

TO: Honorable Mayor and City Council Members  
Attention: Laura C. Kuhn, City Manager

FROM: Cynthia W. Johnston, Housing and Redevelopment Director

**SUBJECT: RESOLUTIONS OF THE CITY OF VACAVILLE (CITY) TERMINATING THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND VACAVILLE COMMUNITY HOUSING FOR 267 BENNETT HILL COURT (APN 129-271-180) AND APPROVING THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT BETWEEN THE CITY AND VACAVILLE SOCIAL SERVICES CORPORATION (VSSC) FOR THE SALE OF 267 BENNETT HILL COURT (APN 129-271-180) TO VSSC FOR THE RELOCATION AND EXPANSION OF OPPORTUNITY HOUSE**

**DISCUSSION:**

This past summer, Vacaville Community Housing and Vacaville Social Services Corporation (VSSC) approached the Vacaville Redevelopment Agency, requesting that VSSC take on a larger role (owner, developer and operator) related to relocating/expanding the Opportunity House and that VCH no longer be the developer and owner of the facility. In order to do so, the Amended and Restated Disposition and Development Agreement between the Agency and VCH needed to be terminated and a new Disposition and Development Agreement (DDA) between the Agency and VSSC be executed. Before this could occur, the State Supreme Court issued a stay that prohibited the Agency from modifying or entering into any new agreements, which remained in effect until January 31, 2012.

On January 10, 2012, the City Council approved a \$300,000 loan (non General Fund or redevelopment sources) to VSSC so the non-profit could continue on the expansion/renovation of Opportunity House (a 48-bed homeless program facility). The short-term loan was necessary, as a cash flow difficulty had arisen because the Redevelopment Agency could not take action to sell the property to VSSC. A new DDA would have permitted VSSC to secure funding by using the property as collateral to complete the larger facility.

As of February 1, the Redevelopment Agency was dissolved and its affordable housing assets, other than unencumbered housing fund balances, have been turned over to the City to continue performing affordable housing activities. For this reason, VCH and VSSC's requests are now being considered by the City Council. A summary of the City and VSSC Disposition, Development and Loan Agreement (DDLA) Business Points are as follows:

- VSSC to purchase the property for not less than fair market value (estimated to be \$1,260,000) with a City 55-year, deferred loan at 0% interest, to be forgiven after 55 years.
- VSSC to execute an Affordability Agreement restricting "rents" for program residents.
- Community Facilities District Payment to be paid using former redevelopment agency funds equal to the amount owed throughout the Affordability Agreement term, estimated to be \$706.23 per bed per year (funding to the General Fund to pay for Police and Fire services to the properties and would not be able to be passed to the program residents through rent increases; historically this has funded the Crime Free Housing Program liaisons).

- The scope of development remains the same as previously proposed: VSSC to demolish an existing building and rehabilitate an existing building to an approximately 9,609 square foot facility including 48 beds, laundry room, dining area, kitchen, fenced children's play area, related parking, landscaping and other improvements.
- VSSC to secure all construction financing through VSSC cash-on-hand, cash donation from VCH, a Community Fundraising Campaign, donated materials, and volunteer labor.
- VSSC to complete construction within twelve months.

A draft of the DDLA and ancillary documents are enclosed (Attachment A) and are being finalized. Staff is recommending that the City Council authorize the City Manager, or her designee, to execute, implement, and make minor modifications to all documents necessary to complete the approved actions. In order for the City to enter into the DDLA and sell the property for these purposes, the following findings/determinations have been made:

- In order to dispose of property through this process, Government Code Section 37350 provides that "A city may . . . dispose of (real property) for the common benefit." In this case, the following factors allow the Council to make this "common benefit" finding. First, the property is being sold at a reasonable price (i.e. fair market value). Second, the property is being conveyed to VSSC subject to use restrictions (i.e. affordability restrictions) to increase the availability of affordable housing within the community.
- In accordance with Government Code Section 65402(a) and Resolution 1991-H-7, the City Council, as the Planning Agency for the City, must determine that the Opportunity House project conforms to and is consistent with the General Plan Land Use Element, which designates the site for Residential High Density land use, and the General Plan Housing Element, which provides for a homeless shelter on the site.
- The project has been determined to meet the exceptions regarding prevailing wages in Labor Code Section 1720(c)(4) and Labor Code Section 1720(c)(6)(E).
- Development of the project is Categorical Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Section 15332 (Class 32, In-fill Development Projects-Existing Facilities) of the Act.

At its meeting held on June 22, 2011 the Housing & Redevelopment Commission unanimously recommended that the City Council approve termination of the agreement with VCH and approve the DDLA between the City and VSSC.

#### **FISCAL IMPACT:**

**No General Fund Impact.** Redevelopment (pre-February 2012) and Successor Housing Agency (post February 2012) moneys have funded staff and legal counsel time; as well as other project costs. These costs have been included in both the enforceable and recognized obligations payment schedules (the EOPS and ROPS).

#### **RECOMMENDATION:**

By simple motion, to adopt the subject resolutions.

Attachment A: Draft Disposition, Development and Loan Agreement

**RESOLUTION NO. 2012-**

**RESOLUTION OF THE CITY OF VACAVILLE TERMINATING THE AMENDED AND  
RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND  
VACAVILLE COMMUNITY HOUSING FOR 267 BENNETT HILL COURT (APN 129-271-180)**

**WHEREAS**, the Vacaville Redevelopment Agency (Agency) entered into a Disposition and Development Agreement (DDA) in February 2007, an Amended and Restated DDA (ARDDA) in January 2009, and a First Amendment to the ARDDA in June 2010, collectively referred to as the ARDDA with Vacaville Community Housing (VCH); and

**WHEREAS**, the purpose of these agreements was to sell 267 Bennett Hill Court (APN 0129-271-180) for fair market value to Vacaville Community Housing for the purpose of development of a new affordable housing facility for homeless individuals and families to replace the facility currently located at 712 Catherine Street in Vacaville and provide an acquisition loan in the amount of \$1,260,000 within the city limits of Vacaville; and

**WHEREAS**, the California State Legislature enacted Assembly Billx1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, per Section 34176(a) of California Redevelopment Law, on January 10, 2012 the City of Vacaville elected to retain the housing assets and functions previously performed by the former redevelopment agency in accordance with Section 34176 of the Redevelopment Law; and

**WHEREAS**, both VCH and the City have mutually determined that the project will benefit from the termination of the ARDDA.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Vacaville does hereby approve the termination of the agreements collectively referred to as the ARDDA, and authorizes the City Manager, or her designee, to execute, implement and make minor modifications to all documents necessary to complete the approved actions.

