

c. Such services cannot be provided in a non-segregated setting. The families must not be required to accept the services offered at the Project. In advertising the Project, Owner may advertise the Project as offering services for a particular type of disability; however, the Project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the Project.

iv. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

v. Give prompt written notification to any rejected applicant of the grounds for any rejection.

d. Owner shall not refuse to lease a HOME-Restricted unit to a certificate or voucher holder under 24 CFR Part 982 – Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the tenant as a holder of such certificate, voucher or comparable certification.

10. Unit Quality & Determination of Cost Allocation. OWNER shall assure that HOME Restricted Units assisted with HOME Funds must be comparable in size and amenities to other units in the Project. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME Restricted units can be determined by pro-rating the total HOME eligible development costs of the Project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME Restricted units in the Project. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation.

11. Compliance With Loan Documents. Owner shall comply with any and all applicable provisions of the Loan Agreement for so long as they continue to be in effect.

12. Repayment On Default Or Early Termination. If the Agency determines the Project does not comply with HOME requirements for affordability as specified in 24 CFR §§ 92.252 or 92.254; or if the Project is terminated before completion, either voluntarily or otherwise; or if Owner does not comply with these funding restrictions; or if the Project is determined to be an ineligible activity under HOME, Owner must repay to Agency any HOME Funds invested in the Project upon demand.

13. Program Income. If Project income is considered to be HOME program income, it shall nevertheless be paid to or retained by Owner in accordance with the agreement between Agency and Owner.

14. Administrative Requirements. Owners that are governmental or non-profit organizations shall comply with the provisions of 24 CFR §92.505 regarding uniform administrative requirements. Owner shall cooperate fully with the Agency and provide all documents and records required by Agency in preparing for HOME related audits. Owner shall comply with all applicable requirements under HOME, including without limitation, recordkeeping and reporting.

15. Governmental Entities, Non-Profits, CHDOS. Special HOME regulations apply to an Owner that is governmental or non-profit entities or a community housing development organization. Such Owner is responsible for knowledge of and shall fully comply with such regulations.

16. Term. These covenants shall burden and regulate the HOME Restricted Units assisted with HOME Funds for the following term as applicable, unless a longer term is specified in the body of the document to which this attached:

a. For rehabilitation or acquisition of existing housing, five (5) years if the subsidy for each of HOME-Restricted Unit is less than \$15,000;

b. For ten (10) years if such subsidy is \$15,000 or more but not more than \$40,000;

c. For fifteen (15) years if such subsidy is more than \$40,000 or if the project involves refinancing of an existing loan; and

d. For new construction or acquisition of newly constructed housing, twenty (20) years.

17. No Termination On Recapture. Notwithstanding any other provisions of the Regulatory Agreement, the provisions of this HOME Funding and Other Federal Restrictions shall continue for the duration of the applicable preceding term.

## EXHIBIT 7B: CDBG AND OTHER FEDERAL REQUIREMENTS

The following provisions shall be applicable to this Contract and binding on Subrecipient and Agency only if all or part of the funds to be paid for work performed under this Contract are provided under the Community Development Block Grant Program administered by the United States Department of Housing and Urban Development. In the event of a dispute as to the applicability of any of the following provisions to Subrecipient's work under this Contract, Agency's determination shall be final.

1. **DEFINITIONS.** For purposes of this Contract and in addition to definitions made elsewhere in this Contract, the following quoted words and phrases contained in this Contract shall have the following meanings:

- a) The "Act" is the federal Housing and Community Development Act of 1974, as amended.
- b) "Allocable Costs" are particular to a Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. See 2 CFR §200.405.
- c) "CDBG" is the federal Community Development Block Grant program administered by HUD. "CFR" is the Code of Federal Regulations.
- d) "CDBG Requirements" are the laws, rules and regulations (other than the Act) which are specifically applicable to this Contract. A substantial portion of the Federal Requirements are included in this Attachment 3.
- e) "Contract Provisions" refers to "Attachment 1: Contract Provisions". This Attachment 3 contains the provisions common to all Agency administered CDBG agreements.
- f) "Cost Objective" generally means a service, program, project or activity in which costs can be assigned to and measured from. See 2 CFR §200.28.
- g) "Direct costs" are those costs that can be identified specifically with a particular final cost objective or other internally or externally funded activity, or that can be directly assigned to such activities relatively easy with a high degree of accuracy. See 2 CFR §200.413.
- h) "Indirect costs" means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved. See 2 CFR §§ 200.56, 200.413, and 200.414.
- i) "HUD" is the United States Department of Housing and Urban Development.
- j) "OMB" is the federal Office of Management and Budget.
- k) "Reasonable Costs" include costs that are generally recognized as ordinary and necessary for the operation or efficient performance of the contract or award and do not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. See 2 CFR §200.404.
- l) "Program Income" is defined in 24 CFR §570.500(a); see also 2 CFR §200.80. Generally, Program Income is income to Subrecipient that is generated from the use of CDBG funds under this Contract. Program Income may include, without limitation, proceeds from the sale, rent or lease of real or personal property acquired with such CDBG funds, principal and interest payments on loans of such CDBG funds, and interest earned on other Program Income.
- m) "Project Funds" are the funds to be paid to the Subrecipient under this Contract. All Project Funds are funds disbursed to the Recipient and Agency under the CDBG Program.
- n) "Quarterly Reports" are the reports required to be submitted by Subrecipient under Attachment 3 Exhibit 14 - Quarterly Reports
- o) "Subrecipient" is the Contractor as defined elsewhere in this Contract.

**2. EXHIBITS.** Exhibits to this Attachment are located online at [www.shra.org](http://www.shra.org) and contain a substantial portion of the Federal Requirements and are incorporated into this Contract.

**Subrecipient acknowledges that they have reviewed and accept these Exhibits by initialing here: \_\_\_\_\_:**

- a) Exhibit 1 – CDBG Regulations: 24 CFR 570 et seq.
- b) Exhibit 2 – Requirements for Nonprofit Subrecipients. 2 CFR Section 200.70 and Appendix VIII to 2 CFR Part 200.
- c) Exhibit 3 –Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations [applies only to Subrecipients who are not a state or local government or a public agency]. See 2 CFR §§ 200.52, 200.55, and Appendix VIII to 2 CFR Part 200.
- d) Exhibit 4 –Cost Principles for Nonprofit Organizations [applies only to Subrecipients who are not a state or local government, a public agency or an educational institution]. See 2 CFR §200.70, and Appendix VIII to 2 CFR Part 200.
- e) Exhibit 5 –Audits of Institutions of Higher Education and Other Nonprofit Organizations [applies only to Subrecipients who are not a state or local government or a public agency]. See 2 CFR §§ 200.55, 200.418, 200.419, and Appendix III to CFR Part 200.
- f) Exhibit 6 –Cost Principles for Educational Institutions [applies only to Subrecipients who are an educational institution]. See CFR §§200.418, 200.419.
- g) Exhibit 7 –Principles for determining Costs Applicable to Grants and Contracts with State, Local and Federally-Recognized Tribal Indian Governments [applies only to Subrecipients who are a state or local government, a public agency. See 2 CFR §§ 200.416 and 200.417.
- h) Exhibit 8 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 2 CFR Part 200; see also 2 CFR §§ 200.416, 200.417, 24 CFR §570.502 and Appendix VII to 2 CFR Part 200.
- i) Exhibit 9 – New Restrictions on Lobbying. 24 CFR Part 87; see also 2 CFR §200.450.
- j) Exhibit 10 – Federal Labor Standards Provisions; 29 CFR §5.5
- k) Exhibit 11 – Executive Order 12432 – M/WBE; see also 2 CFR §200.321.
- l) Exhibit 12 – Executive Order 12138 – M/WBE; see also 2 CFR §200.321.
- m) Exhibit 13 – Executive Order 11625 – M/WBE and Agency-assembled M/WBE material; see also 2 CFR §200.321.
- n) Exhibit 14 – Executive Order 11246, as amended – Equal Opportunity.
- o) Exhibit 15 – Executive Order 13166 – Limited English Proficiency Access.
- p) Exhibit 16 – Equal Access to Housing and HUD Programs Regardless of Sexual Orientation or Gender Identity: 24 CFR Parts 5, 200, 400, 570, 574, 882, 891 and 982.
- q) Exhibit 17 – Violence Against Women Reauthorization Act of 2013
- r) Exhibit 18– CPD Notice 15-02 – Appropriate Placement for Transgender Persons in Single Sex Emergency Shelters and Other Facilities.
- s) Exhibit 19 – Generally Applicable HUD Program Requirements; Waivers. 24 CFR Part 5.

**3. FINDINGS AND REPRESENTATIONS.** This Contract has been made for the following purposes and based upon the following representations of the parties:

a) In accordance with the provisions of California Government Code Section 53703, Agency possesses full powers for the purpose of administering the expenditure of funds received under the federal Housing and Community Development Act of 1974, as amended, Community Development Block Grant program, administered by the United States Department of Housing and Urban Development.

b) Agency has determined that the fulfillment of Subrecipient's obligations under this Contract serves the purposes of community improvement and welfare.

c) Pursuant to the provisions of California Government Code Section 53703 and after public hearing, Subrecipient has been allocated CDBG funds for the uses and activities of this Contract.

d) Agency and Subrecipient are subject to all laws, rules and regulations regarding the use of CDBG funds for the purposes and activities stated in this Contract.

**4. COSTS.** All costs must be necessary and reasonable for the performance of the federal award and be allocable thereto under these principles per 2 CFR §§ 200.403 and 200.404. Classifying a particular cost as direct or indirect depends on whether it can be identified directly with a cost objective (such as a project or activity) without disproportionate effort. All costs must comply with 2 CFR Part 200, Subpart E-Cost Principles (2 CFR §§ 200.420-200.475).

The contractor may, but is not required to, elect to charge for indirect costs. If the contractor chooses to charge for indirect costs, the maximum indirect cost rate is 10% (de minimis), unless an indirect cost rate has been previously negotiated with and approved by the federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost rate proposals. The negotiated rate must be accepted by all federal awarding agencies.

**5. ADDITIONAL RESTRICTIONS ON FUNDS.** Subrecipient acknowledges that the funds for this Contract are CDBG funds, the amount of which has been established after public hearing and that Agency has no authority to change the Project Funds except after public hearing and Recipient approval. Therefore, and notwithstanding any other provision of this Contract, the parties agree that the total compensation and reimbursement for all services and expenses required during the term of this Contract shall not exceed the Project Funds. Subrecipient shall provide, from whatever source, all additional funds necessary to fulfill Subrecipient's obligations under this Contract, including without limitation with respect to any of the foregoing:

a) If Subrecipient incurs additional expenses or does additional work related to this Contract, Subrecipient shall bear all such costs and expenses unless the Agency has executed a written amendment to this Contract prior to Subrecipient's having incurred such costs and expenses.

b) Subrecipient shall use proceeds of this Contract only for the purposes stated in this Contract, as described in the Scope of Work, and strictly in compliance with all applicable laws, rules and regulations.

c) If Subrecipient is not a state or local government, educational institution or public agency, Subrecipient shall fully comply with the regulations, policies, guidelines and requirements set forth in 2 CFR Part 200 and 24 CFR Part 570.

d) Subrecipient shall deposit any advance under this Contract in an interest-bearing account and, unless specified otherwise in this Contract, shall remit any interest earned over \$100 to the Agency.

e) Project Funds shall not be used for any explicitly religious purposes, which prohibition is further described in 24 CFR §§ 5.109(d) & (e).

f) In the event of suspension or termination of this Contract, Subrecipient shall return unused funds to the Agency in accordance with 24 CFR §570.503(b)(7). If the Subrecipient improperly retains funds, the Agency may retain funds from future disbursements to the Subrecipient in accordance with the procedures described in 24 CFR §570.504(b)(2). In accordance with 2 CFR §§ 200.338 and 200.339, suspension or termination may occur if Subrecipient materially fails to comply with any term of the award, and the award may be terminated for convenience in accordance with 2 CFR §§ 200.338 and 200.339.

**6. RESEARCH AND DEVELOPMENT (R & D).** Funds may not be used for R & D. R & D means all research and development related activities, both basic and applied, that are performed by non-Federal entities. See 2 CFR §200.87 for additional information on R & D.

**7. RETURN OF PROGRAM INCOME.** Subrecipient shall report receipt of all Program Income and return all Program Income to the Agency.

**8. ANTI-KICKBACK RULES.** Monthly, or more often, Subrecipient must, without condition, pay the salaries of architects, draftsmen, technical engineers and technicians performing work under this Contract. Such payments shall be made without deduction or rebate, excepting only such payroll deductions as are mandatory by law or permitted by applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1937 (18 U.S.C., Section 874). Subrecipient shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to insure compliance by subcontractors with such regulations. Subrecipient shall be responsible for the submission of affidavits required of subcontractors under this Contract, except for such variations or exemptions as the Secretary of Labor may specifically allow.

**9. WORK HOURS.** Subrecipient must comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3201-3708) and must cooperate with Agency in implementing and enforcing the provisions of such Act. Among other requirements of the act, Subrecipient must pay not less than one and one-half times the basic rate of pay for the work of Subrecipient's employee in excess of eight hours in one day or forty hours in one week in the performance of this Contract. Subrecipient must insert appropriate provisions in all subcontracts covering work under this Contract to insure compliance with such Act. Subrecipient must meet and cooperate with Agency's Labor Compliance officer to assure compliance with such Act.

**10. WITHHOLDING OF SALARIES.** If, in the performance of this Contract, there is any underpayment of salaries by Subrecipient or by any subcontractor, Agency must withhold from Subrecipient out of payments due to him any amount sufficient to pay employees underpaid the difference between the salaries required under this Contract to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by Agency for and on account of Subrecipient or subcontractor to the respective employees to whom they are due.

**11. CLAIMS AND DISPUTES PERTAINING TO SALARY RATES.** Claims and disputes pertaining to salary rates or to classification of architects, draftsmen, technical engineers and technicians performing work under this Contract must be promptly reported in writing by Subrecipient to Agency for the latter's decision which shall be final with respect thereto.

**12. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.**

a) Subrecipient will send to each labor union or representative of workers with whom he has a collective bargaining agreement or other contract or understanding, a notice to be provided by Agency, advising the labor union or workers representative of Subrecipient's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

b) Subrecipient will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

c) Subrecipient will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

**13. CONFLICT OF INTEREST.** No member, officer or any employee of Subrecipient, or its designees or agents, who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have an interest, direct or indirect, in any contract or its proceeds, for work to be performed in connection with the program assisted under this Contract. Subrecipient must incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the purposes of this Section. In the procurement of supplies, equipment, construction, and services by Subrecipient, the conflict of interest provisions in 2 CFR§ 200.318 and 2 CFR§ 200.319 respectively, shall apply.

**14. DISCRIMINATION BECAUSE OF CERTAIN LABOR MATTERS.** No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable to his employer under this Contract.

**15. RECORDS, REPORTING AND MONITORING.** Agency may monitor the adequacy of Contractor's performance in any manner which Agency deems most effective. Contractor must cooperate with Agency in such monitoring. Subrecipient must keep all necessary books and records, including loan documentation and financial records, in connection with the operation and services performed under this Contract, and must document all transactions so Agency may properly audit all expenditures made pursuant to this Contract. Subrecipient must maintain and preserve all records related to this Contract in its possession for a period of three (3) years from the completion date of this Contract, unless otherwise directed by Agency. All books, records and accounts kept by Subrecipient in connection with the performance of this Contract shall be made available for inspection by representatives of the federal government and/or Agency staff as required to monitor or audit the program.

In addition to the reports specified in this Contract, Subrecipient shall retain the records required by the applicable provisions of 2 CFR § 200.333 and provide the Agency with the reports required pursuant to 2 CFR §§ 200.328 and 200.343, and such other records and reports as the Agency may reasonably require in the administration of this Contract. Subrecipient shall keep all other necessary books and records, including property, personnel, loan documentation and financial records, in connection with the operation and services performed under this Contract, in accordance with 2 CFR §200.333. Subrecipient shall conduct audits in accordance with 2 CFR, Part 200, Subpart F. Subrecipient shall document all transactions sufficiently for Agency to properly monitor and audit all expenditures made pursuant to this Contract.

**16. DRUG FREE WORKPLACE.** Subrecipient must comply with the Drug-Free Workplace Act of 1988 (final rule published on May 25, 1990) and Agency's policies and rules promulgated under the Act. Subrecipient must obtain such policies and rules from the Agency.

**17. RESTRICTIONS ON LOBBYING; FILING CERTIFICATION AND DISCLOSURE FORMS.** Subrecipient shall not use any funds paid under this Contract, directly or indirectly, for any political activity, whatsoever, or to influence any public official or employee. In any event, Subrecipient shall comply with the restrictions on lobbying stated in 24 CFR Part 87 and 2 CFR §200.450. Subrecipient shall sign and return to the Agency the certification described in 24 CFR Part 87, Appendix A and the disclosure form described in 24 CFR Part 87, Appendix B. Subrecipient shall require any person receiving proceeds of this Contract from Subrecipient to comply with 24 CFR Part 87, including the submission to Agency of completed certifications under Appendix A and disclosure forms under Appendix B.

**18. ELIGIBILITY AND NON-DISCRIMINATION (SECTION 109).** Subrecipient shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicap, or age as more specifically set forth in 24 CFR §570.602 which requires compliance with Section 109 of the Act (42 USC §5301) and Section 504 of the Rehabilitation Act of 1973.

**19. CIVIL RIGHTS COVENANT.** As provided in 24 CFR §§ 5.105 and 570.602 and depending upon the type and nature of the grant of CDBG funds, this Contract may be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) and HUD regulations. Subrecipient certifies that its activities under this Contract shall be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) and that it will comply with the other provisions of Title 24 of the CFR and with other applicable laws, to the full extent of their application. Further pursuant to Executive Order 11063 (as amended pursuant to Executive Order 12259) set out in 24 CFR Part 107, in the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under the Contract, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Agency and the United States are beneficiaries of and entitled to enforce such covenant. Subrecipient, in undertaking its obligation in carrying out the program assisted hereunder, shall take such measures as are necessary to enforce such covenant and shall not itself so discriminate.

**20. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS.** This Contract is subject to minority and women's business enterprises requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138. Subrecipient shall take all reasonable steps necessary to encourage the participation of minority and female owned businesses in work under this Contract.

a) With regard to any work of construction funded with Project Funds, such steps may include, without limitation, the following:

a) Obtaining the minority and Women's Business Enterprises Registry from the Agency MBE/WBE Coordinator to ensure such contractors receive an invitation to bid.

b) Advertising the invitation to bid or to submit proposals in the El Hispano and the Sacramento Observer as well as in a newspaper of general circulation in the Sacramento metropolitan area.

c) Reviewing the telephone directory or professional organization membership lists, or making direct contact with minority- or female-owned businesses for specialized trades and services, and inviting such firms to bid.

b) Subrecipient shall include the Minority and Women's Business Enterprises requirements, in the form prescribed by the Agency, in all contracts for use of funds under this Contract, and Subrecipient shall coordinate purchases of goods and services over \$10,000 with the Agency's MBE/WBE Coordinator.

c) Subrecipient shall maintain documentation of outreach efforts to minority and/or female owned businesses. Additionally, Subrecipient shall maintain documentation of contract awards for the Quarterly Reports.

**21. FLOOD DISASTER PROTECTION.** Pursuant to the requirements of the Flood Disaster Protection Act of 1973 (42 USC §4001), Subrecipient shall not use or permit the use of any portion of the assistance provided under this Contract for acquisition or construction purposes as defined by the Director of the Federal Emergency Management Agency (42 USC §4003(a) (4)), for use in an area identified by the Director of the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is located is then participating in the national flood insurance program (described at 42 USC §4011) and the use of any such assistance shall be subject to the mandatory purchase of flood insurance requirements of 42 USC §4012a.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Director as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, 42 USC §7401 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under the Flood Disaster Protection Act of 1973 (42 USC §4012a). Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Contract.

**22. COMPLIANCE WITH AIR AND WATER ACTS.** This Contract is subject to the applicable requirements of the Clean Air Act (42 USC §7401 et seq.), the Federal Water Pollution Control Act, (33 USC Chapter 26), and the corresponding regulations of the Environmental Protection Agency (40 CFR, Chapter 1, Subchapter A). In compliance with said regulations, Subrecipient shall cause or require to be inserted in all contracts and subcontracts funded with Project Funds, and with respect to any transaction which is not otherwise exempt from such laws and regulations, all of the following requirements:

a) A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of the contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA).

b) Compliance with all the requirements of Section 114 of the Clean Air Act, (42 USC §7401 et seq.) and Section 308 of the Federal Water Pollution Control Act, (33 USC Chapter 26) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c) A stipulation that, as a condition for the award of the contract, prompt notice shall be given to Agency by Subrecipient or the prospective contractor or subcontractor of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.



d) Contract by the contractor that he shall include or cause to be included the criteria and requirements in this Section 19a. through 19c. of this Section in every non-exempt subcontract and requiring that the contractor shall take such action as the government may direct as a means of enforcing such provisions.

e) In no event shall any amount of the assistance provided under this Contract be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) (42 USC §7413) of the Clean Air Act or Section 309(c) (33 USC §1319) of the Federal Water Pollution Control Act.

**23. RELOCATION.** This Contract is subject to the requirements of Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.) and HUD implementing regulations at 24 CFR Part 42 and 24 CFR §570.606. Subrecipient shall not undertake any of the work contemplated under this Contract if relocation is involved without first obtaining written approval from Agency. Subrecipient shall inform affected persons of the relocation assistance policies and procedures set forth in the regulations at 24 CFR Part 42 and 24 CFR §570.606.

**24. PROPERTY OWNERSHIP AND PROCUREMENT.** The Subrecipient, shall, in the acquisition or improvement of real and personal property with funds provided under this Contract, be subject to all applicable provisions of the Federal Requirements.

a) Any real property under Subrecipient's control which was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 must be either used to meet one of the national objectives in 24 CFR §570.208 for five years after the expiration or termination of this Contract, or disposed of in a manner that results in the Agency being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property.

b) General property and procurement guidelines are contained in 24 CFR Part 570 and 2 CFR Part 200.. In all cases in which personal property is sold, the proceeds shall be transferred to Agency for the CDBG program or shall be Program Income, and, personal property not needed by the Subrecipient shall be transferred to Agency for the CDBG program or shall be retained by Subrecipient after compensating the Agency.

c) Real property shall be acquired in accordance with Title III, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (at 24 CFR Part 42).

**25. USE OF DEBARRED, SUSPENDED OR PROHIBITED PARTIES.** Subrecipient shall not use any Project Funds, directly or indirectly, to award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 570. Subrecipient will verify that the Federal Debarred List Registry does not include any contractor or subrecipient prior to awarding contracts and that they will record the date that the Registry was consulted. Subrecipient acknowledges this requirement by initialing here:

\_\_\_\_\_ Subrecipient initials

**26. DAVIS-BACON ACT AND STATE PREVAILING WAGES.** If this Contract is for construction, alteration, or repair (including painting and decorating) of public buildings or public works, Subrecipient must comply with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a - 276a-5) and all rules, regulations and orders promulgated under said act, unless a determination of exemption from requirements of the Davis-Bacon Act is made and unless the exemption is expressly stated elsewhere in this Contract. Among other provisions, said act establishes minimum wages and fringe benefits; prohibits deductions or rebates from payments; provides for the withholding of funds to assure compliance with wage provisions; and provides for the termination of the Contract and debarment of the Subrecipient for failure so to comply. Additionally, California State Prevailing wages may apply (California Labor Code §1720 et seq.), in which case prevailing wages shall be the higher of either the Davis Bacon wages or the State prevailing wage, as determined by trade.

