, landscaping and improvements to the onsite parking lot

**B. "COLLATERAL"** The Collateral securing repayment of the Loan, which Collateral consists of the following:

"PROPERTY"	The following described real property, which is security for the Loan and the site of the Project:	
Address	1124 and 1132 Del Paso Boulevard, Sacramento, California	
Assessor's Parcel Number	275-0165-002; 275-0165-003; 275-0165-016; 275-0165-017; and 275-0165-018	
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in <b>Exhibit: Legal Description</b> attached and incorporated by reference.	
Borrower's Title Interest	Borrower has fee interest in the Property or, if the Additional Escrow Instructions so indicate, Borrower will acquire fee interest in the Property at Close of Escrow.	
"ADDITIONAL COLLATERAL"	The Additional Collateral securing repayment of the Loan is any additional security required by Lender under this Loan Agreement, including without limitation the following items, if any	
"PERSONAL PROPERTY"	Borrower's interest in the following personal property, tangible and intangible, and all other such property listed as security in this Loan Agreement	Materials and supplies for the Project

OTHER ADDITIONAL COLLATERAL	Borrower's interest in the following property:	
-----------------------------	--	--

<b>C. "ESCROW INFORMATION":</b>		
"Title Company" and "Escrow Agent"	North American Title Company	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow
"Escrow"	The escrow with Escrow Agent	
"Closing Date"		Which is the date for close of the Escrow, as it may be extended

<b>D. "List of Exhibits" (THE FOLLOWING ARE ATTACHED AND INCORPORATED IN THIS LOAN AGREEMENT):</b>	
EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Scope of Development</u>	"Scope of Development"
<u>Exhibit 3: Note Form</u>	"Note"
<u>Exhibit 4: Trust Deed Form</u>	"Trust Deed"
<u>Exhibit 5: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 6: Escrow Instructions</u>	"Escrow Instructions"

<b>E. "Approval Documents" BORROWER SHALL SUBMIT THE FOLLOWING DOCUMENTS FOR LENDER APPROVAL:</b>
Construction Agreements for the Project
Architectural Agreement for the Project
Borrower's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project
Evidence of financing as described in Article II of this Loan Agreement
Plans and Specifications as defined in Article II of this Loan Agreement

<b>F. "Assigned Documents" BORROWER SHALL ASSIGN THE FOLLOWING DOCUMENTS TO LENDER:</b>
Construction Contract
Architectural Contract

<b>G. "Construction Information":</b>		
"Completion Date"		Which is the date on or before which the Completion of the Project must occur.
"General Contractor"	Sunseri Associates, Inc.	Which is the general contractor for construction of the Project
"Project Architect"	Allan Hoshida	Which is the architect for design of the Project

"Retention"	The following percentage of each disbursement made for construction work, in aggregate not to exceed the following percentage of the Loan Amount, which shall be retained by Lender for disbursement with the final disbursement of the Loan:	Percentage of disbursements:	Ten Percent (10%)
		Percentage of Loan:	Ten Percent (10%)

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

This Loan is made pursuant to the OPA. This Loan Agreement is subject to the OPA including without limitation, conditions precedent to funding the Loan or making disbursements of the Loan proceeds.

Loan funds shall be used solely for Project construction. No Loan funds shall be used for predevelopment costs, except as provided in an approved Lender budget. Unless otherwise noted in said budget, predevelopment costs are not subject to the withholding as Retention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17.18. “Other Lender Draw” means a draw request or other request for disbursement submitted to another lender for the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18.10. **USE OF PROCEEDS.** All Loan Proceeds will be disbursed as provided in this Loan Agreement and used only for payment of the costs of construction of the

Project in accordance with the Plans and Specifications and for other purposes specified in the Loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

giving of notice or the passage of time, will constitute a default by Lender under the Loan Agreement.

21. **RELOCATION.** Lender is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Borrower shall comply fully with all relocation laws that are the obligation of Lender or are otherwise applicable to the Project. Lender and Borrower, however, agree that there are no occupants on the Property and therefore no one shall person or business shall be displaced by this Project.

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

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

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

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

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

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

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

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

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

23.6. **OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, if any, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

23.6.1. **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

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

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

23.9. **PREVAILING WAGES.** The transaction as contemplated in the DDA does not trigger prevailing wages. It is a market rate transaction and the Agency providing funding through a market rate loan. Borrower 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. Borrower and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Borrower indemnifies, holds harmless and defends the Lender from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Borrower or General Contractor or both of them.

#### 24. LOAN DISBURSEMENT PROCEDURES.

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

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

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

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

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

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

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

24.2. **CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** After Borrower has expended all of Borrower's equity, Borrower may request Borrower's request for the first Loan disbursement is a representation and warranty by Borrower that there has been no material adverse change in Borrower's financial capacity or in any representation made to Lender in Borrower's application for the Loan or Borrower's supporting documentation. Lender shall make the first loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 10.1 have been met:

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

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

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

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

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

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

24.3. **CONDITIONS PRECEDENT TO FINAL DISBURSEMENT.** Lender shall make the final loan disbursement under this Loan Agreement when the following conditions precedent and the conditions precedent stated in Section 10.1 have been met:

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

a. That the Project has been duly completed in a good and proper manner using sound, new materials;

b. That the Project complies with the Plans and Specifications, the requirements of all Governmental

c. Authorities and any other party having enforceable rights regarding the construction of the Project; and

d. That the Project is structurally sound.