**I HEREBY CERTIFY** that the foregoing resolution was introduced and passed at a noticed meeting of the City Council of the City of Vacaville held on the 13th day of March 2012, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

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Michelle A. Thornbrugh, City Clerk

## **RESOLUTION NO. 2012-**

### **RESOLUTION OF THE CITY OF VACAVILLE APPROVING THE DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT BETWEEN THE CITY OF VACAVILLE AND VACAVILLE SOCIAL SERVICES CORPORATION (VSSC) FOR THE SALE OF 267 BENNETT HILL COURT (APN 129-271-180) TO VSSC FOR THE RELOCATION AND EXPANSION OF OPPORTUNITY HOUSE**

**WHEREAS**, the City of Vacaville ("City") owns the parcel in Vacaville, California, APN 0129-271-180 on Bennett Hill Court, and the City acquired the property to remove blight and for the future development of land uses compatible with adjoining residential land uses; and

**WHEREAS**, the purpose of the transfer of the City property to Vacaville Social Services Corporation ("VSSC") is for the development of a new affordable housing facility for homeless individuals and families to replace the facility currently located at 712 Catherine Street in Vacaville; and

**WHEREAS**, in accordance with Government Code Section 37350, the proposed transfer of property is for the "common benefit" because it is transferred at a reasonable price (i.e. fair market value) and is subject to affordability restrictions, which will increase the availability of affordable housing for homeless individuals and families within the City; and

**WHEREAS**, the California State Legislature enacted Assembly Billx1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, per Section 34176(a) of California Redevelopment Law, on January 10, 2012 the City of Vacaville elected to retain the housing assets and functions previously performed by the former redevelopment agency in accordance with Section 34176 of the Redevelopment Law; and

**WHEREAS**, the City and VSSC will transfer the property according to the terms of a Disposition, Development and Loan Agreement and the price per square foot is not less than fair market value as determined by an independent appraiser; and

**WHEREAS**, pursuant to Section 15332 (Class 32, In-fill Development Projects-Existing Facilities) of the California Environmental Quality Act (CEQA), this project is Categorically Exempt from the requirements of CEQA; and

**WHEREAS**, the City Council, as the Planning Agency for the City of Vacaville, determines that the homeless facility project conforms to and is consistent with the General Plan Land Use Element, which designates the site for Residential High Density land use, and the General Plan Housing Element, which provides for a homeless shelter on the site.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Vacaville does hereby approve the Disposition, Development and Loan Agreement between the City of Vacaville and Vacaville Social Services Corporation (VSSC) for the acquisition of 267 Bennett Hill Court (APN 129-271-180) by VSSC for the relocation and expansion of Opportunity House and authorizes the City Manager, or her designee, to execute, implement and make minor modifications to all documents necessary to complete the approved actions.

**I HEREBY CERTIFY** that the foregoing resolution was introduced and passed at a noticed meeting of the City Council of the City of Vacaville held on the 13th day of March 2012, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

---

Michelle A. Thornbrugh, City Clerk

DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT

BETWEEN

THE CITY OF VACAVILLE

AND

VACAVILLE SOCIAL SERVICES CORPORATION

(Bennett Hill Court)

Dated as of March \_\_, 2012

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DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT  
(Bennett Hill Court)

This Disposition, Development, and Loan Agreement (the "Agreement") is entered into as of February \_\_, 2012 (the "Effective Date"), by and between the City of Vacaville, a municipal corporation (the "City"), and Vacaville Social Services Corporation, a California nonprofit public benefit corporation (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City is the owner of the Property. The City and the Developer desire for the Developer to develop the Improvements on the Property. To effectuate this purpose, the City will convey the Property to the Developer, subject to the terms and conditions of this Agreement. Prior to the Effective Date, the Developer and the City entered into the Right of Entry Agreement to permit the Developer to commence demolition, and site work, necessary for the development of the Improvements.

C. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement and that this Agreement is in the best interests, and will materially contribute to the improvement of the City by improving the supply of affordable housing, including housing for homeless and formerly homeless individuals and families, and related social services, to homeless and formerly homeless individuals and families.

D. Pursuant to CEQA, the City (in its capacity as "lead agency") has determined that the transactions contemplated by this Agreement (including the development of the Improvements), qualify as a "Class 32" categorical exemption as set forth in Section 15332 of the CEQA Guidelines.

THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.  
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Agreement" means this Disposition, Development, and Loan Agreement, including the attached Exhibits and all subsequent operating memoranda and amendments to this Agreement.

(b) "Applicable Land Use Approvals" means the City and other governmental permits and approvals necessary for the rehabilitation and operation of the Development, including overall design and architectural review, but excluding a building permit.

(c) "Certificate of Completion" means the certificate to be issued by the City upon the completion of construction of the Improvements as more particularly set forth in Section 4.15.

(d) "CFD" means the Community Facilities District No. 12 (Police and Fire Services) previously established by the City.

(e) "CFD Payment" means the payment in the amount not to exceed One Million Eight Hundred Sixty-Four Thousand Four Hundred Forty-Five Dollars (\$1,864,445) to be made by the City on behalf of the Developer as more particularly set forth below.

(f) "City" means the City of Vacaville, California.

(g) "City Council" means the City Council of the City of Vacaville.

(h) "City Deed of Trust" means the deed of trust that will encumber the Developer's fee interest in the Property to secure repayment of the City Note, substantially in the form attached hereto as Exhibit F.