Prior to starting Project construction, Subrecipient must obtain the Department of Labor General Wage Decision for Sacramento County. The Bid opening shall serve as the Subrecipient's federally-required ten (10) day call, and serves to lock-in applicable prevailing wages throughout the construction phase.

**27. CONSTRUCTION PROVISIONS.** Subrecipient shall comply with the provisions of this Section 24 for all activities pertaining to the construction, prosecution, completion or repair of any building or work financed in whole or in part by CDBG funds provided pursuant to this Contract.

**28. FEDERAL LABOR STANDARDS.** Pursuant to 24 CFR §570.603, for construction, rehabilitation, alteration, or repair of real property (other than residential property containing less than eight units) funded with Project Funds, Subrecipient shall comply, and shall cause all subcontractors on such work to comply, with the applicable provisions of the Davis-Bacon Act, as amended, (40 USC §§ 276a, 276a-5), the Contract Work Hours and Safety Standards Act, as amended, (40 USC §327 et seq.) and all rules, regulations and orders promulgated under said Acts. Among other provisions, said Acts establish minimum wages and fringe benefits; prohibit deductions or rebates from payments; provide for the withholding of funds to assure compliance with wage provisions; and provide for the termination of the contract and debarment of the contractor for failure so to comply. Subrecipient shall also comply, and shall cause all subcontractors on such work to comply, with all other applicable HUD labor requirements, including, without limitation, the requirements of 29 CFR Parts 3 and 5 which govern the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by state or local law, nothing in this Contract is intended to relieve Subrecipient of its obligations, if any, to require payment of the higher rates. Subrecipient shall cause or require to be inserted, in all such contracts, provisions which subject the parties to the Federal Labor Standards Provision and all other applicable regulations and requirements of HUD. Subrecipient shall not award any contract subject to the provisions of this Section 24.a. of the Contract to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

**29. ECONOMIC OPPORTUNITY EMPLOYMENT REQUIREMENTS.** The following is applicable to all contracts related to the project which is the subject of this Contract.

a) The work to be performed under this Contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

b) The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract.

c) The contract requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area.

d) The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

e) Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Employment Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

f) Contractor will include this Employment Clause in every subcontract for work in connection with the project.

g) Each Contractor or subcontractor undertaking work in connection with a Section 3 covered project must fulfill his obligation to utilize lower income project area residents as employees to the greatest extent feasible by:

a) Identifying the number of positions in the various occupational categories including skilled, semi-skilled, and unskilled labor, needed to perform each phase of the Section 3 covered project;

b) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;

c) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are not currently occupied by regular permanent employees;

d) Establishing the positions described in Paragraph (3) of this Section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower income residents of the Section 3 covered project area;

e) Making a good faith effort to fill all of the positions identified in Paragraph (4) of this Section with lower income project area residents through the Greater Sacramento Urban League, Sacramento Works, Sacramento Employment Training Agency, or similar local workforce agencies.

f) Making a good faith effort to fill of the positions identified in Paragraph (4) of this Section with lower income project area residents.

**30. ARCHITECTURAL BARRIERS ACT.** Subrecipient shall comply with the Architectural Barriers Act of 1968 (42 USC §4151), as applicable, which Act requires that the design of any facility, except a private residence, that is constructed, renovated, remodeled or rehabilitated with funds received pursuant to this Contract shall comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Usable by, the Physically Handicapped", as described in 41 U.S.C.F.R. 10119.6, and Subrecipient shall cooperate with the Agency in its inspections pursuant to such provisions.

**31. LEAD-BASED PAINT.** The use of lead-based paint is prohibited in any residential structure constructed or rehabilitated with Project Funds, which prohibitions are further described in 24 CFR Part 35, Subpart F. For those properties constructed prior to 1978, Subrecipient shall assure that rehabilitation applicants, purchasers or tenants, as the case may be, shall be notified (i) that the property may contain lead-based paint, (ii) of the hazards of lead-based paint, (iii) of the symptoms and treatment of lead-based poisoning (iv) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards), (v) of the advisability and availability of blood level screening for children under the age of seven years of age, and (vi) that in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken. Subrecipient shall follow the procedures for the elimination of lead-based paint hazards, to the extent required under 24 CFR 570.608 (c).

**32. FOOD, TRAVEL AND ENTERTAINMENT.** Travel costs may include expenses for transportation, lodging and subsistence and are only allowable for employees who are in travel status on official business and approved as part of this contract or with prior written approval and are specifically related to this contract. Costs must be considered reasonable and do not exceed charges allowed by contractor's Out of Town Travel Policy. See 2 CFR §200.474 for additional information on travel costs and [www.shra.org](http://www.shra.org) for the Out of Town Travel Policy.

The costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval. All entertainment costs must comply with 2 CFR §200.438. In addition, the costs of alcoholic beverages are not allowed under §200.423

**33. CHANGES IN LAWS AND REGULATIONS.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation **shall automatically supersede the contract's scope of work and any attachments.** The most current exhibits, laws, and regulations will be posted at [www.shra.org](http://www.shra.org).

**34. OTHER PROGRAM REQUIREMENTS.** Agency must provide Subrecipient with all relevant program information regarding the federal programs having jurisdiction over this Contract. Agency must assist Subrecipient in the interpretation of the requirements of such programs. Subrecipient shall be considered to be familiar with the requirements of such programs and shall comply with such requirements.

## **EXHIBIT 7C: HOPWA AND OTHER FEDERAL REQUIREMENTS**

The following provisions shall be applicable to this Contract and binding on Subrecipient and Agency only if all or part of the funds to be paid for work performed under this Contract are provided under the Housing Opportunities for Persons with Aids Program administered by the United States Department of Housing and Urban Development. In the event of a dispute as to the applicability of any of the following provisions to Subrecipient's work under this Contract, Agency's determination shall be final.

1. **DEFINITIONS.** For purposes of this Contract and in addition to definitions made elsewhere in this Contract, the following quoted words and phrases contained in this Contract shall have the following meanings:

- a) The "Act" is the federal Housing and Community Development Act of 1974, as amended.
- b) "Allocable Costs" are particular to a Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. See 2 CFR §200.405.
- c) "Contract Provisions" refers to "Attachment 1: Contract Provisions." This Attachment 3 contains the provisions common to all Agency administered HOPWA agreements.
- d) "Cost Objective" generally means a service, program, project or activity in which costs can be assigned to and measured from. See 2 CFR §200.28.
- e) "Direct Costs" are those costs that can be identified specifically with a particular final cost objective or other internally or externally funded activity, or that can be directly assigned to such activities relatively easy with a high degree of accuracy. See 2 CFR §200.413.
- f) "HOPWA" is the federal Housing Opportunities for Persons with AIDS program administered by HUD. "CFR" is the Code of Federal Regulations.
- g) "HOPWA Requirements" are the laws, rules and regulations (other than the Act) which are specifically applicable to this Contract. A substantial portion of the HOPWA Requirements are included in this Attachment 3.
- h) "Indirect Costs" Indirect costs" means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved. See 2 CFR §§ 200.56, 200.413, and 200.414
- i) "HUD" is the United States Department of Housing and Urban Development.
- j) "OMB" is the federal Office of Management and Budget.
- k) "Program Income" is defined in 2 CFR §200.80. Generally, Program Income is income to Subrecipient that is generated from the use of HOPWA funds under this Contract. Program Income may include, without limitation, proceeds of the sale, rent or lease of real or personal property acquired with such funds, principal and interest payments on loans of such HOPWA funds, and interest earned on other Program Income.
- l) "Project Funds" are the funds to be paid to the Subrecipient under this Contract. All Project Funds are funds disbursed to the Recipient and Agency under the HOPWA Program.
- m) "Quarterly Reports" are required to be submitted by Subrecipient in accordance with 2 CFR 200.328(b)(1). See 2 CFR §200.327, 200.328, 200.329, 200.512, 24 CFR Part 91, and 24 CFR §574.520 for additional reporting requirements.
- n) "Reasonable Costs" include costs that are generally recognized as ordinary and necessary for the operation or efficient performance of the contract or award and do not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. See 2 CFR §200.404.
- o) "Subrecipient" is the Contractor as defined elsewhere in this Contract.

2. **EXHIBITS.** Exhibits to this Attachment are located online at [www.shra.org](http://www.shra.org) and contain a substantial portion of the Federal Requirements and are incorporated into this Contract.

Subrecipient acknowledges they have reviewed and accept these Exhibits by initialing here: \_\_\_\_\_

- a) Exhibit 1 – HOPWA Regulations: 24 CFR Part 574.
- b) Exhibit 2 – Requirements for Nonprofit Subrecipients. 2 CFR §200.70 and Appendix VIII to 2 CFR Part 200.
- c) Exhibit 3 - Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations [applies only to Subrecipients who are not a state or local government or a public agency]. See also 2 CFR §§ 200.52, 200.55, and Appendix VIII to 2 CFR Part 200.
- d) Exhibit 4 - Cost Principles for Nonprofit Organizations [applies only to Subrecipients who are not a state or local government, a public agency or an educational institution]. See 2 CFR §200.70, and Appendix VIII to 2 CFR Part 200.
- e) Exhibit 5 – Audits of Institutions of Higher Education and Other Nonprofit Organizations [applies only to Subrecipients who are not a state or local government or a public agency]. See also 2 CFR §§ 200.55, 200.418, 200.419, and Appendix III to 2 CFR Part 200.
- f) Exhibit 6 –Cost Principles for Educational Institutions [applies only to Subrecipients who are an educational institution]. See CFR §§ 200.418 and 200.419.
- g) Exhibit 7 –Principles for determining Costs Applicable to Grants and Contracts with State, Local and Federally-Recognized Tribal Indian Governments [applies only to Subrecipients who are a state or local government, a public agency. 2 CFR §§ 200.416, 200.417, and Appendix VII to 2 CFR Part 200.
- h) Exhibit 8 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 2 CFR Part 200; see also 2 CFR §§200.416, 200.417, and Appendix VII to 2 CFR Part 200.
- i) Exhibit 9 – New Restrictions on Lobbying. 24 CFR Part 87; see also 2 CFR §200.450.
- j) Exhibit 10 – Federal Labor Standards Provisions; 29 CFR §5.5.
- k) Exhibit 11 – Executive Order 12432 – M/WBE; see also 2 CFR §200.321.
- l) Exhibit 12 – Executive Order 12138 – M/WBE; see also 2 CFR Section §200.321.
- m) Exhibit 13 – Executive Order 11625 – M/WBE and Agency assembled M/WBE materials.
- n) Exhibit 14 – Executive Order 11246, as amended – Equal Opportunity.
- o) Exhibit 15 – Executive Order 13166 – Limited English Proficiency Access.
- p) Exhibit 16 – Equal Access to Housing and HUD Programs Regardless of Sexual Orientation or Gender Identity: 24 CFR Parts 5, 200, 570, 574, 882, 891 and 982
- q) Exhibit 17 – Generally Applicable HUD Program Requirements; Waivers. 24 CFR Part 5. Exhibit 18. CPD Notice 15-02 – Appropriate Placement for Transgender Persons in Single Sex Emergency Shelters and Other Facilities.
- r) Exhibit 20 – Notice CPD 06-07 Standards for HOPWA Short-Term Rent, Mortgage, and Utility (STRMU) Payments and Connections to Permanent Housing.

3. **FINDINGS AND REPRESENTATIONS.** This Contract has been made for the following purposes and based upon the following representations of the parties:

a) In accordance with the provisions of California Government Code §53703, Agency possesses full powers for the purpose of administering the expenditure of funds received under the federal Housing and Community Development Act of 1974, as amended, Housing Opportunities for Persons with AIDS Grant program, administered by the United States Department of Housing and Urban Development.

b) Agency has determined that the fulfillment of Subrecipient's obligations under this Contract serves the purposes of community improvement and welfare.

c) Pursuant to the provisions of California Government Code §53703 and after public hearing, Subrecipient has been allocated HOPWA funds for the uses and activities of this Contract.

d) Agency and Subrecipient are subject to all laws, rules and regulations regarding the use of HOPWA funds for the purposes and activities stated in this Contract.

**4. COSTS.** All costs must be necessary and reasonable for the performance of the federal award and be allocable thereto under these principles per 2 CFR §§ 200.403 and 404. Classifying a particular cost as direct or indirect depends on whether it can be identified directly with a cost objective (such as a project or activity) without disproportionate effort. All costs must comply with 2 CFR Part 200, Subpart E-Cost Principles (2 CFR §§ 200.420-200.475).

The contractor may elect, but is not required, to charge for indirect costs. If the contractor chooses to charge for indirect costs, the maximum indirect cost rate is 10% (de minimis), unless an indirect cost rate has been previously negotiated with and approved by the federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost rate proposals. The negotiated rate must be accepted by all federal awarding agencies.

**5. ADDITIONAL RESTRICTIONS OF FUNDS.** Subrecipient acknowledges that the funds for this Contract are HOPWA funds, the amount of which has been established after public hearing and that Agency has no authority to change the Project Funds except after public hearing and Recipient approval. Therefore, and notwithstanding any other provision of this Contract, the parties agree that the total compensation and reimbursement for all services and expenses required during the term of this Contract shall not exceed the Project Funds. Subrecipient shall provide, from whatever source, all additional funds necessary to fulfill Subrecipient's obligations under this Contract.

a) If Subrecipient incurs additional expenses or does additional work related to this Contract, Subrecipient shall bear all such costs and expenses unless the Agency has executed a written amendment to this Contract prior to Subrecipient's having incurred such costs and expenses.

b) Subrecipient shall use proceeds of this Contract only for the purposes stated in this Contract, as described in the Scope of Work, and strictly in compliance with all applicable laws, rules and regulations.

c) If Subrecipient is not a state or local government, educational institution or public agency, Subrecipient shall fully comply with the regulations, policies, guidelines and requirements Subrecipient shall deposit any advance under this Contract in an interest bearing account and, unless specified otherwise in this Contract, shall remit any interest earned over \$100 to the Agency.

d) Project Funds shall not be used for any religious purposes, which prohibition is further described in 24 CFR §§ 5.109 and 574.300(c).

e) In the event of suspension or termination of this Contract, Subrecipient shall return unused funds to the Agency. If the Subrecipient improperly retains funds, the Agency may retain funds from future disbursements to the Subrecipient. In accordance with 2 CFR §§ 200.338 and 200.339, suspension or termination may occur if Subrecipient materially fails to comply with any term of the award, and the award may be terminated for convenience in accordance with 2 CFR §§ 200.338, 200.339, 200.340, 200.341, and 200.342.

f) **RESEARCH AND DEVELOPMENT (R & D).** Funds may not be used for R & D. R & D means all research and development related activities, both basic and applied, that are performed by non-Federal entities. See 2 CFR § 200.87 for additional information on R & D.

**6. RETURN OF PROGRAM INCOME.** Subrecipient shall report receipt of all Program Income and return all Program Income to the Agency.

**7. ANTI-KICKBACK RULES.** Monthly, or more often, Subrecipient must, without condition, pay the salaries of architects, draftsmen, technical engineers and technicians performing work under this Contract. Such payments shall be made without deduction or rebate, excepting only such payroll deductions as are mandatory by law or permitted by applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1937 (18 U.S.C., §874). Subrecipient shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to ensure compliance by subcontractors with such regulations. Subrecipient shall be responsible for the submission of affidavits required of subcontractors under this Contract, except for such variations or exemptions as the Secretary of Labor may specifically allow.

**8. WORK HOURS.** Subrecipient must comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708) and must cooperate with Agency in implementing and enforcing the provisions of such Act. Among other requirements of the act, Subrecipient must pay not less than one and one-half times the basic rate of pay for the work of Subrecipient's employee in excess of eight hours in one day or forty hours in one week in the performance of this Contract. Subrecipient must insert appropriate provisions in all subcontracts covering work under this Contract to ensure compliance with such Act. Subrecipient must meet and cooperate with Agency's Labor Compliance officer to assure compliance with such Act.

**9. WITHHOLDING OF SALARIES.** If, in the performance of this Contract, there is any underpayment of salaries by Subrecipient or by any subcontractor, Agency must withhold from Subrecipient out of payments due to him or her any amount sufficient to pay employees underpaid the difference between the salaries required under this Contract to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by Agency for and on account of Subrecipient or subcontractor to the respective employees to whom they are due.

**10. CLAIMS AND DISPUTES PERTAINING TO SALARY RATES.** Claims and disputes pertaining to salary rates or to classification of architects, draftsmen, technical engineers and technicians performing work under this Contract must be promptly reported in writing by Subrecipient to Agency for the latter's decision which shall be final with respect thereto.

**11. CONFLICT OF INTEREST.** No member, officer or any employee of Subrecipient, or its designees or agents, who exercises any functions or responsibilities with respect to the program during his or her tenure or for one (1) year thereafter, shall have an interest, direct or indirect, in any contract or its proceeds, for work to be performed in connection with the program assisted under this Contract. Subrecipient must incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the purposes of this Section. In the procurement of supplies, equipment, construction, and services by Subrecipient, the conflict of interest provisions in 2 CFR §§ 200.318 and 200.319, respectively, shall apply.

**12. DISCRIMINATION BECAUSE OF CERTAIN LABOR MATTERS.** No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable to his employer under this Contract.

**13. RECORDS, REPORTING AND MONITORING.** Agency may monitor the adequacy of Contractor's performance in any manner which Agency deems most effective. Contractor must cooperate with Agency in such monitoring. Subrecipient must keep all necessary books and records, including loan documentation and financial records, in connection with the operation and services performed under this Contract, in accordance with 2 CFR §200.333, and must document all transactions so Agency may properly audit all expenditures made pursuant to this Contract. Subrecipient must maintain and preserve all records related to this Contract in its possession for a period of three (3) years from the completion date of this Contract, unless otherwise directed by Agency. All books, records and accounts kept by Subrecipient in connection with the performance of this Contract shall be made available for inspection by representatives of the federal government and/or Agency staff as required to monitor or audit the program.

In addition to the reports specified in this Contract, Subrecipient shall retain the records required by the applicable provisions of 2 CFR §200.333 and provide the Agency with the reports required pursuant to 2 CFR §§ 200.328 and 200.343, and such other records and reports as the Agency may reasonably require in the administration of this Contract. Subrecipient shall keep all other necessary books and records, including property, personnel, loan documentation and financial records, in connection with the operation and services performed under this Contract. Subrecipient shall conduct audits in accordance with 2 CFR Part 200, Subpart F. Subrecipient shall document all transactions sufficiently for Agency to properly monitor and audit all expenditures made pursuant to this Contract.

**14. 14. DRUG FREE WORKPLACE.** Subrecipient must comply with the Drug-Free Workplace Act of 1988 (final rule published on May 25, 1990) and Agency's policies and rules promulgated under the Act. Subrecipient must obtain such policies and rules from the Agency.

**15. RESTRICTIONS ON LOBBYING; FILING CERTIFICATION AND DISCLOSURE FORMS.** Subrecipient shall not use any funds paid under this Contract, directly or indirectly, for any political activity, whatsoever or to influence any public official or employee. In any event, Subrecipient shall comply with the restrictions on lobbying stated in 24 CFR Part 87. Subrecipient shall sign and return to the Agency the certification described in 24 CFR 87, Appendix A and the disclosure form described in 24 CFR Part 87, Appendix B. Subrecipient shall require any person receiving proceeds of this Contract from Subrecipient to comply with 24 CFR Part 87, including the submission to Agency of completed certifications under Appendix A and disclosure forms under Appendix B. See also 2 CFR §200.450.

**16. ELIGIBILITY AND NON-DISCRIMINATION (SECTION 109).** Subrecipient shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, or physical or mental handicap, or age as more specifically set forth in 24 CFR §574.603, which requires compliance with the non-discrimination and equal opportunity requirements at 24 CFR Part 5 and Section 109 of the Act (42 USC §5301).

**17. CIVIL RIGHTS COVENANT.** As provided in 24 CFR §§ 5.105, and 574.603 and depending upon the type and nature of the grant of HOPWA funds, this Contract may be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) and HUD regulations. Subrecipient certifies that its activities under this Contract shall be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) and that it will comply with the other provisions of Titles 2 and 24 of the CFR and with other applicable laws, to the full extent of their application. Further, pursuant to Executive Order 11063 (as amended pursuant to Executive Order 12259) set out in 24 CFR Part 107, in the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under the Contract, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Agency and the United States are beneficiaries of and entitled to enforce such covenant. Subrecipient, in undertaking its obligation in carrying out the program assisted hereunder, shall take such measures as are necessary to enforce such covenant and shall not itself so discriminate.

**18. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS.** This Contract is subject to minority and women's business enterprises requirements set forth in Executive Orders 12432, 11625, and 12138. Subrecipient shall take all reasonable steps necessary to encourage the participation of minority and female owned businesses in work under this Contract.

a) With regard to any work of construction funded with Project Funds, such steps may include, without limitation, the following:

a) Obtaining the minority and Women's Business Enterprises Registry from the Agency MBE/WBE Coordinator to ensure such contractors receive an invitation to bid.

b) Advertising the invitation to bid or to submit proposals in the El Hispano and the Sacramento Observer as well as in a newspaper of general circulation in the Sacramento metropolitan area.

c) Reviewing the telephone directory or professional organization membership lists, or making direct contact with minority- or female-owned businesses for specialized trades and services, and inviting such firms to bid.

b) Subrecipient shall include the Minority and Women's Business Enterprises requirements, in the form prescribed by the Agency, in all contracts for use of funds under this Contract, and Subrecipient shall coordinate purchases of goods and services over \$10,000 with the Agency's MBE/WBE Coordinator.

c) Subrecipient shall maintain documentation of outreach efforts to minority and/or female owned businesses. Additionally, Subrecipient shall maintain documentation of contract awards for the Quarterly Reports.



**19. FLOOD DISASTER PROTECTION.** Pursuant to the requirements of the Flood Disaster Protection Act of 1973 (42 USC §4001), Subrecipient shall not use or permit the use of any portion of the assistance provided under this Contract for acquisition or construction purposes as defined by the Director of the Federal Emergency Management Agency (42 USC §4003(a)(4)), for use in an area identified by the Director of the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is located is then participating in the national flood insurance program (described at 42 USC §§4011) and the use of any such assistance shall be subject to the mandatory purchase of flood insurance requirements of 42 USC §4012a.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Director as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, 42 USC §§4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under the Flood Disaster Protection Act of 1973 (42 USC §4012a). Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Contract.

**20. COMPLIANCE WITH AIR AND WATER ACTS.** This Contract is subject to the applicable requirements of the Clean Air Act (42 USC §7401 et seq.), the Federal Water Pollution Control Act, (33 USC §1251 et seq.), and the corresponding regulations of the Environmental Protection Agency (40 CFR Parts 1-49). In compliance with said regulations, Subrecipient shall cause or require to be inserted in all contracts and subcontracts funded with Project Funds, and with respect to any transaction which is not otherwise exempt from such laws and regulations, all of the following requirements:

a) A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of the contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA).

b) Compliance with all the requirements of Section 114 of the Clean Air Act, (42 USC §7414c-8) and Section 308 of the Federal Water Pollution Control Act, (33 USC §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

c) A stipulation that, as a condition for the award of the contract, prompt notice shall be given to Agency by Subrecipient or the prospective contractor or subcontractor of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

d) Agreement by the contractor that he or she shall include or cause to be included the criteria and requirements in this Section 19a through 19c of this Section in every non-exempt subcontract and requiring that the contractor shall take such action as the government may direct as a means of enforcing such provisions.

e) In no event shall any amount of the assistance provided under this Contract be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) (42 USC §7413) of the Clean Air Act or Section 309(c) (32 USC §1319) of the Federal Water Pollution Control Act.