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

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

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

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

a. The General Contractor and subcontractors and material suppliers and their subcontractors and material suppliers have been paid in full;

b. Borrower has obtained final certificates of occupancy for all of the Project;

c. All other permits and approvals necessary for the construction, equipping, management, operation, use, or ownership of the Project have been obtained, subject only to those conditions approved by Lender, and

d. The completed Project complies with all applicable zoning regulations, subdivision map acts, building code provisions, and similar governmental laws and regulations, and has all utilities and adequate ingress and egress from public streets, that evidence to be in the form of a certificate executed by Borrower in favor of Lender.

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

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

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

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

24.4. **MAKING DISBURSEMENT.** Lender shall pay each disbursement request within twenty (20) business days after the disbursement request is submitted to Lender, subject to fulfillment of the conditions precedent as stated in Section 10.1. Lender shall disburse the actual cost of the work represented in the disbursement request by Borrower, reduced by the cost of work included in the request and not satisfactorily completed and by the amount of the Retention to be withheld.

24.5. **OTHER LENDER DRAW.** Borrower shall provide Lender with true, accurate and correct copies of each Other Lender Draw, if any, including without limitation all supporting information, documents, and other required submittals. Lender shall have the right to reject an Other Lender Draw, for failing to comply with the Loan, for changing the Project in any material way, or for impairing the ability of Lender to enjoy the practical realization of its rights under the Loan and its related instruments. If Lender rejects an Other Lender Draw, Borrower shall withdraw the Other Lender Draw and shall not accept and shall return any disbursement on account of such Other Lender Draw.

24.5.1. **ACKNOWLEDGMENT OF RELIANCE.** Borrower acknowledges that Lender is making Loan disbursements in advance of disbursements of other lenders in reliance upon Borrowers compliance with this provision.

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

## 25. DEFAULT

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

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

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

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

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

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

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

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

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

## **26. REMEDIES**

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

26.1.1. Terminate its obligation to make disbursements.

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

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

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

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

26.2. **RIGHTS CUMULATIVE, NO WAIVER.** All of Lender's rights and remedies provided in this Loan Agreement or in any of the other Loan Documents are cumulative and may be exercised by Lender at any time. Lender's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Lender under the Loan Documents are repaid and Borrower has cured all other Events of Default. No waiver will be

implied from Lender's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Loan Documents must be in writing and will be limited to its specific terms.

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

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

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

27.1. **LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 15 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

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

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

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

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

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

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

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

Lender other projects which will or may be considered in aggregate with the Project, and thereafter, Borrower shall immediately inform Lender of the change in or addition to any such projects. Nevertheless, Lender may, at any time require that the insurance coverage be provided solely for the Project.

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

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

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

**27.8. BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 16 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Lender shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Lender will not be reduced or diminished thereby, and all of the other requirements of this Section 15 with respect to such insurance shall otherwise be satisfied by such blanket policy.

## **28. MISCELLANEOUS**

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

**28.2. SUBORDINATION.** Agency will subordinate this Loan to the senior loan, provided that the senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement, and that the senior loan does not require modification of this Loan Agreement, Agency's execution of any agreements containing new or modified Loan terms or Agency's execution of any agreement creating a contractual relationship between Lender and the senior lender including obligations or liabilities between Lender and the senior lender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**28.11. ASSIGNMENT.** The terms of this Loan Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Borrower shall not assign this Loan Agreement or any interest it may have in the monies due or, except as otherwise provided, convey or encumber the Property without the prior written consent of Lender to a party other than a general partner or managing member of Borrower or a single asset entity wholly owned and controlled by Borrower or a general partner or managing member of Borrower. However, if there is an

assignment, conveyance, or encumbrance, Lender may nevertheless at its option continue to make disbursements under this Loan Agreement to Borrower or to those who succeed to Borrower's title, and all sums so disbursed will be deemed to be disbursements under this Loan Agreement and not modifications, and will be secured by the Trust Deed. Lender may at any time assign the Loan Documents to any affiliate of Lender or to a national bank or other lender having experience with construction lending, and the assignee will assume the obligations of Lender, and Lender will have no further obligation of any nature. In that case, the provisions of this Loan Agreement will continue to apply to the Loan, and the assignee will be substituted in the place and stead of Lender, with all rights, obligations, and remedies of Lender, including, without limitation, the right to further assign the Loan Documents. In addition, Lender may at any time assign a participation in the Loan to any other party, provided that Lender continues to be primarily obligated under this Loan Agreement.

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

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

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

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

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

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

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

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

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

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

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

28.20. **NO REPRESENTATIONS BY LENDER.** By accepting or approving anything required to be observed, performed, or fulfilled, or to be given to Lender pursuant to this Loan Agreement or pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of income and expense, or other Financial Statement, survey, appraisal, or

insurance policy, Lender will not be deemed to have warranted or represented the sufficiency, legality, effectiveness, or legal effect of it or of any particular term, provision, or condition of it, and any acceptance or approval will not be or constitute any warranty or representation by Lender.

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

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

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

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

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

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

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

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

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

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

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

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

**BORROWER :**  
**RED VOLCANO PRODUCTIONS, LLC, a**  
**California limited liability company**

**LENDER:**  
**REDEVELOPMENT AGENCY OF THE CITY OF**  
**SACRAMENTO**

By:  
\_\_\_\_\_  
Jeff von Kaenel  
Managing Member

By:  
\_\_\_\_\_  
Anne M. Moore, Executive Director

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

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

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

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