(i) "City Documents" means, collectively, this Agreement, the City Note, the City Deed of Trust, the City Financing Statement, the City Regulatory Agreement and all other documents required to be executed by the Developer in connection with the transaction contemplated by this Agreement.

(j) "City Event of Default" has the meaning set forth in Section 8.3

(k) "City Financing Statement" means the UCC-1 Financing Statement to be provided by the City and executed by the Developer and the City, granting the City a security interest in the personal property associated with the Improvements.

(l) "City Grant Deed" means the grant deed by which the City shall convey the Property to the Developer substantially in the form of Exhibit C.

(m) "City Loan" means the loan in the amount of the Purchase Price plus any amounts provided by the City to the Developer pursuant to the terms set forth in Article 5 of this Agreement.

(n) "City Note" means the promissory note that will evidence the Developer's obligation to repay the City Loan substantially in the form attached hereto as Exhibit E.

(o) "City Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants, in a form prepared by the City, to be executed by the Parties, and recorded against the Property, at the Closing.

(p) "Closing" means the date mutually acceptable to the Parties within thirty (30) days following the date on which all conditions precedent to conveyance set forth herein have been satisfied, but in no event later than the date set forth in the Schedule of Performance (provided that the Developer has satisfied the conditions precedent to conveyance set forth herein), or such other date that the Parties agree upon in writing.

(q) "Construction Plans" means all construction documentation upon which the Developer, and the Developer's general contractor and subcontractors, shall rely on for constructing and/or rehabilitating each and every part of the Improvements identified in the scope of work specifications (which include building construction, drainage, sidewalk/patio, landscaping, parking, and common areas) and shall include, but not necessarily be limited to, scope of work specifications, working drawings for drainage, sidewalk/patio work, landscaping plans, common areas, and parking lot final elevations (also known as "working drawings") and a time schedule for construction.

(r) "Control" shall mean direct or indirect management or control of: (i) the managing member or members in the case of a limited liability company; (ii) the managing general partner or general partners in the case of a partnership; and (iii) (a) a majority of the directors in the case of a corporation, as determined by the City.

(s) "Developer" means Vacaville Social Services Corporation, a California nonprofit public benefit corporation.

(t) "Developer Event of Default" has the meaning set forth in Section 8.4.

(u) "Development" means the Property and the Improvements.

(v) "Escrow" means the escrow established with the Title Company for the purpose of conveying the Property from the City to the Developer.

(w) "Financing Plan" means the Developer's plan for financing the acquisition of the Property and the development of the Improvements, approved by the City pursuant to Section 2.5.

(x) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local government authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute,

regulation or ordinance presently in effect that may be promulgated in the future, as such as statutes, regulations and ordinances may be amended from time to time.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in office or residential activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health & Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

(y) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Development or any portion thereof.

(z) "Improvements" means: (i) the approximately six thousand five hundred eighty (6,580) square foot building to be rehabilitated on the Property to provide approximately forty-eight (48) units of affordable housing for homeless, and formerly homeless, individuals and families, (ii) office and related space for social services to be provided to the residents of the Property, and (iii) related parking and other improvements, all as more particularly set forth in the Scope of Development attached as Exhibit H.

(aa) "Memorandum of DDLA" means the memorandum of Disposition, Development, and Loan Agreement to be recorded against the Property at the Closing. The form of the Memorandum of DDLA is attached hereto as Exhibit G.

(bb) "Operating Agreement" means the lease agreement, or such other use and operating agreement between the Developer and the Operator and/or the operation of the Development, if any.

(cc) "Operator" means a reputable social services provider, or property management company retained by the Developer to operate the Development, as reasonably acceptable to the City in accordance with this Agreement.

(dd) "Parties" means the City and the Developer.

(ee) "Project Area" means Vacaville Community Redevelopment Project Area, as more particularly described in the Redevelopment Plan.

(ff) "Property" means the real property to be redeveloped by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(gg) "Redevelopment Plan" means the Redevelopment Plan for the Vacaville Redevelopment Project Area, adopted by the City Ordinance No. 1164 on March 23, 1982, as amended from time to time.

(hh) "Right of Entry Agreement" means that certain Right of Entry Agreement dated as of September 6, 2011, by and between the Developer and the City.

(ii) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve disposition of the Property to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit F.

(jj) "Security Financing Interest" has the meaning set forth in Section 10.1.

(kk) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until the fifty-fifth (55<sup>th</sup>) anniversary of the date of issuance of the Certificate of Completion for the Development, or, upon reconveyance of the City Note, whichever occurs earlier.

(ll) "Title Company" means Old Republic Title Company located at 785 Alamo Drive, Suite 180, Vacaville, California, unless modified by the Parties.

(mm) "Title Report" means the preliminary title report for the Property dated December 24, 2008, prepared by Placer Title Company

(nn) "Transfer" has the meaning set forth in Section 7.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated in the Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Financing Plan
Exhibit C:	Form of City Grant Deed
Exhibit D:	Form of City Note
Exhibit E:	Form of City Deed of Trust
Exhibit F:	Schedule of Performance
Exhibit G:	Form of Memorandum of DDLA
Exhibit H:	Scope of Development

## ARTICLE 2. PREDISPOSITION REQUIREMENTS

Section 2.1 Conditions Precedent to Conveyance of Property. The requirements set forth in this Article are conditions precedent to the City's obligations to convey the Property to the Developer. The City's obligation to convey the Property to the Developer shall be subject to the satisfaction of all such conditions precedent prior to the date or dates set forth in the Schedule

of Performance, unless otherwise waived by the City. The conditions set forth in this Article 2 are solely for the benefit of the City and may only be waived by the City pursuant to Section 11.18. Nothing in this Agreement, or in the Right of Entry Agreement, shall be deemed to obligated the City to waive any of the conditions set forth herein, or otherwise convey the Property to the Developer unless and until all conditions precedent to such conveyance have been satisfied.