**21. RELOCATION.** This Contract is subject to the requirements of Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §4601 et seq.) and HUD implementing regulations at 24 CFR Part 42 and CFR §574.630. Subrecipient shall not undertake any of the work contemplated under this Contract if relocation is involved without first obtaining written approval from Agency. Subrecipient shall inform affected persons of the relocation assistance policies and procedures set forth in the regulations at 24 CFR Part 42 and 24 CFR 574.630.

**22. PROPERTY OWNERSHIP AND PROCUREMENT.** The Subrecipient, shall, in the acquisition or improvement of real and personal property with funds provided under this Contract, be subject to all applicable provisions of the Federal Requirements.

a) General property and procurement guidelines are contained in 2 CFR §§ 200.310-200.316 and 2 CFR §§ 200.317-200.326, respectively. In all cases in which personal property is sold, the proceeds shall be transferred to Agency for the HOPWA program or shall be Program Income, and, personal property not needed by the Subrecipient

shall be transferred to Agency for the HOPWA program or shall be retained by Subrecipient after compensating the Agency.

b) Real property shall be acquired in accordance with Title III, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (24 CFR Part 42) and 24 CFR §574.630.

**23. USE OF DEBARRED, SUSPENDED OR PROHIBITED PARTIES.** Subrecipient shall not use any Project Funds, directly or indirectly, to award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 2 CFR Part 2424, 2 CFR Part 180, and 2 CFR §200.213. Subrecipient will verify that the Federal Debarred List Registry does not include any contractor or subrecipient prior to awarding contracts and that they will record the date that the Registry was consulted. Subrecipient acknowledges this requirement by initialing here:

Subrecipient initials \_\_\_\_\_

**24. Davis Bacon Act And State Prevailing Wages.** The provisions of the Davis-Bacon Act do not apply to the HOPWA Program (24 CFR §574.655). However, if this Contract is for construction, alteration, or repair (including painting and decorating) of public buildings or public works, California State Prevailing wages may apply (California Labor Code §1720 et seq.), in which case Subrecipient must comply with the provisions of California Labor Code §1720 et seq. and all rules, regulations and orders promulgated under said statutes.

**25. FEDERAL LABOR STANDARDS.** For construction, rehabilitation, alteration, or repair of real property funded with Project Funds, Subrecipient shall comply, and shall cause all subcontractors on such work to comply, with the applicable provisions of the Contract Work Hours and Safety Standards Act, as amended, (40 USC §3701 et seq.) and all rules, regulations and orders promulgated under said Acts. Among other provisions, said Acts establish minimum wages and fringe benefits; prohibit deductions or rebates from payments; provide for the withholding of funds to assure compliance with wage provisions; and provide for the termination of the contract and debarment of the contractor for failure so to comply. Subrecipient shall also comply, and shall cause all subcontractors on such work to comply, with all other applicable HUD labor requirements, including, without limitation, the requirements of 29 CFR Parts 3 and 5, which govern the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by state or local law, nothing in this Contract is intended to relieve Subrecipient of its obligations, if any, to require payment of the higher rates. Subrecipient shall cause or require to be inserted, in all such contracts, provisions which subject the parties to the Federal Labor Standards Provision and all other applicable regulations and requirements of HUD. Subrecipient shall not award any contract subject to the provisions of Section 25 of the Contract to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

**26. ECONOMIC OPPORTUNITY EMPLOYMENT REQUIREMENTS.** The following is applicable to all contracts related to the project which is the subject of this Contract.

a) The contract requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the project area.

b) The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c) Contractor will send to each labor organization or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his or her commitments under this Employment Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d) Contractor will include this Employment Clause in every subcontract for work in connection with the project.

e) Good Faith Effort. Each Contractor or subcontractor undertaking work in connection with a Section 3 covered project must fulfill his or her obligation to utilize lower-income project area residents as employees to the greatest extent feasible by:

a) Identifying the number of positions in the various occupational categories including skilled, semi-skilled, and unskilled labor, needed to perform each phase of the Section 3 covered project;

b) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;

c) Identifying the positions described in Paragraph (1) of this Section, the number of positions in the various occupational categories which are not currently occupied by regular permanent employees;

d) Establishing the positions described in Paragraph (3) of this Section, a goal which is consistent with the purpose of this subpart within each occupational category of the number of positions to be filled by lower-income residents of the Section 3 covered project area;

e) Making a good faith effort to fill all of the positions identified in Paragraph (4) of this Section with lower income project area residents first and foremost, through the First Source Program;and

f) Making a good faith effort to fill of the positions identified in Paragraph (4) of this Section with lower-income project area residents.

**27. ARCHITECTURAL BARRIERS ACT.** Subrecipient shall comply with the Architectural Barriers Act of 1968 (42 USC §4151), as applicable, which Act requires that the design of any facility, except a private residence, that is constructed, renovated, remodeled or rehabilitated with funds received pursuant to this Contract shall comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Usable by, the Physically Handicapped," as described in 41 USC §§ 101-4712, and Subrecipient shall cooperate with Agency in its inspections pursuant to such provisions.

**28. LEAD-BASED PAINT.** The use of lead-based paint is prohibited in any residential structure constructed or rehabilitated with Project Funds, which prohibitions are further described in 24 CFR Part 35.. For those properties constructed prior to 1978, Subrecipient shall assure that rehabilitation applicants, purchasers or tenants, as the case may be, shall be notified (i) that the property may contain lead-based paint, (ii) of the hazards of lead-based paint, (iii) of the symptoms and treatment of lead-based poisoning (iv) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards), (v) of the advisability and availability of blood level screening for children under the age of seven years of age, and (vi) that, in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken. Subrecipient shall follow the procedures for the elimination of lead-based paint hazards, to the extent required under 24 CFR 574.635.

**29. FOOD, TRAVEL AND ENTERTAINMENT.** Travel costs may include expenses for transportation, lodging and subsistence and are only allowable for employees who are in travel status on official business and approved as part of this contract or with prior written approval and are specifically related to this contract. Costs must be considered reasonable and do not exceed charges allowed by contractor's Out of Town Travel Policy. See 2 CFR §200.474 for additional information on travel costs and [www.shra.org](http://www.shra.org) for the Out of Town Travel Policy.

The costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval. All entertainment costs must comply with 2 CFR §200.438. In addition, the costs of alcoholic beverages are unallowable per 2 CFR §200.423.

**30. CHANGES IN LAWS AND REGULATIONS.** In the event an applicable law or regulation is modified or eliminated, or new law or regulation is adopted, the revised law or regulation shall automatically supersede the contract's scope of work and any attachments. The most current exhibits, laws and regulations will be posted at [www.shra.org](http://www.shra.org).

**31. OTHER PROGRAM REQUIREMENTS.** Agency must provide Subrecipient with all relevant program information regarding the federal programs having jurisdiction over this Contract. Agency must assist Subrecipient in the interpretation of the requirements of such programs. Subrecipient shall be considered to be familiar with the requirements of such programs and shall comply with such requirements.

## **EXHIBIT 7D: HTF FUNDING REQUIREMENTS**

### **HOUSING TRUST FUND – CITY OF SACRAMENTO FINANCING FOR RESIDENTIAL RENTAL PROPERTY**

These “HTF Funding Requirements” are attached to a Regulatory Agreement, and are incorporated in that Regulatory Agreement. In turn, the Regulatory Agreement is incorporated in the Loan that is described in the Regulatory Agreement. The capitalized terms used in these HTF Funding Requirements shall have the meanings below in the body of the these HTF Funding Requirements. Terms being defined are indicated by quotation marks. Capitalized terms in these HTF Funding Requirements that are not defined below are defined in the Regulatory Agreement.

1. **RECITALS.** The Loan is funded by the Agency with proceeds of the Housing Trust Fund (“HTF”) of the City of Sacramento. The Agency has approved the Loan on condition that the property securing the Loan (“Property”) is rehabilitated or developed as residential rental property (“Project”) with certain units regulated in accordance with the HTF (“HTF-Assisted Units”) by recordation of these HTF Funding Restrictions as covenants running with the land. The Project has been determined to be within a seven mile distance from the non-residential projects generating the funds or has access to existing or planned public transit such that it is reasonable that tenants of the Project could commute from the Project to the non-residential projects generating the funds. The Project conforms to any City “Fair Share” plan currently adopted and in effect. HTF-Assisted Units are made affordable by such regulation to persons and households that qualify as low-income or very low-income as indicated in the table in Article I of the Regulatory Agreement. The development of the Project will benefit the Project Area because the Project will provide housing for persons who work within the Project Area. The Project is located within the City of Sacramento (“City”). Most Project Area workers live outside of the Project Area and come from throughout the City, including the vicinity of the Property.

2. **AFFORDABILITY REQUIREMENTS.** Owner shall assure that all of the HTF-Assisted Units assisted with HTF funds shall be rented at or below the following rates:

a. Moderate-Income Units shall be rented for not more than thirty percent (30%) of eighty percent (80%) of the Sacramento Metropolitan Statistical Area median income as determined annually by the federal Department of Housing and Urban Development (“Median Income”), as adjusted for family size appropriate to the size and number of bedrooms in the respective HTF-Assisted Unit.

b. Low-Income Units shall be rented for not more than thirty percent (30%) of sixty percent (60%) of the Sacramento Metropolitan Statistical Area median income (“Median Income”), as determined annually by the federal Department of Housing and Urban Development, as adjusted for family size appropriate to the size and number of bedrooms in the respective HTF-Assisted Unit.

c. Very Low-Income Units shall be rented for not more than thirty percent (30%) of fifty percent (50%) of the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective HTF-Assisted Unit.

d. Unless Owner has obtained prior written Agency authorization, Owner shall maintain the allocation of HTF-Assisted Units by the bedroom sizes stated in the Regulatory Agreement.

e. Owner shall be responsible to determine the affordable rents for the HTF-Assisted Units. Within ten (10) days of Owner request, Agency shall provide all information necessary for Owner to compute such affordable rents and will assist Owner in determining such rents.

3. **OCCUPANCY REQUIREMENTS.** Owner shall assure that all HTF-Assisted Units shall be occupied by households earning less than eighty percent (80%) of Median Income.

4. **UNIT QUALITY.** Owner shall assure that Assisted Units assisted with HTF funds must be comparable in size and amenities to other units in the Project.

5. **TERM.** These covenants shall burden and regulate the HTF-Assisted Units for a term of thirty (30) years.

## **EXHIBIT 7E: MIHF FUNDING REQUIREMENTS**

### **MIXED INCOME HOUSING FUNDS – CITY OF SACRAMENTO FINANCING FOR RESIDENTIAL RENTAL PROPERTY**

These “Mixed Income Housing Funding Requirements” (or “MIHF Requirements”) are attached to a Regulatory Agreement, and are incorporated in that Regulatory Agreement. In turn, the Regulatory Agreement is incorporated in the Loan that is described in the Regulatory Agreement. The capitalized terms used in these MIHF Requirements shall have the meanings below in the body of these MIHF Requirements. Terms being defined are indicated by quotation marks. Capitalized terms in these MIHF Requirements that are not defined below are defined in the Regulatory Agreement.

**6. RECITALS.** The Loan is funded by the Agency with proceeds of the Mixed Income Housing Fund (“MIHF”) of the City of Sacramento. The Agency has approved the Loan on condition that the property securing the Loan (“Property”) is rehabilitated or developed as residential rental property (“Project”) with certain units regulated in accordance with the Regulatory Agreement (“MIHF-Assisted Units”) by recordation of these MIHF Requirements as covenants running with the land.

**7. AFFORDABILITY REQUIREMENTS.** Owner shall ensure that all of the MIHF-Assisted Units shall be rented at or below the following rates:

a. Moderate-Income Units shall be rented for not more than thirty percent (30%) of eighty percent (80%) of the Sacramento Metropolitan Statistical Area median income as determined annually by the federal Department of Housing and Urban Development (“Median Income”), as adjusted for family size appropriate to the size and number of bedrooms in the respective MIHF-Assisted Unit.

b. Low-Income Units shall be rented for not more than thirty percent (30%) of sixty percent (60%) of the Median Income, as adjusted for family size appropriate to the size and number of bedrooms in the respective MIHF-Assisted Unit.

c. Very Low-Income Units shall be rented for not more than thirty percent (30%) of fifty percent (50%) of the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective MIHF-Assisted Unit.

d. Extremely Low-Income Units shall be rented for not more than thirty percent (30%) of thirty percent (30%) of the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective MIHF-Assisted Unit.

e. Unless Owner has obtained prior written Agency authorization, Owner shall maintain the allocation of MIHF-Assisted Units by the bedroom sizes stated in the Regulatory Agreement.

f. Owner shall be responsible for determining the affordable rents for the MIHF-Assisted Units. Within ten (10) days of Owner request, Agency shall provide all information necessary for Owner to compute such affordable rents and will assist Owner in determining such rents.

**8. OCCUPANCY REQUIREMENTS.** Owner shall ensure that all MIHF-Assisted Units shall be occupied by households earning less than eighty percent (80%) of Median Income.

**9. UNIT QUALITY.** Owner shall ensure that MIHF-Assisted Units must be comparable in size and amenities to other units in the Project.

**10. TERM.** These covenants shall burden and regulate the MIHF-Assisted Units for a term of thirty (30) years.

## **RESOLUTION NO. 2020 -**

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

**on date of**

**CAPITOL PARK HOTEL: APPROVAL OF \$3,200,000 LOAN AGREEMENT AND RELATED DOCUMENTS COMPRISED OF HOUSING AUTHORITY SUCCESSION AGENCY FUNDS; EXECUTION OF LOAN AGREEMENT AND RELATED DOCUMENTS WITH MERCY HOUSING CALIFORNIA, OR RELATED ENTITY; APPROVAL OF RELEASE OF PROMISSORY NOTE, RECONVEYANCE OF DEED OF TRUST AND RELEASE OF REGULATORY AGREEMENT RELATED TO AN EXISTING \$1,500,000 HOUSING AUTHORITY LOAN; RELATED BUDGET AMENDMENT; AND ENVIRONMENTAL FINDINGS**

### **BACKGROUND**

- A. On June 27, 1989, the Housing Authority of the City of Sacramento adopted a resolution (Resolution No. 89-024) applying to the Richards Boulevard Area. While actions have been taken in the past that may have been contrary to Resolution No. 89-024 and would have resulted in its rescission, Resolution No. 89-024 has not been formally rescinded. The Housing Authority of the City of Sacramento now wishes to formally rescind Resolution No. 89-024.
- B. In 2011 the California Legislature enacted AB 1X26, which, coupled with a subsequent decision of the State Supreme Court, resulted in the dissolution of redevelopment agencies as of February 1, 2012.
- C. The City of Sacramento, by Resolution Number 2012-018 (adopted on January 31, 2012), designated the Housing Authority of the City of Sacramento as the local authority to retain the housing assets and functions previously performed by the Redevelopment Agency of the City of Sacramento.
- D. The Housing Authority of the City of Sacramento, by Resolution Number 2012-001 (adopted on January 31, 2012), accepted the housing assets and housing functions previously performed by the Redevelopment Agency of the City of Sacramento.
- E. The Redevelopment Agency of the City of Sacramento, by resolution Number 2012-001 (adopted on January 31, 2012) transferred its housing assets and housing functions to the Housing Authority of the City of Sacramento.
- F. On April 1, 2013, the California Department of Finance issued its final determination related to the Housing Asset Transfer assets. This final determination included these Housing Successor funds.
- G. Capitol Park Hotel was built in 1912 and was operating as a 180-unit single room occupancy (SRO) residential hotel and temporary shelter in downtown Sacramento at 1125 9th Street, corner of 9th and L Streets, (Property). The current owner of the Property is 1121 9th Street, LLC, a related entity to Mercy Housing California.

- H. On February 11, 2020, Sacramento City Council (Council) adopted a resolution approving the SRO Withdrawal, Conversion Certificate and Replacement Housing Plan for Capitol Park Hotel on February 11, 2020 (Resolution 2020-0048).
- I. Also on February 11, 2020, the Council and Board of the Housing Authority of the City of Sacramento (Board) approved a \$7,600,000 Loan Commitment (Loan Commitment) comprised of \$1,700,000 in City Community Development Block Grant (CDBG) funds, \$1,100,000 in Housing Opportunities for Persons with AIDS (HOPWA) funds, \$800,000 in City Housing Trust Funds (HTF), \$2,300,000 in Mixed Income Housing Funds (MIHF) and \$1,700,000 Housing Authority Successor Agency Funds (HASAF) to assist Mercy Housing California, or related entity (Developer) for the financing of the Capitol Park Hotel affordable, permanent supportive and workforce housing development located downtown at 1125 9th Street, including the tenant addresses of 1117, 1121, 1125, 1127, 1129 and 1131 9th Street (Project) (Council Resolution 2020-0049 and Board Resolution 2020-0003).
- J. The Board adopted a resolution authorizing the Executive Director, or designee, of the Housing Authority of the City of Sacramento (HACS) to enter into and execute a \$1,500,000 predevelopment loan agreement and related documents comprised of HASA funds with the Developer for the Project (Predevelopment Loan) (Resolution 2020-0003) also on February 11, 2020. The Developer and HACS would like to refinance and incorporate the \$1,500,000 predevelopment loan with the \$1,700,000 of previously approved HASA funds in the Loan Commitment for a total \$3,200,000 loan in HASA funds to the Developer, subject to Board approval.
- K. On August 3, 2020, the Developer submitted a funding application to Sacramento Housing and Redevelopment Agency (SHRA) requesting an additional \$4,200,000 loan to assist in funding the acquisition, construction and permanent financing of the Project. The need for additional assistance is due to increased scope of development to satisfy the structural, electrical and State Historic Preservation Officer's (SHPO) requirements. SHRA's construction staff reviewed and approved the additional scope of development and construction budget. The additional \$4,200,000 loan will be comprised of \$3,200,000 in City HOME Investment Partnerships Program (HOME) funds and \$1,000,000 in City Housing Trust Funds, subject to Council approval in a separate resolution.
- L. The Project improves and increases the stock of affordable housing in the community. Imposition of the HASA funds Art in Public Places Program would increase the cost of the Project substantially and reduce either the number of affordable units available in the Project or the affordability of those units. Therefore, the Aesthetic Improvement Policy requirements are not applicable.
- M. The Project is consistent with: a) the Agency's previously approved Multifamily Lending and Mortgage Revenue Bond Policies (Council Resolution 2019-0452 and Board Resolution 2019-0022), Affordable Housing Priority 2(i), Conversion of Non-Residential to Residential Use for Permanent Supportive Housing and Homeless Housing, and Priority 2(iii), Workforce Housing; b) the 2013-2021 Housing Element, Goals H-1.1.1 Sustainable housing practices; H-1.2.9, in part, Workforce

Housing, especially in and around downtown; H-1.3.2 Economic integration of multifamily affordable housing projects; H-2.2.4, in part, Pursue and maximize the use of all appropriate state, federal, local and private funding for the development of housing affordable for extremely low-, very low-, and low-income households, while maintaining economic competitiveness in the region; H-3.1.1 Promote extremely low income housing; H-3.2.8 Provide funding and other resources for permanent supportive housing; H-3.2.9 Prioritization of Special Needs Housing, such as chronically homeless individuals or families for available local affordable housing financing as set forth in the City's Multifamily Lending and Mortgage Revenue Bond Policies. Projects that augment or safeguard the City's inventory of single room occupancy units will also have the same priority; and H-5.1 to 5.4, in part, Promote and create accessible residential development (Resolution No. 2013-415); and c) the Sacramento Promise Zone Plans and Goals, Sustainably Built Community sub-goal to increase housing types and transit growth to promote livability and connectivity within the Promise Zone (Resolution No. 2015-263).

- N. In addition, the recommended actions for the development are located in a) the Downtown Housing Initiative and Initiation of the Downtown Specific Plan, to bring 10,000 places to live to Downtown Sacramento by 2025 (Resolution No. 2015-282); and b) the Opportunity Zone that provides a federal tax incentive for investors, who invest in real estate projects and operating businesses located in designated low-income communities through deferral and partial tax reductions of reinvested capital gains and forgiveness of tax on new capital gains (enacted into federal law through the Tax Cuts and Jobs Act of 2017).
- O. The Capitol Park Hotel Project has been found to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Categorical Exemptions, Section 15332, In-Fill Development Projects.
- P. An Environmental Assessment was prepared for this project pursuant to the National Environmental Policy Act, and it was found that with mitigation measures incorporated, the project will not result in a significant impact on the quality of the human environment.

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

- Section 1. All evidence presented having been duly considered, the findings, including environmental findings regarding this action, as stated above, are found to be true and accurate and are hereby approved adopted.
- Section 2. The \$3,200,000 Acquisition, Construction and Permanent Loan Agreement and related documents, attached as Exhibit A, for financing the Project with \$3,200,000 in HASA funds (Loan Documents) are approved, and the Executive Director, or designee, is authorized to enter into, execute and transmit the Loan Documents to the Developer, and enter into and execute other documents as approved to form by its Office of the General Counsel, and perform other actions HACS deems necessary to fulfill the intent of the HASA funds, including without limitation, subordination, financial



restructuring, and extensions, consistent with its adopted policy and with this resolution.

**Section 3.** The Executive Director, or designee, is authorized to refinance the \$1,500,000 Predevelopment Loan; execute the release of the Predevelopment Loan promissory note, the reconveyance of the Predevelopment Loan deed of trust, and release of the Predevelopment Loan regulatory agreement, given the affordability terms of the Predevelopment Loan regulatory agreement are incorporated in the \$3,200,000 Loan Documents to the Developer; enter into and execute other documents as approved to form by its Office of the General Counsel; and perform other actions HACS deems necessary to fulfill the intent of the HASAF, including without limitation, subordination, financial restructuring, and extensions, consistent with its adopted policy and with this resolution. For the avoidance of doubt, the \$3,200,000 Loan Documents provided for herein is inclusive of the \$1,500,000.00 predevelopment loan refinanced proceeds.

**Section 4.** The Executive Director, or designee, is authorized to amend the budget to refinance the \$1,500,000 Predevelopment Loan as described in Section 3 of this resolution.

**Table of Contents:**

**Exhibit A: Loan Documents (HASAF)**

## ACQUISITION, CONSTRUCTION, AND PERMANENT LOAN AGREEMENT CAPITOL PARK HOTEL

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

1. **LOAN.** 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.

A. "LOAN INFORMATION" The general loan provisions of the Loan:		
"EFFECTIVE DATE"	[DATE]	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	Housing Authority of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	801 12th Street, Sacramento, CA 95814	
"BORROWER"	The borrower of the Loan funds whose name, legal status and address are:	
Name	Mercy Housing California 90, L.P.	
Legal Status	limited partnership	
Principal Address	2512 River Plaza Drive, Suite 200, Sacramento, CA 95833	
"LOAN"	The Loan made by this Loan Agreement.	
"LOAN COMMITMENT"	Lender's loan commitment, made by letter dated as of	February 11, 2020
"LOAN PROGRAM"	Lender's Loan Program, commonly known as	Housing Authority Successor Agency Funds (HASAF)
"LOAN AMOUNT"	Three Million Two Hundred Thousand Dollars and No Cents (\$3,200,000.00). At Close of Escrow, the Borrower shall disburse \$1,500,000.00 from the Loan Amount through Escrow to Lender to repay the promissory note evidencing the Predevelopment and Permanent Loan on behalf of its affiliate, 1121 9 <sup>th</sup> Street LLC and satisfy all obligation under the Predevelopment and Permanent Loan Agreement and Predevelopment and Permanent Loan Agreement Note. Thereafter, Lender shall execute all documents Lender deems necessary to release 1121 9 <sup>th</sup> Street LLC from the Predevelopment and Permanent Loan Documents.	
"INTEREST RATE"	The interest rate is 0% per year.	
"MATURITY DATE"	The first day of the 684 <sup>th</sup> calendar month following the Effective Date: [DATE]	

"PAYMENT SCHEDULE"

Annual Loan payments will be made on a Residual Receipts basis (as defined below) beginning on August 1st following conversion to permanent financing and the initial annual audited financial statement, as defined below, until the Maturity Date. Annual Loan payments shall be applied first to outstanding interest accrued and unpaid and then to principal.

"Residual Receipts" means Net Operating Income (or "NOI") (as defined below) less each of the following payments made in the order of priority set forth below during each installment period, as confirmed by Financial Statements (as defined in Section 3.10 herein) from the preceding year. In no event shall any item be paid during any installment period unless all items prioritized above it have received its full payment during such installment period. Payment priority shall be as follows, with the highest priority starting with item one (1) and descending downward to item four (4):

- 1) Partnership management fee up to \$20,000 annually as of the Loan's Effective Date escalating at 3% annually, which payment shall accrue to the extent unpaid in any given year.
- 2) Asset management fees up to \$5,000 annually as of the Loan's Effective Date escalating at 3% annually, which payment shall accrue to the extent unpaid in any given year.
- 3) After Sections one (1) and two (2) of Residual Receipts are paid, available cash flow from NOI will go into a transition reserve account until such account has a balance of the higher of \$1,245,000 or the final amount required by the California Department of Housing Community Development (HCD) No Place Like Home (NPLH) program regulatory agreement, then available cash flow will go into a separate services and operating reserves account to cover supportive and/or resident services or operating deficits of the Project. Any remaining available cash flow from NOI will be paid under Section four (4) of Residual Receipts.
- 4) After Sections one (1) through three (3) of Residual Receipts are paid, 100% of the available cash flow from NOI proportionately divided in the following manner:
  - a) 50% to Borrower;
  - b) 21.08% to HCD to repay the NPLH loan until it has been fully repaid (with interest);
  - c) 21.96% to the Sacramento Housing and Redevelopment Agency (SHRA) to repay the HOME loan until it has been fully repaid (with interest); and then to repay the CDBG loan until it has been fully repaid (with interest); and then to repay the HOPWA loan until it has been fully repaid (with interest); and then to repay the HTF loan until it has been fully repaid (with interest); and then to repay the MIHF loan until it has been fully repaid (with interest); and
  - d) 6.96% to the Housing Authority of the City of Sacramento (HACS) to repay the HASAF loan until it has been fully repaid (with interest).

The Net Operating Income is defined as periodic "Revenue" less "Operating Expenses." "Revenue" means all revenue from the leasing of the Project, including but not limited to all rents, fees, and charges paid by tenants as well as rental subsidy payments regardless of the source of these subsidies, forfeited tenant deposits, rent increases, proceeds from vending machines and laundry room machines. Revenue shall not include tenants' security deposits (unless forfeited), interest on those deposits, loan proceeds, capital contributions or similar advances, or amounts released from reserves or interest on reserves.

"Operating Expenses" shall mean actual costs, fees and expenses as evidenced by invoices attributable to the operation, recordkeeping, maintenance, taxes and management of the Project, including property management fees; taxes and assessments; payroll, benefits and payroll taxes for Project employees; insurance; security; painting, cleaning, repairs, and alterations; landscaping; sewer charges; utility charges; advertising, promotion and publicity; cable television, satellite, cable; elevator and other similar services; office, janitorial, cleaning and building supplies; recreational amenities and supplies; purchase, repair, servicing and installation of appliances; costs and expenses associated with the provision of social and/or community services to the residents of the Project; equipment, fixtures and furnishing; fire alarm and elevator monitoring; fees and expenses of accountants, attorneys, consultants and other professionals; and monitoring fees to: a) HCD with respect to the NPLH loan, b) SHRA with the respect to the HOME, CDBG, HOPWA, HTF and MIHF loans, and c) HACS with the respect to the HASAF loan. The definition will include deposits into operating and/or replacement reserves maintained by the Borrower.

"BORROWER EQUITY"	Thirty Nine Million Dollars and No Cents (\$39,000,000.00)	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.
	None	Which is Borrower's non-cash contribution to the Project (such as deferred Developer fees).
"PROJECT"	Which is the Project to be developed on the Property with the Loan funds, described as:	Capitol Park Hotel will be an acquisition and rehabilitation of a historic 180-unit single room occupancy building into 134 affordable, permanent supportive and workforce housing units which are studios that include kitchenettes and full bathrooms. Amenities will include a 24/7 desk clerk, community room, and meeting areas for individual and group settings. Bicycle parking will be available onsite. Acquisition and rehabilitation also includes approximately 3,300 square feet of commercial space restricted to the Approved Uses and Disapproved Use as set forth in Section H, Special Provisions of this Loan Agreement.

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	Parcel	1121 9th Street, Sacramento, CA 95814	
Assessor's Number	Parcel	006-0102-016-0000 and 006-0102-018-0000	
"Legal Description"		The Property is situated in the State of California, County of Sacramento, and is more particularly described in <u>Exhibit 1: Legal Description</u> attached and incorporated by reference.	
Borrower's Interest	Title	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:	None

C. "ESCROW INFORMATION":		
"Title Company" and "Escrow Agent"	Fidelity National 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"	November 23, 2020	Which is the date for close of the Escrow, as it may be extended.

D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Loan Agreement):	
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: Notice of Affordability Restrictions</u>	"Notice of Affordability Restrictions"
<u>Exhibit 7: Escrow Instructions</u>	"Escrow Instructions"
<u>Exhibit 8: Funding Requirements</u>	"Funding Requirements"

**E. "APPROVAL DOCUMENTS"** Borrower shall submit the following documents for Lender approval:

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 this Loan Agreement

Plans and Specifications as defined in this Loan Agreement

**F. "ASSIGNED DOCUMENTS"** Borrower shall assign the following documents to Lender:

Construction Contract

Architectural Contract

**G. "CONSTRUCTION INFORMATION":**

"Completion Date"	December 31, 2022	Which is the date on or before which the Completion of the Project must occur.
"General Contractor"	Mid-State Construction Corporation, a California corporation	Which is the general contractor for construction of the Project.
"Project Architect"	Page & Turnbull, Inc., a California corporation	Which is the architect for design of the Project
"Retention"	The amount, 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 Loan: Ten Percent (10.0%)

**H. "SPECIAL PROVISIONS"** The following special provisions shall be in addition to the provisions of this Loan Agreement:

1. Lender acknowledges and consents to Wincopin Circle LLLP, a Maryland limited liability limited partnership, whose address is:

Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attention: General Counsel  
Telephone: (410) 964-0552  
Facsimile: (410) 772-2630 (the "Tax Credit Limited Partner")

With a copy to:  
Gallagher Evelius & Jones LLP  
218 N. Charles Street, Suite 400  
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The Tax Credit Limited Partner may transfer its interests to any other third party, so long as such change does not affect the identity, powers or duties of Borrower's general partners or the ability of the limited partners to change the general partner or its powers. If the Tax Credit Limited Partner removes the Borrower's general partner for cause, Lender consent shall not be required, provided that the general partner that has been removed for cause is replaced with an affiliate of the Tax Credit Limited Partner and Lender has been provided written notice from the Tax Credit Limited Partner immediately after the general partner has been removed.

2. The "Approved Uses" of the Property are as follows: Borrower shall assure that the residential space on the Property is used as a residential property available for rent. Borrower shall assure that the approximate 3,300 square feet of commercial space open to the public on the Property will enhance the living environment of the residents of the Project, and is subject to approval by Lender.

3. Borrower shall assure that the Property is not used, in whole or in part, for any Disapproved Use. A "Disapproved Use" of the Property is any use other than the Approved Uses, and includes, but is not limited to a liquor store/bar, adult store/film, veterinarian office/kennel, funeral, video arcade/pool hall, bowling alley, music, dancing, manufacturing, repair facility, vehicle related, service stations, hazardous materials, storage or warehousing facilities, tattoo and/or piercing establishment, pawn shop, check cashing or paycheck advance business, passive activity (e.g., switching station), nuisances, and/or medical marijuana.

4. Mercy Housing Management Group is approved by Lender as "Property Manager" for the Property and Project.

3. **DEFINITIONS.** Terms not defined in this Loan Agreement shall have the definitions assigned in the Trust Deed. 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. "California Environmental Quality Act" or "CEQA" is established in the California Public Resources Codes § 21000 et seq. and is applicable to private activities requiring discretionary governmental approvals (Pub. Res. Code §210001.1, 21001, 21080 and 14 California Code of Regulations § 15002(c).

3.3. "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.

3.4. "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.

3.5. "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 (or lien waivers have been obtained); 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 or building permit sign offs by the Building Department of the City of Sacramento have been issued; and all of the conditions to final disbursement of the Loan have been satisfied.

3.6. "Environmental Review" means the investigation and analysis of the Project's impacts on the environment as may be required by CEQA and/or National Environmental Policy Act (NEPA), or of the Project's impacts on any species of plant or animal listed as a species of concern, or a threatened or endangered species under California or federal laws or regulations.

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

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

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

3.10. "Financial Statements" means the certified financial statements of Borrower (and any other persons on whose financial capacity 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.

3.11. "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.

3.12. "General Contractor" means the general contractor named by Borrower in its 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.

3.13. "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.

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

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

3.16. "Loan Agreement" means this Acquisition, Construction and Permanent Loan Agreement, 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.

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

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

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

3.20. "Mitigation Measure(s)" means those feasible measures, actions, or features that are to be incorporated into the Project in order to avoid or substantially reduce the Projects significant impact on the environment.

3.21. "National Environmental Policy Act" or "NEPA" contains the federally required procedures to review and analyze the effect and impact of the Project on the environment as applied to the Project under 24 Code of Federal Regulations Parts 50 and 58 et seq.

3.22. "Note" means that certain promissory note evidencing the Loan and attached hereto as Exhibit 3.

3.23. "Other Lender Draw" means a draw request or other request for disbursement submitted to another lender for the Project.

3.24. "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.

3.25. "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.

3.26. "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.

3.27. "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.

3.28. "Predevelopment and Permanent Loan" means that certain loan made by Lender to 1121 9<sup>th</sup> Street LLC, a California limited liability company in the principal amount of \$1,500,000.00 from Housing Authority Successor Agency Funds.

3.29. "Predevelopment and Permanent Loan Agreement" means that certain loan agreement executed between Lender and 1121 9th Street LLC, a California limited liability company, on \_\_\_\_\_ governing the Predevelopment and Permanent Loan.

3.30. "Predevelopment and Permanent Loan Documents" means the Predevelopment and Permanent Loan Agreement, its security documents, regulatory agreement, promissory note, deed of trust, and all other documents (including guaranties, if any) evidencing, securing, or relating to the Predevelopment and Permanent Loan.

3.31. "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.

3.32. "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.

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

3.34. "Trust Deed" means that certain Deed of Trust and Assignment of Rents between Borrower, as trustor, Lender, as beneficiary, and trustee which secures the Note and is attached hereto as Exhibit 4.

3.35. "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, 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 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 Section 2 hereof, 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 constitute a legal and binding obligation of, and are 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 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.

**4.1. 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 except as has been previously disclosed to Lender in writing.

**4.2. 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.

**4.3. PLANS AND SPECIFICATIONS.** The Plans and Specifications are satisfactory to Borrower and the General Contractor and have been approved by 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, including but not limited to an environmental requirement, exists.

**4.4. 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. BORROWER'S COVENANTS AND CONDITIONS.** From the Effective Date until payment and performance in full of all obligations of Borrower under this Loan Agreement, the Note, the Security Documents, and the other Loan Documents or the earlier release of the liens of the Loan Documents (and all related obligations) in accordance with the terms of this Loan Agreement, the Note, the Security Documents, and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

**5.1. SATISFACTION OF PREDEVELOPMENT AND PERMANENT LOAN.** At Close of Escrow, Borrower shall disburse \$1,500,000.00 through Escrow to Lender to repay the promissory note evidencing the Predevelopment and Permanent Loan on behalf of its affiliate, 1121 9th Street LLC and satisfy all outstanding obligations under the Predevelopment and Permanent Loan Documents.

**5.2. USE OF PROCEEDS.** Borrower shall ensure all Loan Proceeds are disbursed as provided in this Loan Agreement and used only for: (1) disbursing \$1,500,00.00 from Escrow to Lender at Close of Escrow to repay the promissory note evidencing the Predevelopment and Permanent Loan on behalf of its affiliate, 1121 9<sup>th</sup> Street LLC and satisfy all obligations under the Predevelopment and Permanent Loan Documents; (2) acquisition of the Property by Borrower; (3) construction of the Project as specified in the Plans and Specifications; and (4) for other purposes specified in the Loan.

**5.3.**

**5.4. PROPERTY MANAGEMENT.** Subject to Lender's written approval, Borrower shall obtain and maintain for the life of the Loan a top quality property management agreement with a duly accredited real estate property management company for the management of the Property, and shall assure compliance of the property manager with the property management

agreement. Lender shall not disburse any funds under this Loan Agreement unless and until it has reviewed and approved the agreement as adequate and the property management company as top quality and duly accredited. Lender shall have the right to review and approve or reject any proposed changes to scope of said agreement and to changes in the real estate property management company prior to making such changes. Any such changes made without Lender approval shall be an Event of Default under this Agreement. Lender has approved Mercy Housing Management Group as the qualified property management company for the Project.

**5.5. 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.

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

5.6.1. 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.

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

5.6.3. 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.

**5.7. BORROWER RESERVES.** Borrower shall maintain reserves for replacement and repairs required to be made to the Property, fixtures on the Property or personal property used on the Property, or otherwise as approved by Lender, in an amount, at all times, of not less than Sixty-Seven Thousand Dollars and No Cents (\$67,000.00) per year.

**5.8. FINANCIAL REPORTING.** During the term of the Loan, Borrower shall deliver to Lender within 120 days of the end of each calendar year audited Financial Statements prepared in accordance with generally accepted accounting principles and signed by authorized officers of Borrower. Prior to the Close of Escrow and during the term of the Loan, Borrower shall deliver to Lender any such additional Financial Statement as may be requested by Lender. Lender reserves the right to review and approve Financial Statements and other credit information and references prior to the Close of Escrow. During the term of the Loan, Borrower must deliver to Lender a monthly rent-roll including household composition information and operating statements with respect to the Property and improvements, as Lender may request.

**5.9. ANNUAL ADMINISTRATIVE FEE.** Borrower agrees to pay an annual administrative fee ("Fee") to Lender as compensation for monitoring compliance with regulatory restrictions and the administration of the Loan. Borrower shall pay annually a Fee equal to 12.5 basis points (0.125%) of the Loan Amount and One Hundred and No/100 Dollars (\$100.00) for each unit assisted by the Loan Program, not to exceed an annual amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) per project. Fee payments shall commence on the Closing Date for the prorated semiannual period from the Closing Date to and including November 2020, and in equal semiannual installments in advance on each May 1 and November 1 of each year thereafter throughout the term of the Regulatory Agreement.

**6. LOAN.** Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, an amount not to exceed the Loan Amount, to repay the promissory note evidencing the Predevelopment and Permanent Loan on behalf of its affiliate,

1121 9<sup>th</sup> Street LLC and satisfy the Predevelopment and Permanent Loan Documents, 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.

**6.1. PRINCIPAL AMOUNT.** The principal amount of the Loan shall be the actual disbursements of 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.

**6.2. 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.

**6.3. 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.

**6.4. 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 entry into any agreements containing new or modified Loan terms.

**6.5. NOTE AND SECURITY DOCUMENTS.** The Loan is evidenced by the Note executed by Borrower in favor of Lender and delivered to Lender upon Close of Escrow. Repayment of the Note is 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.

**6.6. 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. Violation of the Regulatory Agreement is an Event of Default of this Loan.

**6.7. 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.

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

**6.9. ACCELERATION ON TRANSFER OR REFINANCING OF THE PROPERTY; ASSUMPTION.** Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold, transferred or conveyed to any person, or refinanced by Borrower such that additional debt is added to the Property or the cash flows change without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by the Trust Deed to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the Person to whom the Property is to be sold or transferred reach agreement in writing that the Loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under the Trust Deed and the Note.

**7. TITLE INSURANCE.** Borrower must procure and deliver to Lender an ALTA Lender's Policy of Title Insurance, together with such endorsements as Lender may require, including but not limited to CLTA endorsement nos. 100, and 102.5/102.7, and 116 insuring Agency in an amount equal to the principal amount of the Loan, that Lender's Trust Deed constitutes a third lien or charge upon the Property and improvements subject only to such items as shall have been approved by Lender. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Lender.

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

**8.1. 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.

**8.2. 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) Borrower has met the Additional Conditions to Close of Escrow and applicable Special Provisions, if any; (c) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (d) Borrower's representations and warranties in this Loan Agreement are true and correct as of the date of this Loan Agreement and as of Close of Escrow; (e) this Loan Agreement continues to be in full force and effect, no default on the part of Borrower has occurred under this 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 this Loan Agreement; and (f) Lender has approved the Approval Documents.

**8.3. 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) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (b) Lender has met the Additional Conditions to Close of Escrow and applicable Special Provisions, if any; (c) Lender's representations and warranties in this Loan Agreement are true and correct as of the date of this Loan Agreement and as of the Close of Escrow; and (d) this Loan Agreement continues to be in full force and effect, and no default on the part of Lender has occurred under this Loan Agreement.

## **9. INTENTIONALLY OMITTED.**

**10. 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.

**10.1. 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.

**10.2. CONTRACTORS AND CONTRACTS.** All contracts, subcontracts, contractors, and subcontractors shall be subject to Lender's approval prior to the Closing Date. Lender also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable in form and substance to Lender, as it determines to its sole satisfaction. 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 by Borrower or its contractors relating to the Project will require terms sufficient to permit disclosure to Lender of any information Lender deems, in its sole determination, necessary to make such verifications.

**10.3. NO DISCRIMINATION DURING CONSTRUCTION.** Borrower 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:

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

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

**10.3.2. ECONOMIC OPPORTUNITY EMPLOYMENT REQUIREMENTS.** This Loan requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents in and around the area of the project. Borrower will instruct its General Contractor and its subcontractors to utilize lower income project area residents as employees to the greatest extent feasible by:

- (1) Identifying the number of positions in the various occupational categories including skilled, semi-skilled, and unskilled labor, needed to perform each phase of the Project;
- (2) Identifying, within the positions identified in Paragraph (1) of this subsection, the number of positions in the various occupational categories which are currently occupied by regular, permanent employees;
- (3) Identifying, within the positions described in Paragraph (1) of this subsection, the number of positions in the various occupational categories which are not currently occupied by regular, permanent employees;
- (4) Establishing the positions identified in Paragraph (3) of this subsection, a goal which is consistent with the purpose of this subsection within each occupational category of the number of positions to be filled by lower income Project area residents; and
- (5) Making a good faith effort to fill all of the positions established in Paragraph (4) of this subsection with lower income Project area residents through Greater Sacramento Urban League, Sacramento Works, Sacramento Employment Training Agency, or similar local workforce agencies.

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

**10.3.4. MONITORING PROVISIONS.** Borrower, the General Contractor and subcontractors shall comply with the requirements of Lender for monitoring the anti-discrimination and all applicable labor requirements.

**10.4. 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 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, except that Lender shall bear its costs of inspection. If however, Lender's inspection discovers issues of a nature that require further third-party review or investigation, Borrower shall bear the costs of such third party review.

**10.5. 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 shall 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.

**10.5.1.** 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.

10.5.2. 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.

**10.6. INTENTIONALLY OMITTED.**

**10.7. SECURITY INSTRUMENTS.** Upon request by Lender and subject to the security interests of lender whose loan is secured by the Property and senior to Lender's security interest in the Property, 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.

**10.8. OTHER LENDER DRAW.** Borrower shall concurrently submit to Lender any Other Lender Draw. Delivery of such Other Lender Draw shall be made in the same manner as any other notice, except that it shall also be marked "OTHER LENDER DRAW REQUEST" and delivered to the person named in writing by Lender as the recipient of such requests or, in the absence thereof, to Lender's Portfolio Management office. 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 notice for such Other Lender Draw and shall not accept and shall return to Lender any disbursement on account of such Other Lender Draw.

**10.8.1. 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.

**10.8.2. LIQUIDATED DAMAGES.** IF BORROWER FAILS TO PROVIDE TO LENDER ANY OTHER LENDER DRAW, AS AND WHEN REQUIRED UNDER THIS LOAN AGREEMENT, LENDER SHALL BE IRREPARABLY HARMED IN THAT BORROWER'S ABILITY TO REPAY THE LOAN AND LENDER'S SECURITY FOR THE LOAN SHALL BE IMPAIRED TO AN UNKNOWN EXTENT. BORROWER AND LENDER AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL RESULTING DAMAGES IN SUCH EVENT. BORROWER AND LENDER, THEREFORE, AGREE THAT AN AMOUNT EQUAL TO TWO PERCENT (2%) OF THE LOAN AMOUNT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO LENDER ON ACCOUNT OF SUCH EVENT, RECEIPT OF WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF LENDER FOR SUCH EVENT, AND ONLY FOR SUCH EVENT. PAYMENT OF SAID AMOUNT TO LENDER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO LENDER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SAID AMOUNT SHALL BE IMMEDIATELY DUE AND PAYABLE AS OF THE DATE ON WHICH BORROWER DELIVERED SUCH OTHER LENDER DRAW TO THE OTHER LENDER. LENDER SHALL HAVE THIRTY (30) DAYS AFTER RECEIVING ACTUAL NOTICE OF SUCH EVENT TO NOTIFY BORROWER IN WRITING THAT LIQUIDATED DAMAGES UNDER THIS SECTION ARE DUE. BORROWER SHALL HAVE FIFTEEN (15) DAYS AFTER SUCH WRITTEN NOTIFICATION TO CURE THE DEFAULT BY WITHDRAWING THE OTHER LENDER DRAW AND RETURNING ANY DISBURSEMENT ON ACCOUNT OF SUCH OTHER LENDER DRAW. IF BORROWER FAILS TO PAY LIQUIDATED DAMAGES WHEN DUE UNDER THIS SECTION, THE LOAN SHALL BE ALL DUE AND PAYABLE AT THE ELECTION OF LENDER.

\_\_\_\_ Lender's Initials

\_\_\_\_ Borrower's Initials

**10.9. PROJECT SIGN.** If Borrower places a sign on the Property during construction stating the names of the Project participants, it shall also name Lender 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.

**10.10. 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.

**10.11. PREVAILING WAGES.** Unless stated otherwise above, Lender advises Borrower that the Project is subject to the payment of prevailing wages under California law. Borrower 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 Lender's determination of the applicability of California prevailing wage requirements. 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 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.