Section 2.2 Application for Applicable Land Use Approvals. No later than the date set forth in the Schedule of Performance, the Developer shall apply to the City and any other relevant government agency for the Applicable Land Use Approvals for the Improvements. All applications shall conform with the description of the Improvements set forth in this Agreement, unless a variation has been previously approved by the City in writing. The application shall include a site plan, architectural elevations, and such other information as the City or relevant government agency may require. This condition precedent to the Closing shall be deemed satisfied only upon the Developer's delivery of documentation reasonably acceptable to the City, that all Applicable Land Use Approvals have been obtained and the City's approval of such documentation. As of the Effective Date, the condition precedent set forth in this section has been satisfied.

Section 2.3 Construction Plans. The Developer shall submit its Construction Plans in sufficient time to allow adequate City review of the Construction Plans, possible resubmission of the Construction Plans and final City approval of the Constructions Plans by the Closing.

The City shall approve or disapprove the Construction Plans in writing within fifteen (15) days following the City's receipt of the complete Construction Plans, which approval shall not be unreasonably denied. If the Construction Plans are disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have thirty (30) days following the receipt of such notice to submit revised Construction Plans. The provisions of this Section relating to time periods for approval, disapproval, and resubmission of new Construction Plans shall continue to apply until the final Construction Plans have been approved by the City; provided, however, that if City's reasonable approval of the final Construction Plans has not been obtained by the date set forth in the Schedule of Performance the City may terminate this Agreement pursuant to Article 8.

The Developer acknowledges that approval of the final Construction Plans by the City does not constitute approval by the City as required for issuance of a building permit. The Developer further acknowledges that the City's right to review and approve the proposed construction plans are in addition to, and shall not be limited by, the City's obligation to review the Developer's proposed construction plans for consistency with applicable building code requirements. The Developer further acknowledges that the City is under no obligation to approve such proposed construction plans and shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's reasonably requested changes or modifications to the proposed construction plans (even in the event that such requested changes or modifications exceed the minimum thresholds set forth in the applicable building code and have not been required by the City's building department). As of the Effective Date the condition precedent set forth in this section has been satisfied.

Section 2.4 Financing Plan. Prior to the Effective Date the City approved the Financing Plan, attached hereto as Exhibit B, and this condition is deemed satisfied. Prior to the issuance of the Certificate of Completion for the Improvements as set forth in Section 4.16, any material change, modification, revision or alteration of the approved Financing Plan must first be submitted to and approved by the City for conformity to the provisions of this Agreement. If not so approved, the approved Financing Plan shall continue to control. The City acknowledges that the Developer intends to raise sufficient funds and capital needed to complete the Improvements through community donations of materials, funds, and labor. Upon the request of the City, the Developer shall provide to the City (i) quarterly written progress reports, and (ii) annual written reports advising the City on progress made in raising funds and capital for the construction of the Improvements.

Section 2.5 Building Permit. No later than the date set forth in the Schedule of Performance, the Developer shall apply for a building permit allowing for the construction of the Improvements called for in the Construction Plans. After submitting an application for a building permit, the Developer shall diligently pursue and obtain a building permit for the Improvements, and no later than the date set forth in the Schedule of Performance, the Developer shall deliver evidence to the City that the Developer is entitled to issuance of a building permit for the Improvements upon payment of applicable permit fees. Only upon delivery to the City of such evidence in a form reasonably satisfactory to the City shall the predisposition condition of this Section 2.5 be deemed met. If such evidence is not delivered by the date set forth in the Schedule of Performance, this Agreement may be terminated pursuant to Article 8. The City shall render all reasonable assistance (at no additional cost or expense to the City) to the Developer to obtain the building permit.

The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit allocation and approval process.

Section 2.6 Operating Agreement. As of the Effective Date, the Parties agree and acknowledge that the Developer intends to manage and operate the day to day operation of the Development and that as of the Effective Date the Developer has submitted to the City for approval the written guidelines or procedures for operation of the Development (the "Operating Agreement"). To the extent the Developer desires to retain a third party operator, the Developer shall submit to the City for approval any necessary revisions to the Operating Agreement. The City shall approve or disapprove any proposed revisions to the Operating Agreement in writing within fifteen (15) calendar days following the City's receipt of the proposed changes to the Operating Agreement, which approval shall not be unreasonably denied. If the proposed changes to the Operating Agreement are disapproved by the City, the City shall deliver a written notice to the Developer setting forth, in reasonable detail, the reasons for such disapproval. The Developer shall have fifteen (15) calendar days following the receipt of such notice to submit revised Operating Agreement. The provisions of this Section relating to time periods for approval, disapproval, and resubmission of revisions to the Operating Agreement shall continue to apply until the Operating Agreement has been approved by the City. City approval of the Operating Agreement is a condition precedent to City executing the City Grant Deed conveying the Property to the Developer. As of the Effective Date, the condition precedent set forth in this section has been satisfied.

Section 2.7 Financing. Prior to, or simultaneously with, the execution of the City Grant Deed by the City, to the extent applicable, the Developer shall submit to the City evidence reasonably satisfactory to the City that: (i) the Developer has obtained, or has commitments for, no less than forty percent (40%) of the funds described in the approved Financing Plan as the sources of funds to pay the costs of constructing the Improvements; and (ii) that the Developer has obtained construction financing for the Improvements pursuant to executed loan documents between the Developer and a construction lender (such lender and such documents to be reasonably approved by the City), and that any conditions to the release or expenditure of such funds have been met or will be met at the Closing, and such funds will be available at the Closing for commencing construction of the Improvements.

Section 2.8 Construction Contract. No later than the date set forth in the Schedule of Performance, the Developer shall submit to the City for its limited approval the proposed construction contract(s) for the portion of the Improvements to be performed by contractors retained by the Developer (collectively, the "Construction Contracts"). The City's review and approval shall be limited exclusively to a determination whether (a) the guaranteed maximum construction cost set forth in the construction contract is consistent with the approved Financing Plan; (b) the construction contract is with a contractor approved by the City; (c) the construction contract contains provisions consistent with Article 4 of this Agreement; and (d) the construction contract requires a retention of ten percent (10%) of costs until completion of the Improvements (except for specified trades previously approved by the City in writing). The City's approval of the Construction Contracts shall in no way be deemed to constitute approval of or concurrence with any other term or condition of such documents, including, but not limited to, the means, methods, or techniques utilized in connection with the construction of the Improvements.