## **11. LOAN DISBURSEMENT PROCEDURES.**

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

**11.1.1.** No Event of Default or Potential Default of Borrower has occurred and is continuing;

**11.1.2.** 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;

**11.1.3.** Borrower has obtained and maintained, 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; (c) any such loan approval or commitments for financing shall not require modification of the Loan Documents, or any term of this commitment letter, (d) any such loan approval or commitments shall not be based upon sources and uses of Project funds that are different from those approved by Lender for the Project, and (e) that Lender will have notice of, and a reasonable opportunity to cure, any Borrower defaults;

**11.1.4.** 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;

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

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

**11.1.7.** Borrower shall provide assurances, satisfactory to Lender in its sole discretion, that hazardous materials are not present on the Property or that any hazardous materials on the Property will be remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation; and

**11.1.8.** 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.

**11.2. CONDITIONS PRECEDENT TO FIRST DISBURSEMENT.** Borrower's request for the first disbursement of Loan Proceeds (the "First 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 Disbursement when the following conditions precedent and the conditions precedent stated in Section 11.1 have been met:

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

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

11.2.3. 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, or has obtained commitments to issue bonds, 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;

11.2.4. Borrower has provided proof of all insurance required by the Loan Documents;

11.2.5. 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;

11.2.6. 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; and

11.2.7. Borrower must request the First Disbursement consistent with the terms and conditions of this Loan Agreement no later than 11 months following the Effective Date of this Loan Agreement.

**11.3. 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 11.1 have been met:

11.3.1. As applicable, the Project architect and 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 Authorities and any other party having enforceable rights regarding the construction of the Project; and
- c. That the Project is structurally sound.

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

11.3.3. 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;

11.3.4. 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;

11.3.5. 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 or building permit sign offs by the Building Department of the City of Sacramento for all of the Project;

c. All other permits and approvals necessary for the acquisition, construction, furnishing, 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.

11.3.6. 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 of a value in excess of \$1,000 and used in the management, maintenance, and operation of the Project, that are included in the collateral for the Loan;

11.3.7. 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;

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

11.3.9. Borrower has submitted to Lender a final cost certification prepared by a CPA; and

11.3.10. Borrower must request Final Disbursement consistent with terms and conditions of this Loan Agreement no later than 3 years and 11 months following the Effective Date of this Loan Agreement. If Borrower fails to request Final Disbursement consistent with the terms and conditions of this Loan Agreement within 3 years and 11 months of the Effective Date the remaining funds will be recaptured.

**11.4. 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 11.1. 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.

**11.5. DISBURSEMENT OF LESS THAN FULL REQUEST.** If Lender makes a disbursement which is less than the full amount of the disbursement requested, Lender shall inform Borrower of the items disallowed for disbursement and the reason for disallowing them. Lender shall disburse the Loan in the following order of priority, except as expressly provided and unless paid by Borrower from other funds: (a) first, to pay Lender's Loan fees and expenses due; (b) second, to pay Lender the interest due on the Loan; (c) third, at Lender's option to pay all impositions due; (d) fourth, at Lender's option, to make any other payments that Lender may in its sole discretion deem necessary or advisable to protect Lender's security under the Loan Documents; and (e) fifth, to make the disbursement of funds then due in response to Borrower's current request for disbursement. For purposes of this section, impositions means all real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other charges of a Governmental Authority and any interest or costs or penalties with respect to them, ground rent and charges for any easement or agreement maintained for the benefit of the Property, of every nature and any kind that at any time may be assessed, levied, imposed, or become a lien on the Property, Fixtures or income received from the Property or Fixtures, or any use or occupancy of the Property; and any charges, expenses, payments, or assessments of any nature that are or may become a lien on the Property or the income received from it.

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

**11.7. 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.

## **12. RESIDENTIAL OPERATIONS.**

**12.1. VERIFICATION OF NET INCOME.** When requested by Lender, Borrower shall provide Financial Statements and such other evidence as Lender may deem necessary to verify the Project net income, including without limitation copies of certified rent rolls, bank statements, billing statements and invoices.

**12.2. SECURITY AND LIGHTING.** Project shall include a security camera system approved by Lender and lighting adequate to properly illuminate the parking area and all common spaces. In addition, Project will include security cameras and desk clerk coverage 24 hours per day, seven (7) days per week, including holidays.

**12.3. RESIDENT SERVICES PLAN:** Borrower shall provide Lender with a detailed resident services plan including but not limited to the following information: (1) identification of all entities responsible for providing resident services to Project tenants and each entity's role in the provision of those services; (2) a description of the services to be provided; (3) a resident services budget; and (4) Prior to execution, Borrower must submit to Lender any agreement providing for the resident services by a third party which agreement is subject to Lender approval. The agreement must include a minimum of twenty (20) hours per week of on-site resident services, including an on-site service coordinator for six (6) hours, and the remaining fourteen (14) hours for educational, workforce development, enrichment, case management, and transportation assistance programs.

**12.4. SMOKE FREE ENVIRONMENT.** Fifty percent of the residential units and all indoor common areas must be smoke free.

## **13. DEFAULT.**

**13.1. 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, including, without limitation, cure rights provided in Section 16 of the Trust Deed:

13.1.1. Borrower's non-performance of any obligation or breach of this Agreement;

13.1.2. The occurrence of an event of default under any of the Loan Documents;

13.1.3. Subject to Borrower's legal rights to contest a Governmental Requirement, Borrower's failure to comply with any Governmental Requirement, unless within ten (10) days after notice of such failure by Lender or the respective governmental entity or after any action has been commenced to enforce such requirement, Borrower has cured such failure; provided that if such failure cannot be cured within such ten (10) days, Borrower shall have such additional time as is necessary to effect such cure, provided that Borrower has commenced the cure within such ten (10) days and diligently pursues the cure; however, in no event shall such additional time exceed 45 days;

13.1.4. 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, unless within ten (10) days after notice by the issuing entity or Lender of such failure, Borrower has promptly cured such failure; provided that if such failure cannot be cured within such ten (10) days, Borrower shall have such additional time as is necessary to effect such cure, provided that Borrower has commenced the cure within such ten (10) days and diligently pursues the cure; however, in no event shall such additional time exceed 45 days;

13.1.5. 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;

13.1.6. Borrower's failure to complete the construction of the Project by the Completion Date, subject to Unavoidable Delays;

13.1.7. 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;

13.1.8. 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; and

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

13.1.10. Notwithstanding the foregoing, the Lender agrees that any notice of a default under this Loan Agreement or under any other Loan Document also shall be provided to Borrower's limited partner pursuant to Section 16.10 below, and such limited partner shall have the right, but not the obligation, to cure any such default during the applicable cure period. Lender agrees that a cure of any default by such limited partner shall be deemed a cure by Borrower, and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

#### **14. REMEDIES.**

14.1. **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:

14.1.1. Terminate its obligation to make disbursements;

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

14.1.3. 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;

14.1.4. 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; and

14.1.5. 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.

14.2. **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.

14.3. **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.

14.4. **GRANT OF POWER.** Subject to the prior rights of lenders whose loans are secured by the Property and senior to the rights of Lender, 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.

**15. LIABILITY INSURANCE.** With regard to this Loan Agreement, 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 Borrower, General Contractor, subcontractor or anyone 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 incurred by usual personal injury liability coverage which are sustained (1) by any person as a result of a liability arising out of the employment of such person by 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; and (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.

**15.1. LIABILITY INSURANCE POLICY LIMITS.** Borrower shall obtain all insurance under this Section 15 written with a deductible of not more than Ten Thousand Dollars (\$10,000) or an amount approved by Lender, and for limits of liability which shall not be less than the following:

**15.1.1. WORKER'S COMPENSATION.** Borrower shall obtain and maintain worker's compensation coverage which 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;

**15.1.2. 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 equivalent. 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;

**15.1.3. 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;

**15.1.4. INTENTIONALLY OMITTED.**

**15.1.5. PERSONAL INJURY.** Borrower shall obtain and maintain contractual liability for coverage for bodily injury of \$1,000,000 for each occurrence;

**15.1.6. HAZARD.** Borrower shall procure and maintain fire and extended coverage insurance, and during construction, Builder's Risk completed value insurance in a form and substance approved by Lender. Coverage shall be for protection against loss of, or damage to the improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Lender's security for the Loan as may be required by Lender, governmental regulations, or any permanent lender; and

**15.1.7. 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 or equivalent, 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 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.

**15.2. 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 A VII or better, 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:

**15.2.1. ADDITIONAL INSURED.** Borrower shall obtain a policy in ISO form CG 20 33, or equivalent, naming Lender as additional insured under the Commercial General Liability Policy at the same limits as required in section 16.1.2, above.

**15.2.2. 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. 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.

**15.2.3. CERTIFIED POLICY COPY.** Borrower shall provide Lender with a certified copy of each required policy of insurance, upon request by Lender. Borrower shall provide Lender with a Certificate of Insurance for each policy on the applicable ACORD form. And, specific sections of the policy may be requested by Lender for review. The ACORD form shall not substitute for the policy, if the policy is requested. The most current ACORD 25-S "Certificate of Liability Insurance shall be used for liability insurance.

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

\_\_\_\_\_**Borrower's Initials**

**15.4. FAILURE TO MAINTAIN.** If Borrower fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Loan Agreement, Lender shall have the right, upon five (5) days written notice and opportunity to cure, to purchase the insurance on Borrower's behalf, and Borrower shall promptly reimburse the full cost of such insurance to Lender. If Borrower fails to reimburse Lender for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

**15.5. BLANKET COVERAGE.** Borrower's obligation to carry insurance as required under this Section 15 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 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 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.

## **16. MISCELLANEOUS.**

**16.1. 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.

**16.2. CURE BY PARTY OTHER THAN BORROWER.** Any lender whose loan is secured by the property and any principal of Borrower, and Borrower's investor limited partner may cure a default of the Loan, provided that such cure rights shall be the same as Borrower's cure rights. Such other curing party must cure by the date on which Borrower was obligated to cure, except if Lender is obligated by this Loan Agreement to give separate notice to such other curing party, in which instance, the cure period shall begin when Lender makes such notice to such other curing party.

**16.3. CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a taking of all of the Property, the proceeds shall be applied to the sums provided by this Loan, subject to any claims of prior lienholder, with the excess, if any, paid to junior lienholders and Borrower, as they may determine. In the event of the partial taking of the Property, unless Borrower and Lender otherwise agree in writing, and subject to any claims of prior lienholders, there shall be applied to the sums secured by the Trust Deed such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by the Trust Deed immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to junior lienholders and Borrower, as they may determine.

If the condemnor offers to make an award or settle a claim for damages to the Property and: (1) the Property is abandoned by Borrower; or (2) after notice by Lender to Borrower of the condemnor's offer, Borrower fails to respond to Lender within 30 days after the date such notice is mailed; Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by the Trust Deed.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

**16.4. SUBORDINATION.** Lender may subordinate this Loan to a senior loan, provided that any senior loan for the Project indicated in the Budget meets all requirements of this Loan Agreement, and that such senior loan does not require modification of this Loan Agreement.

**16.5. FUNDING REQUIREMENTS.** Borrower shall comply with all laws, rules, regulations and funding requirements that govern the use of any such funds used to fund the Loan. Lender, to the extent required by law, shall cooperate with and assist Borrower in fulfillment of such obligations. If Lender, as a result of actions of Borrower, shall be obligated to repay the Loan Program any amount of the Loan Proceeds, Borrower shall make such repayment on account of Lender and failure to do so shall be an Event of Default.

**16.6. 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.

**16.7. 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.

**16.8. 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 any construction account or impound account, if established.

**16.9. NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** Nothing contained in this Loan Agreement or in any other document executed in connection with this Loan Agreement shall be construed as creating a joint venture or partnership between Lender and Borrower. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Lender and Borrower other than that of a lender and a borrower.

**16.10. 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. 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. Any notices provided to the Borrower under this Loan Agreement or under the Loan Documents shall also be provided to Borrower's limited partner as follows: Wincopin Circle LLLP, c/o Enterprise Community Asset Management, Inc., 70 Corporate Center, 11000 Broken Land Parkway, Suite 700, Columbia, MD 21044, Attention: General Counsel.

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

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

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

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

**16.11. 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.

**16.12. 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 if applicable, 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.

**16.13. 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 acquisition and construction financing for the Project, which sign shall remain for the duration of construction. 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.

**16.14. 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 Security Documents. 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.

**16.15. 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.

**16.16. 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.

**16.17. 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.

**16.18. 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 Loan 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 Loan or the termination of any Loan Document.

**16.19. 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.

**16.20. 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 party to the Loan Documents, 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 Interest Rate, will form a part of the indebtedness and will be secured by the Security Documents.

**16.21. 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.



16.22. **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.

16.23. **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 Loan owing by Borrower to Lender.

16.24. **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.

16.25. **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.

16.26. **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.

16.27. **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 except to the extent caused by the gross negligence or willful misconduct of Lender. 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.

16.28. **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.

16.29. **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.

16.30. **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.

16.31. **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.

16.32. **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. 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:**

**MERCY HOUSING CALIFORNIA 90, L.P.**

By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner

By: Mercy Housing Calwest  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Stephan Daues, Vice President

**LENDER:**

**HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO, A PUBLIC BODY, CORPORATE AND  
POLITIC**

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

Approved as to form:

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

**Exhibit 1: Legal Description**

**For APN/Parcel ID(s): 006-0102-016 and 006-0102-018**

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

**PARCEL ONE**

All that portion of Lots 7 and 8, in the Block Bounded by 9th and 10th, "K" and "L" Streets, of the City of Sacramento, according to the official Plat thereof, described as follows:

Beginning at a point marking the Northwest corner of said Lot 8; thence from said point of beginning South 71°11'56" East 80.37 feet to the Northeast corner of said Lot 8; thence South 71°11'56" East 5.00 feet; thence South 18°48'25" West 100.00 feet; thence North 71°11'56" West 5.00 feet to a point on the Easterly Line of said Lot 8; thence North 72°02'56" West 35.00 feet; thence South 18°48'25" West 60.00 feet to a point on the Southerly line of said Lot 8; thence North 71°12'09" West 45.47 feet to the Southwest corner of said Lot 8; thence Northeasterly along the Westerly line of said Lot 8 to the point of beginning.

**PARCEL TWO**

An easement for light, air and building separation and access for maintenance and repair over, across, and upon the following described portion of Lots 7 and 8 in the Block Bounded by 9th and 10th, "K" and "L" Streets of the City of Sacramento, according to the official plat thereof.

Beginning at a point on the South line of said Lot 8 located South 71°12'09" East 45.47 feet from the Southwest corner of said Lot 8; thence from said point of beginning North 18°48'25" East 60.00 feet; thence South 72°02'56" East 40.00 feet; thence North 18°48'25" East 100.00 feet to a point on the North line of said Lot 7 located South 71°11'56" East 85.37 feet from the Northwest corner of said Lot 8; thence along the North line of said Lot 7 South 71°11'56" East 5.00 feet; thence South 18°48'25" West 105.00 feet; thence North 72°02'56" West 40.00 feet; thence South 18°48'25" West 55.00 feet on the South line of said Lot 8; thence along said South line North 71°12'09" West 5.00 feet to the point of beginning.

APN: 006-0102-016-0000, 006-0102-018-0000

## **CAPITOL PARK HOTEL**

Capitol Park Hotel was originally built in 1912 and was a 180-room Single Room Occupancy (SRO) hotel on approximately 0.26 acres located in the Central City/Downtown area of the City of Sacramento. The preservation and development plan consists of 134 studio apartments located within six and eight story brick, wood and concrete buildings that are joined at almost every level. There is currently a full basement and partial mezzanine. There is approximately 7,000 sf of retail space on the ground floor that will be reduced to approximately 3300 sf and will be double height (i.e., no mezzanine above retail locations). There are minimal existing common areas. Approximately 4,000 sf of office, common utility and community space amenities will be created on the ground floor with the retail space adjoining the current lobby. On the mezzanine level, approximately 4,800 sf of office, common, community space in additional circulation is created from mostly currently unused space. Additional multipurpose rooms will be created by converting SRO rooms on each of the upper residential floors. There is no on-site parking or landscaping. Bicycle parking will be available on-site with most of it occurring in a secured basement area and some available on the ground floor, off the alley. This area is shared space with the adjacent office building. A central trash shoot will be created at the building to this area. The trash dumpsters will then be taken by motorized cart to the alley on pick-up days.

### **I. Site Work:**

1. **Asphalt Pavement:** It is assumed that the Kayak Alley pavement will need to be repaved where adjacent to the building and at utility connections on 9<sup>th</sup> Street.
2. **Hollow Sidewalks:** After conferring with City of Sacramento Planning, an allowance is provided to fill the sidewalks and recreate the look of the prism lights. The alley between the buildings will be repaved.

### **II. Building Exteriors**

1. **Electrical:** All wiring and equipment will be replaced with new wiring and equipment. All exterior lights will be replaced and updated with energy efficient fixtures.
2. **Entryway Doors:** The front entry doors and threshold will be replaced to be ADA compliant.
3. **Roof:** Roofing will be replaced, and insulation will be added. Additionally, roof safety anchors will be installed for safer construction, window cleaning, and future maintenance. All unnecessary existing structures on the roof will be removed.
4. **Siding:** The existing brick and concrete facades will be repaired and repainted. The cement plaster in a light well will be removed and replaced. Decorative sheet metal will be repaired and repainted. A mechanical shaft covered in metal siding will be repurposed as a stair and reclad in new metal siding.
5. **Commercial Storefronts:** The existing (not original) raw clay brick will be painted to match the building. One new storefront and two small windows will be replaced.
6. **Windows:** Existing wood windows will be repainted and repaired as required by historic/SHPO requirements. New windows will be installed in the light well and added stair.

### **III. Building Interiors**

1. **Structural/Seismic Improvements:** The building and exterior brick walls will be reinforced with a series of interior shotcrete walls that will come to concrete moment frames on the ground floor. The moment frames allow for larger openings on the ground floor and better preserve the historic look and function of the ground floor commercial spaces. This system was decided upon after consultation with SHPO.

2. **Americans with Disabilities Act (ADA) Units:** There will be a total of 17 Americans with Disabilities Act (ADA) compliant accessible units. Seven additional units will have communication features.
3. **Appliances:** All units will have new kitchenette style appliances, including a sink, a two-burner cooktop and a small refrigerator. A microwave shelf will be provided, but not a microwave.
4. **Blinds, Shades and Curtains:** All units will have new blinds installed.
5. **Bathtubs and Toilets:** All units will have new bathtub enclosures. Restrooms shall have new toilets and accessories.
6. **Cabinets, Counters and Sinks:** All units will have new cabinets, solid surface or granite countertops and sinks in the kitchen and bathroom.
7. **Ceilings and Walls:** All existing unit interior demising walls separating the units will be removed entirely. Corridor wall framing on the northern building will remain, but lath and plaster, wood trim and doors will be either restored or reproduced to match the original. Gypsum board insulation and sealant will be added for better acoustics.
8. **Electrical and Lighting:** All units will have all new electrical, lighting, data, smoke detection and fire alarms.
9. **Flooring:** The units will have new luxury vinyl plank (LVP) flooring. Wear layer of LVP shall be at least 12 mils inside dwelling units. The bathrooms will have sheet vinyl flooring to provide a cleanable, impervious surface.
10. **Furnishings:** All units will be furnished with twin bed frames and mattresses, nightstands and dressers.
11. **Plumbing Fixtures:** All units will have new code compliant plumbing fixtures.

#### **IV. Community Amenities**

1. **Ceilings and Walls:** All ceilings and walls will be stripped of lath and plaster or drywall. Selective framing to be removed per demolition plan.
2. **Community/Staff Restrooms:** Two accessible restrooms will be provided on the ground floor and one of the mezzanine levels.
3. **Community Room – 1<sup>st</sup> Floor:** A community room that will function more like a large community living room will be created on the first floor in the old Salad Bar space with double height ceilings in the center and the mezzanine at front and back with connecting open corridors with railings looking over the first floor. All new flooring, electrical fixtures, and furniture will be provided.
4. **Community rooms/lounges – Mezzanine level:** two multipurpose rooms will be created out of the two spaces overlooking 9<sup>th</sup> Street. These rooms will serve as staff conference rooms, spaces for group therapy/AA/NA type meetings, as well as social event space. The larger northern room will have a sink, counter, and fridge. These spaces currently have very low dropped ceilings that will be rebuilt at a higher level.
5. **Multipurpose Rooms** –There are five small and one large multipurpose rooms on the upper floors to be used as either storage, a lounge, or additional office/meeting space.
6. **Community Room Kitchen:** A separate warming/prep/storage kitchen for staff and event use is planned at the mezzanine level.
7. **Elevator:** The two elevators will be completely rebuilt to current building code.
8. **Hallways and Stairs:** Hallways will have new vinyl plank flooring and new paint. The southern stair will be rebuilt to meet code requirements. Per SHPO consultation, the northern stair will be repaired in place.

9. **HVAC & Plumbing Systems:** All new plumbing and HVAC, fire sprinklers, electrical, data and lighting is planned.
10. **Laundry Facility:** A single laundry room is planned at a central location.
11. **Lobby:** The lobby will be remodeled in its current location with an added front desk and ramp up to the level of the northern building floor.
12. **Signage:** All unit numbers will be remounted after hallways are completed. Exterior building signage will include replacing the historic signage with a plan to be developed in collaboration with the City Planning Dept and SHPO. New code-required signage will be provided.
13. **Trash Room:** A central trash chute and room will be created at the center of the 2 buildings, but in the northern half. The southern half will also have small trash rooms, but they are not connected to a chute system.
14. **Basement:** The basement will be cleared out of all equipment and furniture. The basement will be accessed by one of the elevators and by two stairs. The basement will be used for equipment and staff/maintenance storage only.

**Attachment 1: Rental Property Minimum Construction Standards are attached and incorporated in this Scope of Development.**

**Attachment 1: Rental Property Minimum Construction Standards**  
This attachment is from Exhibit 2 from the Lender's Multifamily Lending and Mortgage Revenue Bond Policies.

The following is a list of the required minimum construction standards that must be incorporated into projects participating in SHRA's Multifamily Financing and/or Mortgage Revenue Bond programs. All rental units and sites associated with these projects must meet or exceed these standards. Exceptions to these standards may be made for properties subject to U.S. Department of Housing and Urban Development replacement reserve requirements that allow for renovation over time rather than at recapitalization (e.g., Rental Assistance Demonstration conversions for conventional public housing).

**Note:** For rehabilitation projects, all of the following standards shall apply. The non-rehabilitation sections below shall apply to new construction projects.

**Useful Life Expectancy – Rehabilitation only**

SHRA shall reference the current edition of FannieMae's "Instructions for Performing a Multifamily Property Condition Assessment, Appendix F. Estimated Useful Life Tables" in determining the useful life for all building components and systems located within the project. A remaining useful life of 15 years or more is required for all building components and systems located within the approved complex. All items on the FannieMae tables with useful lives indicated to be less than 15 years shall be replaced.

**General Requirements**

- A. All materials funded under this loan must be new unless previously approved. Recycled items must be approved in writing by SHRA prior to their use.
- B. All work shall comply with Federal and State ADA accessibility requirements, as well as any other requirements stipulated by the funding source(s). When there are differences the stricter of the two shall apply. The developer is responsible for notifying their architect and/or engineer of all funding sources used on the project. The architect and/or engineer must indicate these funding requirements in the project's plans/scope.
- C. All units shall be approved for occupancy by the local Building Department or any other Agency Having Jurisdiction (AHJ) at the conclusion of the work and prior to occupancy.
- D. Web-based security cameras and the equipment to record events are required for primary ingress/egress points to and from the site and for the principal parking and indoor and outdoor common areas where people will be congregating.
- E. Site lighting is required for all parking and outside public spaces, and shall be of LED or similarly energy efficient type. The lenses on the exterior lights shall be cleaned with all oxidation removed or replaced. Light poles shall be new or painted, and shall be structurally sound and stable.
- F. The developer's architect is responsible for providing an Operating Procedure Outline Sheet (OPOS) for window washing systems where applicable, per Cal-OSHA requirements.
- G. SHRA encourages the use of energy and water-efficient systems wherever they may be incorporated into the project.

**General Requirements – Rehabilitation only**

- A. Any component of the project which does or may present a health or safety hazard to the public or tenants shall be corrected to the satisfaction of the local Building Department or AHJ.
- B. A clear pest inspection report will be required at the conclusion of the construction work for rehabilitation projects.
- C. For all structures where disturbance of any hazardous materials (e.g. lead, asbestos, mold, etc.) will occur, a clearance report from an environmental consultant is required.
- D. Projects deemed historically significant landmark by either the City of Sacramento or the National Register of Historic Places shall consult with the State Historic Preservation Officer (SHPO), and shall conform to the Secretary of the Interior Standards for the Treatment of Historic Properties.

### **Site Work**

- A. Trees and large shrubs must be trimmed, grass areas must be mowed, and all planter areas must be weed-free. The landscape design shall incorporate a sustainable design appropriate for the Sacramento Valley. Vegetation that assists in minimizing crime and enhances public safety is preferred. Trees compromising building envelope materials (roofing, siding, windows, etc.) and/or structural integrity (including foundations) must be removed. An arborist shall be consulted for an opinion on trees prior to major branch trimming, root cutting or tree removal. All trees, bushes and other plants that are to be removed shall have the root ball removed by grinding or by mechanical means. A landscape plan describing the above must be provided to SHRA for approval.
- B. All landscaped areas must be served by a programmable automated irrigation system. The irrigation controller shall be a "Smart Controller" that senses rain to reduce water use. Irrigation shall be designed to use bubblers and other water saving measures. Irrigation must not spray on building. Sprinklers should minimize overspray that runs to storm drain drop inlets. Areas that show evidence of erosion of soil shall be landscaped to eliminate problems. The landscape plan must be approved by SHRA and applied.
- C. For gated communities containing swinging vehicle gates, driveways shall be striped to show the area under the gate swings for safety purposes.
- D. All projects shall contain trash enclosures with concrete aprons. Trash enclosures shall be made of cinder block or stucco. Trash enclosures shall be accessible to all tenants. Provisions for tenants with disabilities must be addressed in the project Scope of Development or the project plans.
- E. All projects shall meet the parking requirements of the local Agency Having Jurisdiction (AHJ) over the project. "Grandfathered Projects" will need to show that they are in fact "Grandfathered" or otherwise exempted by the local AHJ. Otherwise, all projects shall meet the governing ADA requirements for parking.
- F. A two percent (2%) slope shall be maintained for a distance of five feet from all structures and no standing water shall remain on the site. Provide an on- site drainage system if necessary.
- G. Stairways in common areas must include closed risers and non-slip concrete finish or other slip-resistant material on the treads.
- H. Exterior mounted electrical, mechanical, and plumbing systems must be protected from vandalism.
- I. For family projects of 50 or more units, a minimum of one school age-appropriate play structure is required. For family projects of 100 or more units, a minimum of one school age and one toddler-appropriate play structure is required.

### **Site Work – Rehabilitation only**

- A. All landscaping and irrigation systems must be in a well-maintained condition.
- B. All fencing must be in good and serviceable condition. Existing fencing that is to remain shall be free of flaking paint, rust, or any other signs of failure. If existing fencing shows any signs of failure, it shall be repaired, painted and restored to look new. All chain link fencing must be removed and replaced with fencing of another approved material. All pedestrian gates hardware must be functional and in new or near-new condition. Access Control systems are required at exterior pedestrian gates.
- C. All driveways and sidewalks must be in good condition. All cracked or uplifted areas (more than ¼") shall be repaired or replaced.
- D. The asphalt shall be in good condition, with no alligator cracking, longitudinal cracking, potholes, or standing water. Repairs to portions of parking lots not suitable for new coatings shall be performed by removing and replacing damaged paving. A new seal-coat or slurry-coat shall then be applied to the entire parking lot surface. Parking spaces shall be restriped, including ADA aisles and other applicable striping/painting.



- E. All site accessories (bollards, benches, tables, play equipment, bike racks, mailboxes, shade structures, BBQs, sheds, etc.) shall be replaced or in good repair (cleaned, painted and/or re-coated).

#### **Building Envelope and Moisture Protection – Rehabilitation only**

- A. All areas exposed to moisture must be sealed and watertight. Buildings showing evidence of water intrusion shall have the areas inspected by a licensed architect/engineer or by a certified water intrusion expert. A water intrusion report shall be submitted to SHRA, and shall include the cause of the issue and a resolution to eradicate the water intrusion. If the inspection cannot be completed until the demolition phase of the project, the report shall describe a procedure to inspect the issue during demolition.
- B. Roofing must have 15 years or more of remaining life with no visible signs of leakage. For roofs containing composition shingles, a maximum of two layers of shingles are allowed (including any proposed new layers). Provide evidence that the roof system has a 15-year life remaining on the manufacturer's warranty.
- C. All siding must have 15 years or more of remaining life. Hairline cracks in stucco must be sealed and painted with elastomeric paint. If requested by SHRA, a statement by a licensed architect and/or engineer that the existing siding contains at least 15 years of useful life remaining shall be provided.
- D. Fireplaces must be clean and meet applicable air quality standards. Chimneys shall be clean and must be inspected by a certified chimney inspector for structural integrity. All recommended structural repairs shall be performed.

#### **Doors and Windows**

- A. All dwelling/tenant units must have screens on all windows that are designed to open. Windows designed to open must have functional locks and must operate freely without excessive effort. All windows must be dual-paned (minimum), and shall meet or exceed the State of California's currently applicable efficiency standards, and any other efficiency standards that may be dictated by the funding source or other governing bodies for the project.
- B. All doors must have matching hardware finishes.
- C. All exterior doors must have deadbolt locks, keyed latch assemblies, viewers, and screws in strike plates long enough to penetrate the door jamb framing by at least one inch. The dwelling entry door hardware shall have single action hardware to release deadbolt and latch assembly.
- D. All sliding exterior doors shall have screen doors and shall have functional locks and must operate freely without excessive effort.
- E. All doors and windows must meet current egress standards.

#### **Doors and Windows – Rehabilitation only**

- A. Any windows showing signs of condensation or leakage of any kind shall be replaced. SHRA allows window replacement using retrofit windows when those windows are installed by trained professionals following manufacturer's specifications. Retrofit windows must have a similar useful life as "new, construction" (i.e., nail fin) windows.
- B. All doors and doorjamb must be in good condition. No damaged or worn doorjamb or doors are allowed. Doors and/or jamb beyond their useful life shall be replaced.

#### **Casework**

- A. New cabinet boxes shall be made of plywood or solid wood. No particle board boxes will be allowed.
- B. All counter tops shall be of solid surface or granite, and in very good condition with no significant scratches, burns or other imperfections.

- C. Face frames, doors and drawer faces shall be solid hardwood. No plastic laminate finishes will be allowed.

#### **Casework – Rehabilitation only**

- A. All cabinets shall be replaced or in very good condition, within their 15 year useful life, both structurally and in appearance.

#### **Finishes**

- A. All dwelling unit kitchens shall contain luxury vinyl plank (LVP) flooring. Bathrooms must be floored with LVP, sheet vinyl or ceramic tile to provide a cleanable, impervious surface. Bedrooms, hallways, and living and dining rooms may be floored with carpeting, LVP or hardwood. Wear layer of LVP shall be at least 12 mils inside dwelling units. Tenant unit entries shall be floored with LVP or ceramic tile.

In common areas, corridors may be floored with LVP, glue-down carpeting, or carpet tiles. Community rooms and kitchens shall be floored with LVP. Wear layer of LVP in common/commercial areas shall be a minimum of 20 mils thick.

Carpet shall meet or exceed the minimum standards as set by HUD's UM-44D bulletin.

#### **Finishes – Rehabilitation only**

- A. Floor coverings must be in good, useable condition - no holes, tears, rips, or stains.
- B. All exterior and interior surfaces must be painted. No peeling, cracking, chipping, or otherwise failing paint will be allowed. All painted surfaces must be new, or in near new condition and appearance.
- C. Acoustic (popcorn) ceiling texture must be removed and refinished with new texture to match wall texture.

#### **Equipment**

- A. Dishwashers, refrigerator/freezer, oven, stoves and garbage disposals are required in all dwelling unit kitchens. All appliances must be new or in very good operating condition. All appliances must be Energy Star rated, as applicable. Appliances slated for ADA units shall be per code requirements.
- B. SRO projects are encouraged to provide the appliances listed above and will be reviewed and approved on a case-by-case basis.
- C. All kitchens must have adequate cabinet and counter space. Installation of shelving for microwaves is required if over-the-range microwaves are not used, with the exception of ADA units.

#### **Furnishings**

- A. Dwelling units must have window coverings on all windows.

#### **Special Construction**

- A. Non-habitable structures on property must be painted to match primary buildings and must be structurally sound.
- B. Laundry facilities must, at a minimum, be consistent with CTCAC requirements of one washer and dryer for every ten dwelling units for family housing and one for every 15 units for senior and special needs projects. Ten percent of the total number of washer/dryers must be ADA-accessible machines (unless the ADA units contain their own laundry facilities). Solid surface countertops will be required within laundry rooms and countertops shall meet all ADA requirements.

- C. Public pool areas shall have self-closing gate(s). Fences and gates at pool areas shall meet applicable current codes and standards. Joints between coping and concrete deck shall be appropriately caulked. Existing pools shall have no cracks in plaster or tile grout joints. The Developer is responsible for ensuring pool and surroundings meet all applicable current codes and standards. If a project contains two or more pools, at least one must remain following rehabilitation.

#### **Mechanical/Plumbing**

- A. Water heaters must be installed per current applicable codes.
- B. All common areas and tenant units must have heating and air conditioning. Wall mount (i.e. PTAC units) or central systems are acceptable. Evaporative coolers are not acceptable. HVAC units should be protected from vandalism, pursuant to discretion of SHRA.
- C. Toilets, showerheads, faucets, and mixing valves shall be new and meet current water conservation codes.
- D. Tub surrounds must be one unbroken piece per wall and must be of solid surfaces (such as "Swanstone" or other solid acrylic materials, quartz composites), or other similar materials. Fiberglass/acrylic surrounds are acceptable.

#### **Mechanical/Plumbing – Rehabilitation only**

- A. All toilets, sinks, and tubs shall be chip and stain free.

#### **Electrical**

- A. All units must have smoke/carbon monoxide detectors installed per current code.
- B. Wiring from telephone/data/cable suppliers shall be installed within walls, attic spaces, and/or crawl spaces. No conduits are allowed to be mounted on the exterior of the buildings in new construction.
- C. Broadband infrastructure meeting the requirements of 24 CFR 5.100\* is required in all new construction projects of 4 or more units.

*\*Broadband infrastructure means cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of "advanced telecommunications capability" determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).*

#### **Electrical – Rehabilitation only**

- A. All electrical panels shall meet current code.
- B. Any rehabilitation projects with un-grounded electrical systems shall be re-wired with grounded systems to meet current code.
- C. For rehabilitation projects, switches, outlets and light fixtures shall be replaced with devices that meet current applicable codes.
- D. Wiring mounted on the exterior of the surface may be allowed if it is concealed in conduit and conduit is painted to match exterior siding. For projects where exterior siding will be removed, this wiring shall be installed within walls, attic spaces, and/or crawl spaces.

### **Resident Services Community Space**

All properties, regardless of project type (i.e. senior, family, or large family), must devote a minimum of 1,200 s.f. to actual resident services/community space. Resident services space includes common kitchens, computer rooms, meeting rooms and general gathering space. It does not include public restrooms, leasing offices, laundry facilities and lobbies. Common kitchens are required, including refrigerator, stove, garbage disposal, and dishwasher.

For existing buildings, these requirements shall apply unless SHRA deems there to be significant physical constraints.

### **End of Scope of Development**

Exhibit 3: Note Form

**PROMISSORY NOTE  
FOR CAPITOL PARK HOTEL  
ACQUISITION, 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"	[ , 2020]
"Lender"	Housing Authority of the City of Sacramento, a public body, corporate and politic
"Borrower"	Mercy Housing California 90, L.P.
"Borrower Legal Status"	a California limited partnership
"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"	Three Million Two Hundred Thousand Dollars and No Cents (\$3,200,000.00)
"Interest Rate"	The interest rate is 0% per year.
<b>PAYMENT SCHEDULE.</b> Repayment of this Note shall be made as follows:	
"Maturity Date"	The first day of the 684th calendar month following the Effective Date: [DATE].
"Payment Amount(s)"	<p>Annual Loan payments will be made on a Residual Receipts basis (as defined below) beginning on August 1st following conversion to permanent financing and the initial annual audited financial statement, as defined below, until the Maturity Date. Annual Loan payments shall be applied first to outstanding interest accrued and unpaid and then to Principal Amount.</p> <p>"Residual Receipts" means Net Operating Income (or "NOI") (as defined below) less each of the following payments made in the order of priority set forth below during each installment period, as confirmed by Financial Statements (as defined in Section 3.10 herein) from the preceding year. In no event shall any item be paid during any installment period unless all items prioritized above it have received its full payment during such installment period. Payment priority shall be as follows, with the highest priority starting with item one (1) and descending downward to item four (4):</p> <ol style="list-style-type: none"><li>1) Partnership management fee up to \$20,000 annually as of the Loan's Effective Date escalating at 3% annually, which payment shall accrue to the extent unpaid in any given year.</li><li>2) Asset management fees up to \$5,000 annually as of the Loan's Effective Date escalating at 3% annually, which payment shall accrue to the extent unpaid in any given year.</li></ol>

	<p>3) After Sections one (1) and two (2) of Residual Receipts are paid, available cash flow from NOI will go into a transition reserve account until such account has a balance of the higher of \$1,245,000 or the final amount required by the California Department of Housing Community Development (HCD) No Place Like Home (NPLH) program regulatory agreement, then available cash flow will go into a separate services and operating reserves account to cover supportive and/or resident services or operating deficits of the Project. Any remaining available cash flow from NOI will be paid under Section four (4) of Residual Receipts.</p> <p>4) After Sections one (1) through three (3) of Residual Receipts are paid, 100% of the available cash flow from NOI proportionately divided in the following manner:</p> <p>a) 50% to Borrower;</p> <p>b) 21.08% to HCD to repay the NPLH loan until it has been fully repaid (with interest);</p> <p>c) 21.96% to the Sacramento Housing and Redevelopment Agency (SHRA) to repay the HOME loan until it has been fully repaid (with interest); and then to repay the CDBG loan until it has been fully repaid (with interest); and then to repay the HOPWA loan until it has been fully repaid (with interest); and then to repay the HTF loan until it has been fully repaid (with interest); and then to repay the MIHF loan until it has been fully repaid (with interest); and</p> <p>d) 6.96% to the Housing Authority of the City of Sacramento (HACS) to repay the HASAF loan until it has been fully repaid (with interest).</p> <p>The Net Operating Income is defined as periodic "Revenue" less "Operating Expenses." "Revenue" means all revenue from the leasing of the Project, including but not limited to all rents, fees, and charges paid by tenants as well as rental subsidy payments regardless of the source of these subsidies, forfeited tenant deposits, rent increases, proceeds from vending machines and laundry room machines. Revenue shall not include tenants' security deposits (unless forfeited), interest on those deposits, loan proceeds, capital contributions or similar advances, or amounts released from reserves or interest on reserves.</p> <p>"Operating Expenses" shall mean actual costs, fees and expenses as evidenced by invoices attributable to the operation, recordkeeping, maintenance, taxes and management of the Project, including property management fees; taxes and assessments; payroll, benefits and payroll taxes for Project employees; insurance; security; painting, cleaning, repairs, and alterations; landscaping; sewer charges; utility charges; advertising, promotion and publicity; cable television, satellite, cable; elevator and other similar services; office, janitorial, cleaning and building supplies; recreational amenities and supplies; purchase, repair, servicing and installation of appliances; costs and expenses associated with the provision of social and/or community services to the residents of the Project; equipment, fixtures and furnishing; fire alarm and elevator monitoring; fees and expenses of accountants, attorneys, consultants and other professionals; and monitoring fees to: a) HCD with respect to the NPLH loan, b) SHRA with the respect to the HOME, CDBG, HOPWA, HTF and MIHF loans, and c) HACS with the respect to the HASAF loan. The definition will include deposits into operating and/or replacement reserves maintained by the Borrower.</p>
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**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 the Loan. 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 (as defined in the Loan Agreement), the making of which is further consideration for this Note.

2. All payments on this Note shall be applied first to fees and charges due under the Loan Agreement, if any, then to interest and then to the principal due on this Note. Borrower shall make the payments to the Lender at 801 12<sup>th</sup> Street, Sacramento, CA 95814, or to such other person or organization as may be designated by Lender to Borrower and noticed as provided in the Loan Agreement.

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

4. This Note is secured by a Deed of Trust and 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 Property is refinanced, sold, hypothecated, transferred or conveyed to any person, whether voluntarily or involuntarily, except as permitted under Section 6.9 of the Loan Agreement. 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.

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

6. 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:

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, either (i) failed to disclose, or (ii) 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 or continuation 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, the Notice of Affordability Restrictions 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. Any of the following occur:

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.

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

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

9. During the existence of default or delinquency under the terms of this Note or the 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.

10. This Loan is a nonrecourse 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.

11. 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 Effective Date.

**Borrower:**

**Mercy Housing California 90, L.P.**

**By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner**

**By: Mercy Housing Calwest  
a California nonprofit public benefit corporation,  
its sole member/manager**

**By: \_\_\_\_\_  
Stephan Daucs, Vice President**

**Exhibit 4: Trust Deed Form**

**NO FEE DOCUMENT:**

Entitled to free recording

per Government Code §§6103 and 27383.

When recorded, return to:

SACRAMENTO HOUSING AND

REDEVELOPMENT AGENCY

801 12<sup>th</sup> Street – 4<sup>th</sup> Floor

Sacramento, CA 95814

Attention: Portfolio Management

**DEED OF TRUST AND ASSIGNMENT OF RENTS**  
**Capitol Park Hotel**

For purposes of this Deed of Trust the following capitalized terms shall have the meanings ascribed in the space adjacent to them:

TERM	DEFINITION
"Effective Date"	[_____, 2020]
"Trustor" and "Borrower"	Mercy Housing California 90, L.P., a California limited partnership
"Borrower Address"	2512 River Plaza Drive, Suite 200, Sacramento, CA 95833
"Trustee"	Fidelity National Title Company
"Beneficiary" and "Lender"	Housing Authority of the City of Sacramento, a public body, corporate and politic
"Lender Address"	801 12th Street, Sacramento, California 95814
"Property"	Which is real property located in the County of Sacramento and the State of California as more particularly described in the Legal Description.
	Address 1121 9th Street, Sacramento, California
	Assessor's Parcel Number 006-0102-016-0000, 006-0102-018-0000
"Legal Description"	The Legal Description of the Property which is more particularly described in the attached <b>Exhibit 1 Legal Description</b> , which is incorporated in and an integral part of this Deed of Trust
"Loan"	Which is Lender's loan to Borrower evidenced by the Note and which is secured by this Deed of Trust.
"Loan Agreement"	Which is the agreement between Lender and Borrower stating the term and conditions of the Loan.
	Which is dated as of even date herewith
"Additional Notices"	Lender shall give copies of notices required to be delivered to Borrower to the following parties at the following addresses; provided, however that Borrower acknowledges that such notice is an accommodation and the failure of the Lender to properly deliver any such notice shall not give rise to any claims or defenses of Borrower or any third party:

	Wincopin Circle LLLP c/o Enterprise Community Asset Management, Inc. 70 Corporate Center 11000 Broken Land Parkway, Suite 700 Columbia, MD 21044 Attention: General Counsel Telephone: (410) 964-0552 Facsimile: (410) 772-2630 (the "Tax Credit Limited Partner")	
	With a copy to: Gallagher Evelius & Jones LLP 218 N. Charles Street, Suite 400 Baltimore, Maryland 21201 Attention: Kenneth S. Gross, Esq. Telephone: (410) 727-7702 Facsimile: (410) 468 2786	
"Note"	Which is Borrower's promissory note made in accordance with the Loan Agreement evidencing the following principal sum or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Lender, with interest.	
	Which has a principal sum of	Three Million Two Hundred Thousand Dollars and No Cents (\$3,200,000.00)

THIS DEED OF TRUST is made as of the Effective Date between the Trustor also referenced as the Borrower, the Trustee, and the Beneficiary also referenced as Lender.

Borrower, in consideration of the indebtedness described below and the trust created by this Deed of Trust, irrevocably grants and conveys the Property to Trustee, in trust with power of sale.

Together with all the improvements now or subsequently erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, venetian blinds and other furnishings, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are referred to as the "Property";

To secure to Lender: (a) the repayment of the Loan; and (b) the performance of the covenants and agreements of Borrower contained in this Deed of Trust, the Note, or the Loan Agreement.

Borrower covenants that Borrower is lawfully seized of the estate conveyed by this Deed of Trust and has the right to grant and convey the Property, and that Borrower will warrant and defend generally the title of the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest, if any, on the indebtedness evidenced by the Note. All payments received by Lender under the Note shall be applied by Lender first to interest payable on the Note and thereafter to the unpaid principal of the Note.

2. **Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any by Borrower making payment, when due, directly to the appropriate payee. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event that Borrower makes payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall pay when due any encumbrance, charge and lien, with interest in accordance with its terms, on the Property or any portion which is inferior or superior to this Deed of Trust.

3. **Hazard Insurance.** Borrower shall keep the improvements now existing or later erected on the Property insured against loss of fire or hazards under a policy approved by Lender consistent with the insurance requirements of the Loan Agreement. In addition, Borrower shall insure against loss of all furniture, equipment and other personal property owned by Borrower related to Borrower's operation of the Property. Lender shall have the right to hold the policies and policy renewals, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, as and to the extent provided in the Loan Agreement.

Unless Lender and Borrower otherwise agree in writing, any such application of insurance proceeds to principal shall not extend or postpone the due date of any Loan payment or change the amount of such payment. If the Property is acquired by Lender pursuant to this Deed of Trust, all right, title and interest of Borrower in and to any insurance policies and proceeds of such policies resulting from damage to the Property prior to the sale of acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

4. **Liability Insurance.** In addition to the casualty insurance required under the Loan Agreement during the course of construction, Borrower shall keep comprehensive general liability insurance for the Property in a form and coverage consistent with the provisions of the Loan Agreement and reasonably approved by Lender.

5. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment, demolition, or deterioration of the Property.

6. **Protection of Lender's Security.** Borrower shall appear and defend any action or proceeding purporting to affect the security under this Deed of Trust or the rights of the Lender. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender may, upon notice to Borrower, make such appearances, disburse such sums and take such actions as are necessary to protect Lender's interest, including, but not limited to, disbursement of judgments, costs or reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this Section 6, with interest, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. In any event, this Section shall be construed as a right and an option of Lender and shall not be construed to require Lender to incur any expense or take any action.

7. **Inspection.** Lender, by its designated representative, may make reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower and any occupant of the Property reasonable prior notice of any such inspection.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, shall be applied as provided in the Loan Agreement.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

9. Borrower Not Released. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time payment by reason of any demand made by the original Borrower or Borrower's successors in interest.

10. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy under this Deed of Trust, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust, the Note, the Loan Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound; Joint and Several Liability Captions. The covenants and agreements contained in this Deed of Trust shall bind, and the rights under this Deed of Trust shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Section 15. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or to define its provisions.