Upon receipt by the City of the proposed Construction Contracts, the City shall promptly review same and approve such documents within five (5) days if such documents satisfy the limited criteria set forth above. If the Construction Contracts are not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised Construction Contracts for City approval, which approval shall be granted or denied in five (5) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the five (5) day period(s) set forth above shall be deemed approval by the City. Construction Contracts executed by the Developer for the Improvements shall be in a form approved or deemed approved by the City.

Section 2.9 Insurance. The Developer shall furnish to the City evidence of the insurance coverage meeting the requirements of Section 6.9 below, no later than the date set forth in the Schedule of Performance.

### ARTICLE 3. CONVEYANCE OF THE PROPERTY

Section 3.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, the City shall sell the Property to the Developer, and the Developer shall purchase the Property from the City. The Property shall be conveyed by the City Grant Deed, a form of which is

attached as Exhibit D. Upon the recordation of the City Grant Deed the Right of Entry Agreement shall terminate.

Section 3.2 Purchase Price. The Developer shall pay the City the amount of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000) for the Property (the "Purchase Price"). The Purchase Price shall be deemed paid upon the Developer's execution of the City Note and recordation of the City Deed of Trust. As more particularly set forth in the City Note, payment of the City Loan shall be deferred for the entire Term provided that the Developer operates, or causes the operation of, the Development in accordance with Article 6, and the City Regulatory Agreement. Notwithstanding the foregoing the Parties agree and acknowledge that either prior to, or after, the Closing the City shall cause the completion of an appraisal (the "Appraisal") of the Property by a licensed appraiser reasonably acceptable to the Parties, to determine the fair market value of the Property (the "Fair Market Value"). Among other matters that shall be utilized to determine the Fair Market Value shall be the value of the Property with its current zoning plus the value of the any improvements on the Property that Developer will be able to salvage for its construction, less any demolition costs previously incurred by, or on behalf of, the Developer pursuant to the Right of Entry Agreement. Following the completion of such Appraisal the Parties shall take the following actions: (i) the Developer shall execute a new promissory note in the amount of the Fair Market Value as set forth in the Appraisal, and (ii) the City shall mark the existing promissory note in the amount of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000) as "cancelled", and return such promissory note to the Developer. Thereafter, all references to the "Promissory Note" or the "City Note" in this Agreement or any other City Document shall be deemed to be a reference to the promissory note in the amount of the Fair Market Value. The Parties further agree and acknowledge that the Fair Market Value may be greater than, or less than, One Million Two Hundred Sixty Thousand Dollars (\$1,260,000), and in either event shall constitute the Purchase Price for the Property.

Section 3.3 Opening Escrow. To accomplish the conveyance of the Property, the Parties shall establish an escrow with the Escrow Holder and shall execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement.

Section 3.4 Closing Date. The Closing shall occur no later than the date set forth in the Schedule of Performance, and only in the event that all conditions precedent to conveyance set forth in Article 2 have been satisfied or waived by the City. In addition to the conditions precedent to execution of the City Grant Deed as set forth in Article 2 (including but not limited to the closing of the financing set forth in the approved Financing Plan), the following conditions shall be satisfied prior to or concurrently with, and as conditions of, execution of the City Grant Deed:

(a) The Developer shall provide the City with a certified copy of a corporate authorizing resolution, approving this Agreement and the City Grant Deed and the conditions and covenants set forth in this Agreement and the City Grant Deed.

(b) The Developer shall have executed and delivered to the City the City Grant Deed, the Memorandum of DDLA, the City Note, the City Deed of Trust, the City Financing Statement, the City Regulatory Agreement, and any other documents and instruments required to be executed and delivered, all in a form and substance satisfactory to the City.

(c) The City Grant Deed, the City Deed of Trust, the City Regulatory Agreement, and the Memorandum of DDLA shall have been recorded against the Property as liens subject only to the exceptions authorized by the City.

(d) A title insurer reasonably acceptable to the City is unconditionally and irrevocably committed to issuing a 2006 ALTA Lender's Policy of insurance insuring the lien priority of the City Deed of Trust in the amount of the Purchase Price, plus any other amounts advanced by the City under this Agreement, subject only to such liens (if any) approved by the City in the Financing Plan as prior to the lien of the City Deed of Trust and such exceptions and exclusions as may be reasonably acceptable to the City and containing such endorsements as the City may reasonably require.

(e) The Developer shall have provided the City evidence that the Developer is entitled to the issuance of a building permit for construction of the Development as set forth in Section 2.5.

(f) There shall exist no condition, event or act which would constitute a breach or default under this Agreement.

(g) All representations and warranties of the Developer contained in any part of this Agreement shall be true and correct.

Section 3.5 Condition of Title. Prior to the Closing, the City shall (at the City's sole cost) cause the relocation of all the existing tenants of the Property in accordance with all applicable laws. Upon the Closing, the Developer shall have insurable fee interest to the Property which shall be free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except:

- (a) applicable building and zoning laws and regulations;
- (b) the provisions of the Redevelopment Plan;
- (c) the provisions of this Agreement (as disclosed by the Memorandum of DDLA), and the City Grant Deed;
- (d) the City Regulatory Agreement, and the City Deed of Trust;
- (e) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation of the Memorandum of DDLA;
- (f) the liens of any loan approved by the City in the Financing Plan;
- (g) conditions, covenants, restrictions or easements currently of record or as otherwise approved by the Developer in its reasonable discretion; and

(h) exceptions, 1-8, inclusive, as shown in the Title Report, and any mechanics liens, or similar claims, arising out of, or in connection with, the Right of Entry Agreement.

Section 3.6 Condition of Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), the City hereby represents and warrants that it has no knowledge, and has no reasonable cause to believe, that any release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to the Developer.