13. Notice. Except for any notice required under applicable law to be given in another manner, any notice to be given under this Deed of Trust shall be given as provided for in the Loan Agreement. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated.

14. Governing Law; Severability. This Deed of Trust shall be governed by the law of the State of California. If any term or provision of this Deed of Trust shall, to any extent, be held invalid or unenforceable, the remainder of this Deed of Trust shall remain in full force and effect and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

15. Acceleration on Transfer or Refinancing of the Property: Assumption. Except as otherwise provided in the Loan Agreement, if all or any part of the Property or an interest in the Property is sold or transferred or refinanced by Borrower without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the loan may be assumed. If Lender has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower, or any of its principals or anyone with a substantial legal interest in Borrower, may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by this Deed of Trust.

**16. Acceleration on Breach; Remedies.** Except as provided in Section 15, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, the Note, (including the covenants to pay when due any sums secured by this Deed of Trust and restricting transfer of the Property) the Regulatory Agreement, or Loan Agreement, Lender shall mail notice to Borrower specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no less than 30 days from the date the notice is mailed to Borrower, by which breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. The Borrower's limited partner shall have the right, but not the obligation, to cure any such default during the applicable cure period. Lender agrees that a cure of any default by such limited partner shall be deemed a cure by Borrower, and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Lender shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this Section, including, but not limited to reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any portion of the Property is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements it contains. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto as determined by Lender. In the event of a dispute regarding the excess funds, either Lender or Trustee may file an action in interpleader to determine who shall receive the funds and may then deposit the excess funds with the court.

**17. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security, Borrower assigns to Lender the rents of the Property, provided that Borrower shall, prior to an acceleration for breach as provided above or abandonment of the Property, have the right to collect such rents as they become due.

Upon acceleration for breach or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender, its agent, or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender, its agent and the receiver shall be liable to account only for those rents actually received.

18. Prior Lienholder. The provisions of this Deed of Trust shall operate subject to the claims of prior lienholders to the extent of such claims.

19. Nonrecourse. Notwithstanding any provision of this Deed of Trust or any document evidencing or securing the Loan, Borrower, and Borrower's principals, agents, officers, and successors in interest shall not be personally liable for the payment of the Loan or any obligation of the Loan, and in the event of a default Lender shall look solely to the Property subject to this Deed of Trust and to the rents, issues and profits thereof in satisfaction of the indebtedness evidenced by the Note; provided, that nothing in this condition and no action so taken shall operate to impair any obligation of Borrower under the Regulatory Agreement.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to such reconveyance. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness.

21. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee by this Deed of Trust and applicable law.

22. Request for Notice. Borrower and each party listed to receive Additional Notices request that copies of the notice of default and notice of sale be sent to their respective addresses.

23. Statement of Obligation. Lender may collect a reasonable fee for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California, as it may be amended from time to time.

24. Use of Property. Borrower shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

25. Extended Use Agreement. In order to receive an allocation of federal low income housing tax credits, Borrower will be required to record in the real property records of the County in which the property is located, an "extended low-income housing commitment" (as defined in Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended ("Code")) ("Extended Use Agreement"). Lender acknowledges and agrees that, in the event of a foreclosure of its interest under this Deed of Trust or delivery by Borrower of a deed in lieu thereof (collectively, a "Foreclosure"), Lender expressly agrees to undertake, with respect to low-income housing tenants, the requirements of Section 42(h)(6)(E)(ii) of the Code, as amended from time to time.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

**BORROWER (Trustor):**

**MERCY HOUSING CALIFORNIA 90, L.P.**

By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner

By: Mercy Housing Calwest  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Stephan Daues, Vice President



**Exhibit 5: Regulatory Agreement**

**NO FEE DOCUMENT:**

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

When recorded, return to:  
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO  
801 12<sup>th</sup> Street – 4<sup>th</sup> Floor  
Sacramento, CA 95814  
Attention: Portfolio Management

**REGULATORY AGREEMENT FOR RESIDENTIAL RENTAL PROPERTY  
AND DECLARATION OF RESTRICTIVE COVENANTS AFFECTING REAL PROPERTY**

<b>PROJECT NAME:</b>	Capitol Park Hotel
<b>PROJECT ADDRESS:</b>	1121 9th Street, Sacramento, CA
<b>APN:</b>	006-0102-016-0000, 006-0102-018-0000

**FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS ACKNOWLEDGED, AGENCY AND OWNER HAVE ENTERED THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AFFECTING REAL PROPERTY (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 table and in the body of this Regulatory Agreement as the context indicates. Terms being defined are indicated by quotation marks.

TERM	DEFINITION		
“Effective Date”	This Regulatory Agreement shall be effective as of the following date:		[_____, 2020]
“Agency”	Housing Authority of the City of Sacramento A public body, corporate and politic		
“Agency Address”	801 12th Street, Sacramento, California 95814		
“Owner”	Mercy Housing California 90, L.P., a California limited partnership		
“Owner Address”	Owner’s business address is as follows:	2512 River Plaza Drive, Suite 200, Sacramento, CA 95833	
“Jurisdiction”	City of Sacramento		
“Property”	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as Exhibit 1 – Legal Description of the Property and incorporated in this Regulatory Agreement by this reference		
“Funding Agreement”	The Funding Agreement between Agency and Owner as follows:	Titled:	Acquisition, Construction and Permanent Loan Agreement
		Dated:	[_____, 2020]
“Agency Funding”	Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property		
“Agency Funding Amount”	The amount of Agency Funding, as follows:		\$3,200,000.00

<b>"Funding Requirements"</b>	The legal restrictions on the use of the funds that Agency has used to make Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in <b>Exhibit 2 – Funding Requirements</b> .
<b>"Approved Use"</b>	The Approved Uses of the Property are as follows: Owner shall assure that the residential space on the Property is used as a residential property available for rent. Owner shall assure that the approximate 3,300 square feet of commercial space open to the public on the Property will enhance the living environment of the residents of the Project, and is subject to approval by Agency; and contains The only permitted use of the Property, which is as a residential property available for rent by the general public and containing not no less than the following number of total units: 134 studio units.
<b>"Disapproved Use"</b>	Owner shall assure that the Property is not used, in whole or in part, for any Disapproved Use. A Disapproved Use of the Property is any use other than the Approved Uses, and includes, but is not limited to a liquor store/bar, adult store/film, veterinarian office/kennel, funeral, video arcade/pool hall, bowling alley, music, dancing, manufacturing, repair facility, vehicle related, service stations, hazardous materials, storage or warehousing facilities, tattoo and/or piercing establishment, pawn shop, check cashing or paycheck advance business, passive activity (e.g., switching station), nuisances, and/or medical marijuana.

**3. RESTRICTED PARCELS; APPROVAL OF LEASES.** In order to assure that the proper number and types of units have been rented in accordance with this Regulatory Agreement, Owner is prohibited from leasing any Unit within the Project until either the parties have recorded against the Property a list of the Restricted Units or Agency has approved the individual lease or lease form for the Restricted Units. The following numbers of units are restricted for each respective funding source. The initial rents for the Restricted Units shall be the following; provided, however, that upon the request of Owner, Owner and Agency may agree to a schedule for the Restricted Units that complies with the following affordability requirements as of the date when the Project is available for occupancy. In any event the rents for the Restricted Units may be adjusted not more often than annually. The rents shall include allowance for utilities and costs reasonably related to the rental of the Restrictive Units, as may be required in determining the rents for the applicable funding sources. Only Restrictive Units indicated under Agency Funding Source are assisted by Agency. Nevertheless, Owner shall assure the affordability of all of the following Restrictive Units at the named affordability levels. Additionally, higher rents may be charged for Restrictive Units subject to U.S. Department of Housing and Urban Development Housing Assistance Payment Vouchers, provided that the actual rents paid by the tenants do not exceed the affordability levels for the respective Restrictive Units. Restrictive Units with HOME as its funding source are fixed units if referenced by Apartment Number or equivalent; otherwise such units are "floating units" in which the number of units of an affordability level and bedroom type remains the same, but the actual designated unit may change from time to time. Notwithstanding any conflicting provision in the Funding Requirements, the Initial Rent per Unit per Month listed in this Regulatory Agreement shall be paramount and controlling.

Agency Funding Source:	Other Funding Source:	Affordability Level:	Number of Units:	Restricted Units:	Initial Rent per Unit per Month:
Housing Authority Successor Agency Funds (HASAF)	Low Income Housing Tax Credits (LIHTC)	Extremely Low Income 30% AMI	17	Studio	\$453
HASAF	LIHTC	Very Low Income 50% AMI	6	Studio	\$756
<b>Total Units</b>			<b>23</b>		

**4. MANAGEMENT AGREEMENT.** Owner agrees that at all times the Project shall be managed by a property manager (i) approved by Agency in its reasonable discretion and (ii) who has successfully managed at least five projects over forty units in size and subject to a recorded regulatory agreement for at least three years' prior to the application,

without any record of material violations of discrimination restrictions or other state or federal laws or regulations or local governmental requirements applicable to such projects (the "Manager"). Owner shall submit to Agency from time to time such information about the background, experience and financial condition of any existing or proposed Manager as Agency may reasonably require to determine whether such Manager meets the requirements for a Manager set forth herein. Agency reserves the right to conduct periodic reviews of the management practices and of the Manager to determine if the Project is being operated and managed in accordance with the requirements and standards of this Loan. Owner agrees to cooperate with Agency in such reviews.

If Agency determines in its reasonable judgment that the Project is not being operated and managed in accordance with one or more of the requirements or standards of the Funding Agreement, Agency may deliver notice to Owner requesting replacement of the Manager, which notice shall state clearly the reasons for such request. Owner agrees that, upon receipt of such notice, Owner shall within 60 days submit to Agency, a proposal to engage a new Manager meeting the requirements of this provision. Agency shall respond within 30 days to such proposal or such approval shall be deemed given. Upon receipt of such consent or deemed consent, Owner shall promptly terminate the existing Manager's engagement and engage the new Manager.

Owner shall not enter into any management agreement or arrangement with any party with respect to the management of the Project without Agency's prior written consent, such consent not to be unreasonably withheld or delayed. Owner shall not materially modify, amend or terminate any approved management agreement (other than as required to comply with the terms of the Funding Agreement and/or applicable law) without Agency's prior written consent, which consent will not be unreasonably withheld or delayed; provided, however, that such consent shall not be required to extend the term of an existing management agreement.

<b>Approved Management Company</b>
<b>Mercy Housing Management Group</b>

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

Provision	Term
<b>ANNUAL ADMINISTRATIVE FEE.</b> Borrower agrees to pay an annual administrative fee ("Fee") to Lender as compensation for monitoring compliance with regulatory restrictions and the administration of the Loan. Borrower shall pay annually a Fee equal to 12.5 basis points (0.125%) of the Loan Amount and One Hundred and No/100 Dollars (\$100.00) for each unit assisted by the Loan Program, not to exceed an annual amount of Fifteen Thousand Dollars and No Cents (\$15,000.00) per project. Fee payments shall commence on the Closing Date for the prorated semiannual period from the Closing Date to and including November 2020, and in equal semiannual installments in advance on each May 1 and November 1 of each year thereafter throughout the term of the Regulatory Agreement.	See Term in Section 9 of this Regulatory Agreement.

**6. REPRESENTATIONS.** Agency has provided Agency Funding to Owner to develop the Property, subject to the terms of the Funding Agreement. This Regulatory Agreement is a substantial part of the consideration to Agency for making Agency Funding. The funds used by Agency under the Funding Agreement are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. Therefore, Agency has made Agency Funding conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner represents that it 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.

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

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

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

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

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

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

f. Owner shall not cause and shall not permit discrimination based on race, color, national origin, religion, sexual orientation, gender, familial status, age or disability in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for him/her/itself, his/her/its heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.

g. Owner shall not evict, refuse to rent to, or otherwise treat someone differently because of that person's status as a victim of domestic violence, dating violence, sexual assault, or stalking, in compliance with the Violence Against Women Act. This protection is available regardless of sex, gender identity, or sexual orientation.

h. Owner shall ensure compliance with the obligations imposed by the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act) as amended by California Welfare and Institutions Code Section 17851, which restrict Agency funding of federal, state or local benefits to persons who are not citizens or qualified aliens as defined in such act.

i. Owner shall provide Agency with a detailed resident services plan including but not limited to the following information: (1) identification of all entities responsible for providing resident services to Project tenants and each entity's role in the provision of those services; (2) a description of the services to be provided; (3) a resident services budget; and (4) Prior to execution, Borrower must submit to Lender any agreement providing for the resident services by a third party which agreement is subject to Lender approval. The agreement must include a minimum of twenty (20) hours per week of on-site resident services, including an on-site service coordinator for six (6) hours, and the remaining fourteen (14) hours for educational, workforce development, enrichment, case management, and transportation assistance programs.

j. Owner shall not pass utility charges paid by Owner, including water, sewer, and garbage collection charges, through to residents as an add-on to their contracted rent subject to adjustments permitted by applicable utility allowances.

k. Owner shall not make payment of rental insurance premiums a condition of occupancy. If Owner require renters' insurance, the policy premium must be deducted from the tenant's rent. Owner shall not add the insurance premium to the tenant's rent in either the initial or subsequent years.

l. Owner shall make fifty percent (50%) of the residential units and all indoor common areas smoke free.

**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 this 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, Agency, 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 Owner, its successors and assigns and every successor in interest to all or any part of the Property.

**9. TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. Notwithstanding the term in the Funding Requirements, the term of this Regulatory Agreement shall be fifty-five (55) years from the date of the completion of the rehabilitation of the Property, as evidenced by a Certificate of Occupancy or building permit sign offs by the Building Department of the City of Sacramento.

**10. EXPIRATION OF AFFORDABILITY PERIOD.** Owner agrees the rent of "in-place" tenants at the conclusion of the Term will continue to be governed by the applicable affordability restrictions, so long as those tenants continue to live in the development.

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

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

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

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

**15. INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS.** Owner shall indemnify and hold Agency, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to

comply with the covenants, conditions and restrictions contained in this Regulatory Agreement or to comply with all other laws, rules, regulations and restrictions related to the use of Agency Funding. Without limitation, such indemnity shall include repayment to the appropriate parties of rents or sales proceeds in excess of amounts authorized to be charged and repayment to 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.

**16. CHANGES WITHOUT CONSENT OTHERS.** Only Agency and its successors and assigns, and Owner (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 Regulatory Agreement without the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property.

**17. DEFAULT.** Upon a breach of any of the provisions of this Regulatory Agreement by Owner, Agency may give written notice of such breach to Owner by registered or certified mail. If such violation is not corrected to the satisfaction of Agency within sixty (60) days after the date such notice is mailed or within such further time as Agency may determine in its sole and absolute discretion is necessary to correct the breach, and without further notice to Owner, Agency may declare a default under this Agreement, effective on the date of such declaration of default, and upon such default Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement; (b) apply to any court for specific performance of this Regulatory Agreement, (c) apply to any court for an injunction against any violation of this Agreement; (d) apply to any court for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, (e) apply to any court for money damages; or (f) apply to any court or other tribunal for such other relief as may be appropriate. The parties agree the injury to 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.

**18. REGULATORY AGREEMENT VIOLATIONS.** Owner shall pay the program compliance fees and expenses to Agency set forth in Compliance Violations and Actions (Exhibit 3 - Compliance Violations and Actions) in reimbursement of the amounts and time expended by Agency to insure Owner's compliance with State statutes and federal regulations and Owner's obligations under this Regulatory Agreement as a result of Owner not meeting its obligations and reporting requirements. No compliance fee will be assessed for one incident of each type of compliance violation per annual inspection provided the violation is corrected within the specified corrective time period. The second and subsequent violations will be assessed compliance fees as detailed in the Compliance Violations and Actions tables.

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

**20. CONTRADICTIONARY AGREEMENTS.** Owner warrants that it has not, and will not, execute any other agreement with provisions contradictory of or in opposition to, the provisions of this Regulatory Agreement, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict with this Regulatory Agreement.

**21. COMPLIANCE AMENDMENTS.** If revisions to the provisions of this Regulatory Agreement are necessitated to comply with the laws or regulations governing Agency Funding, Owner agrees to execute modifications to this Regulatory Agreement that are needed to comply with such laws or regulations.

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

judgment is less favorable than the best settlement offered in writing in a reasonable manner by the other party, in which case the prevailing party is the other party.

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

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

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

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

**25. NO WAIVER.** No waiver by 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.

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

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

**OWNER : MERCY HOUSING CALIFORNIA 90, L.P.,  
A CALIFORNIA LIMITED PARTNERSHIP**

**AGENCY: HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO, A PUBLIC BODY, CORPORATE AND  
POLITIC**

By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner

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

By: Mercy Housing Calwest  
a California nonprofit public benefit  
corporation,  
its sole member/manager

Approved as to form:

By: \_\_\_\_\_  
Stephan Daues, Vice President

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



## **EXHIBIT 1**

### **LEGAL DESCRIPTION**

**For APN/Parcel ID(s): 006-0102-016 and 006-0102-018**

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

#### **PARCEL ONE**

All that portion of Lots 7 and 8, in the Block Bounded by 9th and 10th, "K" and "L" Streets, of the City of Sacramento, according to the official Plat thereof, described as follows:

Beginning at a point marking the Northwest corner of said Lot 8; thence from said point of beginning South 71°11'56" East 80.37 feet to the Northeast corner of said Lot 8; thence South 71°11'56" East 5.00 feet; thence South 18°48'25" West 100.00 feet; thence North 71°11'56" West 5.00 feet to a point on the Easterly Line of said Lot 8; thence North 72°02'56" West 35.00 feet; thence South 18°48'25" West 60.00 feet to a point on the Southerly line of said Lot 8; thence North 71°12'09" West 45.47 feet to the Southwest corner of said Lot 8; thence Northeasterly along the Westerly line of said Lot 8 to the point of beginning.

#### **PARCEL TWO**

An easement for light, air and building separation and access for maintenance and repair over, across, and upon the following described portion of Lots 7 and 8 in the Block Bounded by 9th and 10th, "K" and "L" Streets of the City of Sacramento, according to the official plat thereof.

Beginning at a point on the South line of said Lot 8 located South 71°12'09" East 45.47 feet from the Southwest corner of said Lot 8; thence from said point of beginning North 18°48'25" East 60.00 feet; thence South 72°02'56" East 40.00 feet; thence North 18°48'25" East 100.00 feet to a point on the North line of said Lot 7 located South 71°11'56" East 85.37 feet from the Northwest corner of said Lot 8; thence along the North line of said Lot 7 South 71°11'56" East 5.00 feet; thence South 18°48'25" West 105.00 feet; thence North 72°02'56" West 40.00 feet; thence South 18°48'25" West 55.00 feet on the South line of said Lot 8; thence along said South line North 71°12'09" West 5.00 feet to the point of beginning.

APN: 006-0102-016-0000, 006-0102-018-0000

## **EXHIBIT 2**

### **FUNDING REQUIREMENTS**

#### **HOUSING AUTHORITY SUCCESSOR AGENCY FUNDS (TAX INCREMENT OR TI) FUNDING REQUIREMENTS RENTAL PROJECT**

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

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

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

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

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

2. **TERM.** These covenants shall burden and regulate the Restricted Unit for fifty-five (55) years.

3. **AFFORDABILITY REQUIREMENTS.**

a. Owner shall assure that the TI-Restricted Units shall be rented or sold at or below the following rates to households whose incomes are at or below the respective income limits for the rental rate:

1) Moderate-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty-five percent (35%) of one hundred and ten percent (110%) the Sacramento Metropolitan Statistical Area median income ("Median Income"), as determined annually by the federal Department of Housing and Urban Development, as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

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

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

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

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

**EXHIBIT 3**

**Compliance Violations and Actions**

**COMPLIANCE VIOLATIONS AND ACTIONS**  
**(All payments due and payable within 30-days of assessment)**

<b>Tenant Eligibility and Affordability Violations</b>		
<b>Compliance Violation</b>	<b>Fees and Actions*</b>	<b>Corrective Time Period</b>
Tenants over income at initial move-in	Initial \$500 per unit, again every 90 days until another income qualified tenant is housed. Correction: Evict tenant if tenant fraud. Otherwise, next available unit must be Affordable and rented to an Income-Qualified tenant.	90 days from discovery date to avoid additional \$500 charge every 90-days the problem is not corrected.
Incorrect eligibility documentation	Initial \$50 per file for incorrect calculations, verifications, or required documents. Additional \$50 per month if not corrected. Correction: Submit copies of corrections to compliance staff as applicable.	30 days from discovery date to submit copies of corrections to compliance staff to avoid additional \$50 per month if not corrected
Failure to complete annual recertifications	Initial \$250 for each incomplete file. Additional \$50 per month if not corrected. Correction: Submit copies of recertifications to compliance staff.	30 days from discovery date to submit corrections to avoid additional \$50 per month if not corrected.
Failure to maintain tenant eligibility records	Initial \$500 per unit, again every 90-days thereafter until new records in place. Additional \$100 per unit per month the project remains out of compliance. Correction: Immediately establish new files/records.	30 days from discovery date to submit copies of new records to avoid additional \$100 per unit per month the project remains out of compliance.
Incorrect Rents	Reimbursement to tenant of the entire amount overcharged. \$100 payment to Agency for each over-charged unit. Correction: Refund tenant with letter of correction.	30 days from discovery date to avoid additional \$100 per overcharged unit per month fee to Agency.
Failure to submit complete and accurate monthly Bond Report by due date	Initial \$100 per report. Additional \$100 per day until complete and accurate report submitted. Correction: Submit copies of corrections to compliance staff as applicable.	7 days from discovery date to submit complete and accurate report to avoid additional \$100 per day charge.
Failure to comply with approved Management Plan	Initial \$100 per report. Additional \$100 per day until complete and accurate report submitted. Correction: Submit copies of corrections to compliance staff as applicable.	30 days from discovery date to submit corrections to avoid additional \$100 per day charge.
Failure to submit complete and accurate quarterly Resident Services report by due date	Initial \$100 per report. Additional \$100 per day until complete and accurate report submitted. Correction: Submit copies of corrections to compliance staff as applicable.	7 days from discovery date to submit corrections to avoid additional \$100 per day charge.

Failure to provide a resident service required by Resident Services Plan	Initial \$250 per service. Additional \$100 per day until service is provided. Correction: Implement required service or new resident services plan submitted and approved; approved plan implemented.	7 days from discovery date to implement required service or provide new resident services plan to avoid additional \$100 per day charge; 30 days from discovery date to implement new plan to avoid additional \$100 per day charge.
Noncompliant lease	\$100 per noncompliant lease. Correction: Prepare and execute approved lease or addendum to address the deficiency.	30 days from discovery date to avoid additional \$100 per noncompliant lease per month charge to Agency.