(b) **"AS IS" CONVEYANCE.** THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE DEVELOPER HAS HAD PRIOR TO THE EFFECTIVE DATE, AND CONTINUES TO HAVE, ACCESS TO THE PROPERTY PURSUANT TO THE RIGHT OF ENTRY AGREEMENT, THAT THE CITY IS CONVEYING AND THE DEVELOPER IS OBTAINING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION

**WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.**

(c) Survival. The terms and conditions of this Section 3.6 shall expressly survive the Closing, shall not merge with the provisions of the City Grant Deed, or any other closing documents and shall be deemed to be incorporated by reference into the City Grant Deed. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the Purchase Price reflects the "as is" nature of this conveyance and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understands the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in Section 3.6 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Purchase Price has been adjusted to reflect the same and that the City would not have agreed to convey the Property to the Developer without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, and its respective council members, employees, officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 3.6(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's

release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

**Developer's Initials:** \_\_\_\_\_

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or misrepresentation.

Section 3.7 Costs of Escrow and Closing. Ad valorem taxes, if any, shall be prorated as of the date of conveyance. The City shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, to close Escrow.

Section 3.8. Taxes. Ad valorem taxes, if any, shall be prorated as of the date of conveyance. The City shall pay the cost of title insurance, transfer tax, Title Company document preparation, recordation fees and the escrow fees of the Title Company, if any, to close Escrow.

Section 3.9 Additional Disclosure. The Developer acknowledges that the City has disclosed to it State legislation – AB x1 26 ("Dissolution Act"). The Developer also acknowledges that the City has disclosed to the Developer that on December 29, 2011, the California Supreme Court reached its decision on the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Dissolution Act. The City makes no representations or warranties as to the impact of the Dissolution Act or the associated litigation on this Agreement.

## ARTICLE 4. CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Construction Pursuant to Plans. The Improvements shall be constructed substantially in accordance with the Construction Plans, unless modified by operation of Section 4.2, and the terms and conditions of the land use permits and approvals and building permits, including any variances granted. The Developer shall comply with all of the duties and obligations set forth in this Article 4, and the Developer's failure to comply with the duties and obligations set forth in this Article 4 shall constitute a Developer Event of Default.

Section 4.2 Change in Construction of Improvements. If the Developer desires to make any material change in the Improvements which are not substantially consistent with the Construction Plans, the Developer shall submit the proposed change to the City for its approval. No change which is required for compliance with building codes or other government health and safety regulations shall be deemed material. If the Improvements, as modified by any such proposed change, will conform to the requirements of this Agreement, and the Construction Plans, the City shall approve the change by notifying the Developer in writing.

Unless a proposed change is rejected by the City within ten (10) working days, it shall be deemed approved. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. If the City rejects a proposed change, it shall provide the Developer with the specific reasons therefore.

The approval of changes in the Construction Plans by the City pursuant to this Section shall be in addition to any approvals required to be obtained from the City pursuant to building permit requirements. Approval of changes in the Construction Plans by the City shall not constitute approval by the City and shall in no way limit the City's discretion in approving changes to the Construction Plans.

Section 4.3 Commencement of Construction. The Developer shall commence construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 4.4 Completion of the Improvements. The Developer shall diligently prosecute to completion the construction of the Improvements no later than the date set forth in the Schedule of Performance.

Section 4.5 Equal Opportunity. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the hiring, firing, promoting or demoting of any person engaged in the construction work.

Section 4.6 Compliance with Applicable Laws; Prevailing Wage Requirement.

(a) The Developer shall cause all construction to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other

officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

(b) This Agreement has been prepared with the intention that the financial assistance provided by the City under this Agreement meets the exceptions set forth in Labor Code Section 1720(c)(6)(D) and Labor Code Section 1720(c)(6)(E) to the general requirement that state prevailing wages be paid in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by any party regarding the applicability of the provisions of Labor Code Section 1720 et seq. To the extent required by applicable law, The Developer shall and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR") and comply with the other applicable provisions of Labor Code Sections 1720 et seq., including but not limited to the hiring of apprentices as required by Labor Code Sections 1775 et seq., and the implementing regulations of the DIR. The Developer shall and shall cause the contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq. Copies of the currently applicable per diem prevailing wages are available from the DIR. During the construction of the Improvements the Developer shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR or comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with construction of the Improvements or any other work undertaken or in connection with the Property.

Section 4.7 Progress Report. The Developer will provide quarterly progress reports to the City regarding the status of construction of the Development, including a certification regarding the actual construction cost, and the Developer's on-going fundraising activities (including all additional pledges, or commitment, of funds, and funds actually received). The certification of the actual construction costs for the progress report will be incorporated in the payment draws and will be verified by the City to insure such certification conforms to the Financing Plan. The Developer shall provide the reports and information required under this Section 4.7 until completion of construction of the Improvements, as evidenced by the Certificate of Completion from the City pursuant to Section 4.15.

Section 4.8 Construction Responsibilities. As between the City and the Developer it shall be the responsibility of the Developer to coordinate and schedule the work to be performed so that commencement and completion of construction of the Improvements will take place in

accordance with this Agreement. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Development.

Section 4.9    Mechanics Liens, Stop Notices, and Notices of Completion.

(a)    If any claim of lien is filed against the Property or the Improvements or a stop notice affecting the City Loan is served on the City or any other lender or other third party in connection with the Development, then the Developer shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the City a surety bond from a surety, reasonably acceptable to the City, or such other evidence reasonably acceptable to the City that the lien or stop notice has been discharged acceptable to the City in sufficient form and amount, or provide the City with other assurance satisfactory to the City that the claim of lien or stop notice will be paid or discharged.

(b)    If the Developer fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section or obtain a surety bond, then in addition to any other right or remedy, the City may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Developer's expense. Alternatively, the City may require the Developer to immediately deposit with the City the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against the Developer.

(c)    The Developer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property and/or Improvements. The Developer authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Development and Property.

Section 4.10    Inspections. The Developer shall permit and facilitate, and shall require its contractors, to permit and facilitate, observation and inspection at the Development by the City and by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement. The Developer acknowledges that the City is under no obligation to: (a) supervise the construction, or the means, methods, or techniques utilized in connection with the construction of the Improvements, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. Any inspection by the City during the construction of the Improvements is entirely for determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall not

rely upon the City for any supervision or inspection of the construction of the Development. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers. The rights granted to the City pursuant to this Section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 4.11 Information. The Developer shall provide any information reasonably requested by the City in connection with the Development.

Section 4.12 Records.

(a) The Developer shall maintain complete, accurate, and current records pertaining to the Development for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the City to inspect and copy records upon reasonable notice to the Developer. Such records shall include all invoices, receipts, and other documents related to expenditures from the City Loan funds. Records must be kept accurate and current.

(b) The City shall notify the Developer of any records it deems insufficient. The Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then the Developer shall begin to correct the deficiency within thirty (30) days and complete the correction of the deficiency as soon as reasonably possible.

Section 4.13 Financial Accounting and Post-Completion Audits.

(a) No later than ninety (90) days following completion of construction of the Development (as evidenced by the City's issuance of the Certificate of Completion), the Developer shall provide to the City a financial accounting of all sources and uses of funds for the Development using the draw request data and other data as reasonably determined by the City. No later than one hundred fifty (150) days following completion of construction of the Development (as evidenced by the City's issuance of the Certificate of Completion), the Developer shall submit an audited financial report to the City showing the sources and uses of all funds utilized for the Development.

(b) The Developer shall make available for examination at reasonable intervals and during normal business hours to the City annually all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records upon reasonable prior notice to the Developer. The City, in its reasonable discretion, may make audits of any records related to the development or operation of the Development or the Developer's compliance with the City Documents.

Section 4.14 Financing; Revisions to Plan. As of the Effective Date, the City has approved the Financing Plan set forth in Exhibit B. The Developer shall submit any required amendments to the Financing Plan, including but not limited to and amendments or modifications to the development budget, or the commitment letter from any lender, to the City

for approval within fifteen (15) days of the date the Developer receives information indicating that actual costs of the Development vary or will vary from the line item costs shown on the Financing Plan. Written consent of the City shall be required to amend the Financing Plan.

Section 4.15 Certificate of Completion. Within thirty (30) days after completion of the construction of the Improvements, in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Improvements (including the dates for beginning and completing construction of the Improvements), the City shall provide an instrument so certifying the completion of the construction of the Improvements (the "Certificate of Completion"). The Certificate of Completion shall be conclusive determination that the covenants in this Agreement with respect to the obligations of the Developer to construct the applicable portion of the Improvements on such portion of the Property have been met. The issuance of the Certificate of Completion shall have no effect on the Term of this Agreement, and the remaining provisions of this Agreement (other than the provisions regarding the construction of the Improvements) shall remain in full force and effect throughout the Term. The certification shall be in such form as will enable each certificate to be recorded among the official records of Solano County. These certifications and determinations shall not constitute evidence of compliance with the requirements of Section 4.6 or satisfaction of any obligation of the Developer to any holder of a deed of trust securing money loaned to finance the Improvements, shall not be deemed a notice of completion under the California Civil Code, nor a certificate of occupancy and shall neither hinder nor convey any rights to occupy any portion of the Improvements. Notwithstanding any provision herein to the contrary, in no event shall the City be obligated to issue the Certificate of Completion until the Developer has executed the promissory note in the amount of the Fair Market Value of the Property as described in Section 3.2.

## ARTICLE 5. CITY LOAN PROVISIONS

Section 5.1 City Loan. The City Loan shall be governed by the terms and provisions of this Agreement, the City Note, and the City Deed of Trust.

Section 5.2 Interest. No interest shall accrue on the principal amount of the City Loan except for a Developer Event of Default, whereupon interest shall accrue from the date of the Developer Event of Default (following expiration of applicable notice and cure periods) until paid at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

Section 5.3 Use of City Loan. The City Loan shall be used exclusively to evidence the Developer's obligation to pay the Purchase Price to the City, and to satisfy the Developer's obligations under the City Documents.

Section 5.4 Security. The Developer shall secure its obligation to pay the City Loan, as evidenced by the City Note, by executing the City Deed of Trust, which shall be recorded as a lien against the Developer's fee interest in the Property.

Section 5.5     Repayment. The Developer shall repay the City Loan in accordance with the City Note.

Section 5.6     Assumption. The City Note shall not be assumable by successors and assigns of the Developer without the prior written consent of the City, which consent shall be granted or denied in the City's sole discretion.

Section 5.7     Non-Recourse. Following recordation of the City Deed of Trust, and except as provided below, the Developer shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the City Loan or the performance of the covenants of the Developer under the City Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the City Note and defaults by the Developer in the performance of its covenants under the City Deed of Trust shall be to the property described in the City Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the City Note of all the rights and remedies of the City there under, or (b) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the City Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the City Note and the performance of the Developer's obligations under the City Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve the Developer of its waiver of City liability in Section 3.6 and the Developer's obligation to indemnify the City under this Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Developer's interest of the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Developer other than in accordance with the City Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development. Prior to recordation of the City Deed of Trust, the City Loan shall be fully recourse to the Developer.

Section 5.8     Subordination of City Deed of Trust. Upon determination of the City Manager, the City Deed of Trust may be subordinated to the deed of trust securing the Developer's construction loan, if any, and may be subordinated to other liens securing financing set forth in the Financing Plan, if any (in each case, a "Senior Lien"), but only on condition that all of the following conditions are satisfied:

(a)     All of the proceeds of the proposed Senior Lien, less any transaction costs, must be used to provide acquisition, construction and/or permanent financing for the Development.

(b)     The Developer must demonstrate to the City's reasonable satisfaction that subordination of the City Deed of Trust is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Development as required by the City Documents. To satisfy this requirement, the Developer must provide to the City, in

addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the loan is necessary to provide adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Development, and adequate financing for the Development would not be available without the proposed subordination.