Housing Quality Standards Violations		
Compliance Violation	Fees and Actions*	Corrective Time Period
Verifiable existence of Toxic Mold	\$200 per unit. Additional \$75 per day charge each time efforts fall outside of corrective timeframes. Correction: Prepare and submit action plan that addresses scope of work and timetable to complete. Relocate tenant if necessary. Obtain certified clearance that mold has been abated and unit is safe to occupy once again.	3-days from discovery date to submit action plan to address. 10-days to relocate tenant if necessary. 30-days to obtain certification that unit is mold free. \$75 per day additional charge each time efforts fall outside of these timeframes.
Broken pipes and plumbing facilities	\$200 per unit. Additional \$75 charge per day if not corrected. Correction: Repair/replace as necessary.	7-days from discovery date to avoid additional \$75 per day each day thereafter corrective action not taken.
Smoke detectors not working in the units	\$200 per unit with non-functional smoke detector. Additional \$75 charge per day if not corrected. Correction: Replace batteries or non-working unit within 24 hours.	Within 24 hours of discovery date to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Windows with large cracks or missing glass	\$200 per unit. Additional \$75 charge per day if not corrected. Correction: Repair/replace as necessary.	7-days from date of discovery to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Infestation of roaches or vermin	\$200 per infested unit. Additional \$75 charge per day if not corrected. Correction: Letter from pest control company verifying removal of pests with paid invoice to compliance staff.	7-days from date of discovery to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Non-working heating unit (Winter) or air conditioning unit (Summer)	\$500 per nonworking unit. Additional \$75 charge per day if not corrected. \$75 re-inspection fee if necessary to verify problem corrected. Correction: Repair/replace as necessary.	Within 24 hours of discovery date to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Excessive amount of urine/ feces	\$200 per unit. Additional \$75 charge per day if not corrected. Correction: Clean unit as necessary and address problem as the lease allows. Submit correction letter with documentation to compliance staff.	7-days from date of discovery to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Excessive amount of trash/garbage in the unit	\$75 per unit. Additional \$75 charge per day if not corrected. Correction: Clean unit and send letter of correction to compliance staff.	14-days from date of discovery to avoid an additional \$75 per day thereafter each day corrective action not taken.
Hazardous exterior	\$500 for hazardous conditions. Additional	7-days from date of discovery to avoid \$75 per

conditions	\$75 charge per day if not corrected. \$75 re-inspection fee. Correction: Clean and/or repair as necessary. Re-inspection to verify problem addressed.	day additional charge each day corrective action not taken.
Large holes walls/ceiling	\$100 per unit. Additional \$75 charge per day if not corrected. Correction: Submit correction letter with documentation to compliance staff.	30-days from date of discovery to avoid \$75 per day additional charge each day corrective action not taken.
Non-Operable Security Gate	\$500 per non-working gate. Additional \$75 charge per day if not corrected. \$75 re-inspection fee if necessary to verify problem corrected. Correction: Repair/replace as necessary.	7-days from date of discovery to avoid \$75 per day additional charge each day corrective action not taken.
No Security Cameras (if cameras required)	\$250 per discovery. Additional \$75 charge per day if not corrected. \$75 re-inspection charge to verify problem corrected. Correction: Replace cameras.	30-days from the date of discovery to avoid \$75 per day additional charge each day thereafter corrective action not taken.
Non-working Security Cameras	\$100 per camera per discovery. Additional \$75 charge per day if not corrected. \$75 re-inspection charge to verify problem corrected. Correction: Repair/replace as necessary.	7-days from date of discovery to avoid \$75 per day additional charge each day corrective action not taken.
Non-working or non-accessible amenities/services	\$100 per item per discovery. Additional \$75 charge per day if not corrected. \$75 re-inspection charge to verify problem corrected. Correction: Repair/replace as necessary.	7-days from date of discovery to avoid \$75 per day additional charge each day corrective action not taken.

\* No compliance fee will be assessed for one incident of each type of compliance violation per annual inspection provided the violation is corrected within the specified corrective time period. The second and subsequent violations will be assessed compliance fees as detailed in the Tenant Eligibility and Affordability Violations and Housing Quality Standards Violations tables.

**Exhibit 6: Notice of Affordability Restrictions**

**NO FEE DOCUMENT:**

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

When recorded, return to:  
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO  
801 12<sup>th</sup> Street – 4<sup>th</sup> Floor  
Sacramento, CA 95814  
Attention: Portfolio Management

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**NOTICE OF AFFORDABILITY  
RESTRICTIONS ON TRANSFER OF PROPERTY**  
[California Health & Safety Code Section 33334.3(f)]

*The following Notice of Affordability Restrictions ("Notice") has been prepared pursuant to Section 33334.3(f) of the California Health and Safety Code, which became effective January 1, 2008. This Notice shall be recorded concurrently with the Regulatory Agreement described below.*

1. The property ("Property") that is the subject of this Notice is located in the County of Sacramento, State of California, and is further described in the legal description, attached as **Exhibit 1: Legal Description**, and incorporated into this Notice by this reference.
2. The "Regulatory Agreement" is the agreement, containing conditions, covenants and restrictions running with the land and restricting the affordability of the restricted unit(s) on the Property as described in the following Section 3. The Regulatory Agreement is between the following parties and dated as of the following Effective Date.

Agency	Housing Authority of the City of Sacramento, a public body, corporate and politic
Owner	Mercy Housing California 90, L.P., a California limited partnership
Project Name	Capitol Park Hotel
Effective Date	[Effective Date]
Term	Fifty-five (55) years from the date of the completion of the rehabilitation of the Property, as evidenced by a Certificate of Occupancy or building permit sign offs by the Building Department of the City of Sacramento.

3. The address(es) of the Property subject to the Notice, including the unit number(s) if applicable, and the assessor's parcel number(s) ("APN") of such Property are set out in the following table. The affordability covenants applicable to each unit and the expiration date of each affordability covenant are stated in the table. Also, the respective unit is designated in the table as a unit to be sold or to be rented. The following affordability covenants are set forth in the Regulatory Agreement.

Property Address	APN	Number of Units	Unit Type	Affordability Level	Sale or Rental
1121 9th Street, Sacramento, CA	006-0102-016-0000, 006-0102-018-0000	17	Studio	Extremely Low Income 30% Area Median Income (AMI)	Rental
		6	Studio	Very Low Income 50% AMI	Rental
	Total Units	23			

4. Units listed for rental shall be rented at or below the following rates to households whose incomes are at or below the respective income limits for the rental rate:

a. Moderate-Income restricted units shall be rented for amounts that do not exceed payments of thirty percent (30%) of one hundred and ten percent (110%) the Median Income, as adjusted for family size appropriate to the size and number of bedrooms in the respective unit.

b. Low-Income restricted units shall be rented for amounts that do not exceed payments of thirty percent (30%) of sixty percent (60%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the unit.

c. Very Low-Income restricted units shall be rented for amounts that do not exceed payments of thirty percent (30%) of fifty percent (50%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective unit.

d. Extremely Low-Income restricted units shall be rented for amounts that do not exceed payments of thirty percent (30%) of thirty percent (30%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective unit.

5. This Notice is descriptive of the terms of the Regulatory Agreement and is not intended to, and does not, affect any rights or obligations of the parties under the Regulatory Agreement. For more detailed information regarding the implementation and interpretation of the described affordability covenants, refer to the Regulatory Agreement. This document shall not be used to interpret or modify the terms of the Regulatory Agreement or any other document affecting the Property.



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

**OWNER : MERCY HOUSING CALIFORNIA 90, L.P.,  
A CALIFORNIA LIMITED PARTNERSHIP**

**AGENCY: HOUSING AUTHORITY OF THE CITY OF  
SACRAMENTO, A PUBLIC BODY, CORPORATE AND  
POLITIC**

**By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner**

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

**By: Mercy Housing Calwest  
a California nonprofit public benefit  
corporation,  
its sole member/manager**

**Approved as to form:**

**By: \_\_\_\_\_  
Stephan Daues, Vice President**

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

Exhibit 7: Escrow Instructions

**JOINT ESCROW INSTRUCTIONS  
FOR AGENCY LOAN**

"Effective Date" [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.**

1. **GENERAL.** These Escrow Instructions, in addition to items listed below, include Article II Instructions, which is attached to and incorporated in these Escrow Instructions by this reference.

2. **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>	Fidelity National Title Company		
	<b>Address:</b>	1375 Exposition Blvd., Suite #240, Sacramento, CA 95815	
<b>"Escrow" with Title Company</b>	<b>Escrow Number:</b>	FSSE-0102000234 -SR	<b>Attention:</b> Mark Clayton
<b>"Agency"</b>	<p>Sacramento Housing and Redevelopment Agency, a joint powers authority (SHRA) for the following loans:</p> <p>\$3,200,000.00 HOME Investment Partnerships Program funds (HOME)</p> <p>\$1,700,000.00 Community Development Block Grant funds (CDBG)</p> <p>\$1,100,000.00 Housing Opportunities for Persons With AIDS funds (HOPWA)</p> <p>\$1,800,000.00 Housing Trust Funds (HTF)</p> <p>\$2,300,000.00 Mixed Income Housing Ordinance Funds (MIHF)</p> <p><b>\$10,100,000.00 Total SHRA Loan</b></p> <p>Housing Authority of the City of Sacramento, a public body, corporate and politic (HACS) for the following loan:</p> <p>\$3,200,000.00 Housing Authority Successor Agency funds (HASAF)</p> <p><b>\$3,200,000.00 Total HACS Loan<sup>1</sup></b></p> <p><b>\$13,300,000.00 Total SHRA and HACS Loans</b></p> <p><b>Legend:</b></p> <p><sup>1</sup>At Close of Escrow, the Borrower shall disburse \$1,500,000.00 from the HASAF Loan Amount through Escrow to HACS to repay the promissory note evidencing the Predevelopment and Permanent Loan on behalf of its affiliate, 1121 9<sup>th</sup> Street LLC, and satisfy all obligation under the Predevelopment and Permanent Loan Agreement and Predevelopment and Permanent Loan Agreement Note. Thereafter, HACS shall execute all documents HACS deems necessary to release 1121 9<sup>th</sup> Street LLC from the Predevelopment and Permanent Loan Documents.</p> <p><b>Address:</b> 801 12<sup>th</sup> Street, Sacramento, CA 95814</p> <p><b>Attention:</b> Anne Nicholls</p>		
<b>"Borrower"</b>	Mercy Housing California 90, L.P., A California limited partnership		
	<b>Address:</b>	2512 River Plaza Drive, Suite 200, Sacramento, CA 95833	
	<b>Attention:</b>	Rich Ciraulo	
<b>"Closing Date"</b>	November 23, 2020		

<b>"Property"</b>	<b>Address:</b>	1121 9th Street, Sacramento, CA 95814	<b>APN:</b>	006-0102-016-0000 and 006-0102-018-0000
<b>Description of the transaction</b>	\$13,300,000 acquisition, construction and permanent loans by SHRA and HACS to Borrower for the rehabilitation of the Property, commonly referred to as Capitol Park Hotel.			

<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>
	<ol style="list-style-type: none"> <li>1. Regulatory Agreement (HOME, CDBG and HOPWA)</li> <li>2. Regulatory Agreement (HTF and MIHF)</li> <li>3. Regulatory Agreement (HASAF)</li> <li>4. Deed of Trust (HOME)</li> <li>5. Deed of Trust (CDBG)</li> <li>6. Deed of Trust (HOPWA)</li> <li>7. Deed of Trust (HTF)</li> <li>8. Deed of Trust (MIHF)</li> <li>9. Deed of Trust (HASAF)</li> </ol>	Sacramento Housing and Redevelopment Agency 801 12th Street – 4 <sup>th</sup> Floor Sacramento, CA 95814 Attention: Anne Nicholls
<b>"Agency Items"</b>	<ol style="list-style-type: none"> <li>1. SHRA Loan Agreement for subject loan (HOME, CDBG, HOPWA, HTF and MIHF)</li> <li>2. HACS Loan Agreement for subject loan (HASAF)</li> <li>3. Promissory Note (HOME)</li> <li>4. Promissory Note (CDBG)</li> <li>5. Promissory Note (HOPWA)</li> <li>6. Promissory Note (HTF)</li> <li>7. Promissory Note (MIHF)</li> <li>8. Promissory Note (HASAF)</li> <li>9. Authorizing resolutions for all Borrower signatories</li> </ol>	
<b>"Borrower Items"</b>	<ol style="list-style-type: none"> <li>1. Loan proceeds in an amount not to exceed 90% of the \$10,100,000.00 SHRA Loan: \$9,090,000.00; and</li> <li>2. Loan proceeds in an amount not to exceed 90% of the \$3,200,000.00 HACS Loan: \$2,880,000.00.</li> </ol>	

<b>"Special Provisions":</b>	Title Policy shall, in addition to customary endorsements, bear the following endorsements: CLTA 101.2 Mechanic's Lien Endorsement Title Policy shall, in addition to customary endorsements, bear the following endorsements: <ul style="list-style-type: none"> <li>• ALTA 9.6 and 9.7 (or CLTA 100) Covenants, Conditions or Restrictions</li> </ul>
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<b>"Agency Title Policy" in the form of an ALTA Agency's</b>	<b>Documents:</b>	<b>Coverage amount:</b>
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<b>Policy insuring that the following are valid liens against the property:</b>	<ol style="list-style-type: none"> <li>1. Regulatory Agreement (HOME, CDBG and HOPWA)</li> <li>2. Regulatory Agreement (HTF and MIHF)</li> <li>3. Regulatory Agreement (HASAF)</li> <li>4. Deed of Trust (HOME)</li> <li>5. Deed of Trust (CDBG)</li> <li>6. Deed of Trust (HOPWA)</li> <li>7. Deed of Trust (HTF)</li> <li>8. Deed of Trust (MIHF)</li> <li>9. Deed of Trust (HASAF)</li> </ol>	In the amount of the SHRA and HACS loans secured (\$13,300,000.00)	
<b>The title policies shall be subject only to the following "Conditions of Title":</b>	Items of 1 through 9 and 14 through 17 of the Title Company's Preliminary Report for the Escrow	<b>Dated:</b>	July 23, 2020
		<b>Number:</b>	FSSE-0102000234-SR

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

**BORROWER: MERCY HOUSING CALIFORNIA 90,  
L.P., A CALIFORNIA LIMITED PARTNERSHIP**

By: 1121 9th Street LLC,  
a California limited liability company,  
its general partner

By: Mercy Housing Calwest  
a California nonprofit public benefit  
corporation, its sole member/manager

By: \_\_\_\_\_  
Stephan Daues, Vice President

**AGENCY: SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY, A JOINT POWERS  
AUTHORITY**

By: \_\_\_\_\_  
La Shelle Dozier, 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.

2.1. **CONDITIONS.** 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. **DEED OF TRUST FORM.** If no exhibit setting out the form of the Deed of Trust form is attached, the Title Company shall draw the Deed of Trust on the Title Company's Long Form Deed of Trust. Title Company shall assure that the Deed of Trust 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 Deed of Trust and incorporate it in the Deed of Trust 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 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 Agency's written notice to Borrower 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.

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

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### 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 the escrow instructions.

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

**TITLE COMPANY**  
**FIDELITY NATIONAL TITLE COMPANY**

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

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

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

Its authorized agent and signatory



## Exhibit 8: Funding Requirements

### **HOUSING AUTHORITY SUCCESSOR AGENCY FUNDS (HASAF) (TAX INCREMENT OR TI) FUNDING REQUIREMENTS RENTAL PROJECT**

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

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

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

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

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

2. **TERM.** These covenants shall burden and regulate the Restricted Unit for fifty-five (55) years.

#### **3. AFFORDABILITY REQUIREMENTS.**

a. Owner shall assure that the TI-Restricted Units shall be rented or sold at or below the following rates to households whose incomes are at or below the respective income limits for the rental rate:

1) Moderate-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty-five percent (35%) of one hundred and ten percent (110%) the Sacramento Metropolitan Statistical Area median income ("Median Income"), as determined annually by the federal Department of Housing and Urban Development, as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

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

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

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

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

## **RESOLUTION NO. SHRC-\_\_\_\_\_**

ADOPTED BY THE SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION UNDER THE AUTHORITY DELEGATED TO THE COMMISSION PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE, SECTION 33202 BY RESOLUTION NO. RA 81-083 ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ON OCTOBER 20, 1981, AND BY RESOLUTION NO. RA-83 ADOPTED BY THE REDEVELOPMENT AGENCY OF THE COUNTY OF SACRAMENTO ON OCTOBER 27, 1981, AND PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34292 BY RESOLUTION NO. HA 81-098 ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO ON OCTOBER 20, 1981, AND BY RESOLUTION NO. HA-1497 ADOPTED BY THE HOUSING AUTHORITY OF THE COUNTY OF SACRAMENTO ON OCTOBER 27, 1981.

ON DATE OF

November 4, 2020

**CAPITOL PARK HOTEL: APPROVAL OF \$10,100,000 LOAN AGREEMENT AND RELATED DOCUMENTS COMPRISED OF \$3,200,000 IN HOME INVESTMENT PARTNERSHIPS PROGRAM, \$1,700,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT, \$1,100,000 IN HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS, \$1,800,000 IN HOUSING TRUST FUNDS, AND \$2,300,000 IN MIXED INCOME HOUSING FUNDS; EXECUTION OF LOAN AGREEMENT AND RELATED DOCUMENTS WITH MERCY HOUSING CALIFORNIA, OR RELATED ENTITY; RELATED BUDGET AMENDMENT; AND ENVIRONMENTAL FINDINGS**

WHEREAS, Capitol Park Hotel was built in 1912 and was operating as a 180-unit single room occupancy (SRO) residential hotel and temporary shelter in downtown Sacramento at 1125 9th Street, corner of 9th and L Streets, (Property). The current owner of the Property is 1121 9th Street, LLC, a related entity to Mercy Housing California; and

WHEREAS, on February 5, 2020 and February 11, 2020, the Sacramento Housing and Redevelopment Commission (SHRC), Sacramento City Council (Council) and the Board of the Housing Authority of the City of Sacramento (Board) approved a \$7,600,000 loan comprised of \$1,700,000 in City Community Development Block Grant (CDBG) funds, \$1,100,000 in Housing Opportunities for Persons with AIDS (HOPWA) funds, \$800,000 in City Housing Trust Funds (HTF), \$2,300,000 in Mixed Income Housing Funds (MIHF) and \$1,700,000 Housing Authority Successor Agency funds to assist Mercy Housing California, or related entity (Developer) for the financing of the Capitol Park Hotel affordable, permanent supportive and workforce housing development located downtown at 1125 9th Street, including the tenant addresses of 1117, 1121, 1125, 1127, 1129 and 1131 9th Street (Project) (Council Resolution 2020-0049 and Board Resolution 2020-0003). The Project includes 65 units for extremely low income and 69 units for very low income households and meets the Housing Trust Fund funding restrictions to fund housing for very low income households whose members are in the labor force; and

**WHEREAS**, the Council also adopted a resolution approving the SRO Withdrawal, Conversion Certificate and Replacement Housing Plan for Capitol Park Hotel also on February 11, 2020 (Resolution 2020-0048); and

**WHEREAS**, also on February 11, 2020, the Board adopted a resolution authorizing the Executive Director, or designee, of the Housing Authority of the City of Sacramento (HACS) to enter into and execute a \$1,500,000 predevelopment loan agreement and related documents comprised of HASA funds with the Developer for the Project (Predevelopment Loan) (Resolution 2020-0003). The Developer and HACS would like to refinance and incorporate the \$1,500,000 predevelopment loan with the \$1,700,000 of previously approved HASA funds in the Loan Commitment for a total \$3,200,000 loan in HASA funds to the Developer, subject to Board approval in a separate resolution; and

**WHEREAS**, on August 3, 2020, the Developer submitted a funding application to Sacramento Housing and Redevelopment Agency (SHRA) requesting an additional \$4,200,000 loan to assist in funding the acquisition, construction and permanent financing of the Project. The need for additional assistance is due to increased scope of development to satisfy structural, electrical and State Historic Preservation Officer's requirements. SHRA's construction staff reviewed and approved the additional scope of development and construction budget. Subject to Council approval, the additional \$4,200,000 loan will be comprised of \$3,200,000 in City HOME Investment Partnerships Program (HOME) funds and \$1,000,000 in City Housing Trust Funds (HTF); and

**WHEREAS**, the Project is consistent with: a) the SHRA's previously approved Multifamily Lending and Mortgage Revenue Bond Policies (Council Resolution 2019-0452 and Board Resolution 2019-0022), Affordable Housing Priority 2(i), Conversion of Non-Residential to Residential Use for Permanent Supportive Housing and Homeless Housing, and Priority 2(iii), Workforce Housing; b) the 2013-2021 Housing Element, Goals H-1.1.1 Sustainable housing practices; H-1.2.9, in part, Workforce Housing, especially in and around downtown; H-1.3.2 Economic integration of multifamily affordable housing projects; H-2.2.4, in part, Pursue and maximize the use of all appropriate state, federal, local and private funding for the development of housing affordable for extremely low-, very low-, and low-income households, while maintaining economic competitiveness in the region; H-3.1.1 Promote extremely low income housing; H-3.2.8 Provide funding and other resources for permanent supportive housing; H-3.2.9 Prioritization of Special Needs Housing, such as chronically homeless individuals or families for

available local affordable housing financing as set forth in the City's Multifamily Lending and Mortgage Revenue Bond Policies. Projects that augment or safeguard the City's inventory of single room occupancy units will also have the same priority; and H-5.1 to 5.4, in part, Promote and create accessible residential development (Resolution No. 2013-415); and c) the Sacramento Promise Zone Plans and Goals, Sustainably Built Community sub-goal to increase housing types and transit growth to promote livability and connectivity within the Promise Zone (Resolution No. 2015-263); and

**WHEREAS**, in addition, the recommended actions for the development are located in a) the Downtown Housing Initiative and Initiation of the Downtown Specific Plan, to bring 10,000 places to live to Downtown Sacramento by 2025 (Resolution No. 2015-282); and b) the Opportunity Zone that provides a federal tax incentive for investors, who invest in real estate projects and operating businesses located in designated low-income communities through deferral and partial tax reductions of reinvested capital gains and forgiveness of tax on new capital gains (enacted into federal law through the Tax Cuts and Jobs Act of 2017); and

**WHEREAS**, the Capitol Park Hotel Project has been found to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Categorical Exemptions, Section 15332, In-Fill Development Projects; and

**WHEREAS**, an Environmental Assessment was prepared for this project pursuant to the National Environmental Policy Act, and it was found that with mitigation measures incorporated, the project will not result in a significant impact on the quality of the human environment.

**BE IT RESOLVED BY THE SACRAMENTO HOUSING AND REDEVELOPMENT COMMISSION:**

Section 1. All evidence presented having been duly considered, the findings, including environmental findings regarding this action, as stated above, are found to be true and accurate and are hereby approved adopted.

Section 2. SHRA is authorized to amend the budget and allocate an additional loan amount up to \$4,200,000 comprised of \$3,200,000 in HOME funds and \$1,000,000 in HTF funds for the Project to the Developer.

Section 3. The \$10,100,000 Acquisition, Construction and Permanent Loan Agreement and related documents, attached as Exhibit A, for financing of the Project with the following amounts and funding programs (Loan Documents) are approved, and the Executive Director, or designee, is authorized to enter into, execute and transmit the Loan Documents to the Developer,

**Capitol Park Hotel: Approval Of \$10,100,000 Loan Agreement And Related Documents**

**4**

and enter into and execute other documents, as approved to form by its Office of the General Counsel, and perform other actions SHRA deems necessary to fulfill the intent and to ensure proper repayment of the listed funding programs, including without limitation, subordination, loan restructuring, and extensions, consistent with its adopted policy and with this resolution:

- a. \$3,200,000 in HOME Investment Partnerships Program funds;
- b. \$1,700,000 in Community Development Block Grant funds;
- c. \$1,100,000 in Housing Opportunities for Persons with AIDS funds;
- d. \$1,800,000 in Housing Trust Funds; and
- e. \$2,300,000 in Mixed Income Housing Funds.

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**CHAIR**

**ATTEST:**

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**CLERK**

This Report Will be  
Delivered at a Later  
Date