(c) The subordination agreement(s) must be structured to minimize the risk that the City Deed of Trust would be extinguished as a result of a foreclosure by the proposed lender (each, a "Senior Lender") or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement must provide the City with adequate rights to cure any defaults by the Developer, including: (i) providing the City or its successor with copies of any notices of default at the same time and in the same manner as provided to the Developer; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(d) The subordination(s) described in this section may be effective only during the original term of the Senior Loan and any extension of its term approved in writing by the City.

(e) No subordination may limit (in whole or in part) the effect of the City Deed of Trust before a foreclosure, nor require consent of the holder of the Senior Loan to exercise of any remedies by the City under the City Documents.

(f) Upon a determination by the City Manager that the conditions in this Section have been satisfied, the City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval by the City Council.

Section 5.9 Subordination of City Regulatory Agreement. Upon a determination by the City Council or the City Manager that the requirements of Health and Safety Code Section 33334.14 are satisfied, including the requirement that any subordination documents contain provisions that are reasonably designed to protect the City's interest in the event of default under deeds of trust to which the City is subordinating, the City shall subordinate the City Regulatory Agreement to the liens of the deeds of trust securing City-approved construction and permanent first mortgage financing for the Improvements. In no event shall the City subordinate the Memorandum of DDLA to any financing secured by the Development.

## ARTICLE 6. ONGOING DEVELOPER OBLIGATIONS

Section 6.1 Applicability. The conditions and obligations set forth in this Article 6 shall apply throughout the Term, unless a different period of applicability is specified for a particular condition or obligation. The Developer's failure to comply with the duties and obligations set forth in this Article 6 shall constitute a Developer Event of Default.

Section 6.2 Use. The Developer hereby agrees that, for the entire Term, the Development will be used and continuously operated only as affordable housing in accordance

with all applicable requirements of the California Community Redevelopment Law (the "Law"), including, but not limited to, the requirement that such housing be provided to households described in Section 50079.5 of the Law, at rents not exceeding the amounts set forth in Section 50053(b)(3) of the Law, and the requirements of the City Regulatory Agreement. In consideration for the operation of the Development in accordance with this Agreement and the City Regulatory Agreement, the City shall pay the CFD Payment. The Parties agree and acknowledge that the CFD Payment is equal to the amount owed for the Improvements to the CFD throughout the Term, and that upon the recordation of the City Regulatory Agreement against the Property, the City shall pay the CFD Payment.

Section 6.3 Maintenance. The Developer agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, of the Development in first-class condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with the Operating Agreement (including without limitation any landscape and signage plans), as the same may be amended from time to time, and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, City, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

The Developer acknowledges the great emphasis the City places on quality maintenance to protect its investment and to provide quality social services for area residents and to ensure that City-assisted projects are not allowed to deteriorate due to deficient maintenance. In addition, the Developer shall keep the Development free from all graffiti and any accumulation of debris or waste material. The Developer shall promptly make all repairs and replacements necessary to keep the Development in first-class condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that the Developer breaches any of the covenants contained in this Section 6.3 and such default continues for a period of ten (10) days after written notice from the City (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from the City, with respect to landscaping and building improvements (and subject to any stricter requirements included in any applicable City ordinance), then the City, in addition to whatever other remedy it may have under this Agreement, at law or in equity, shall have the right to enter upon the Development and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Development and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas of the Property, and to attach a lien on the Developer's fee interest in the Property, or to assess the Developer's fee interest in the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure. The Developer shall promptly pay to the City, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a fifteen percent (15%) administrative charge. The foregoing provisions shall be covenants running with the land until expiration of the Term, enforceable by the City (or its successors or assigns).

Section 6.4 Taxes and Assessments. The Developer shall apply for and shall thereafter use good faith efforts to obtain an exemption from local property taxes pursuant to Section 214 of the California Revenue and Taxation Code. The Developer shall pay all unabated real property taxes on the Development, personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property or the Developer's fee interest in the Property; provided, however, that the Developer shall have the right to contest in good faith any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge against it, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 6.5 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property shall contain therein the following language:

(a) In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use,

occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 6.6 Hazardous Materials.

(a) Covenants.

(i) No Hazardous Materials Activities. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall not cause or permit the Property, or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(ii) Hazardous Materials Laws. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall comply and cause the Property, and the Improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(iii) Notices. The Developer hereby represents and warrants to the City that, at all times from and after the Closing, the Developer shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by the Developer that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Property, or the Improvements by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property, that could cause the Property, or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Laws. The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(iv) Without the City's prior written consent, which shall not be unreasonably withheld, the Developer shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Developer Acknowledgement. The Developer hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the Property is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

(c) Indemnity. Without limiting the generality of the indemnification set forth in Section 11.7 below, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer or any other person or entity (including, but not limited to, the Operator) to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development on or after the date of conveyance of the Property to the Developer; (2)

the presence in, on or under the Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Development to the extent it arises on or after the date of conveyance of the Property to the Developer; or (3) any activity carried on or undertaken on or off the Development, subsequent to the conveyance of the Property to the Developer, and whether by the Developer or any successor in title or any employees, agents, contractors or subcontractors of the Developer or any successor in title, or any third persons at any time occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Development. The foregoing indemnity shall further apply to any residual contamination on or under the Development, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The provisions of this subsection shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

(d) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under subsection (c) above, are in no way limited or otherwise affected by any information the City may have concerning the Development and/or the presence within the Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

#### Section 6.7 Operator; Periodic Reports.

(a) Operator. The Parties agree and acknowledge that the Developer intends to manage and operate the day-to-day use of the Development. To the extent the Developer desires to retain a third-party operator to operate the Development, the Development shall at all times be managed by an experienced third-party Operator reasonably acceptable to the City, with demonstrated ability to operate housing facilities like the Development in a manner that will provide decent, safe, and sanitary housing. For any change in the Operator, that is not the Developer, the Developer shall submit for the City's approval the identity of the operator, or the replacement operator. The Developer shall also submit such additional information about the background, experience and financial condition of any proposed operator as is reasonably necessary for the City to determine whether the proposed operator meets the standard for a qualified Operator set forth above. If the proposed operator meets the standard for a qualified Operator set forth above, the City shall approve the proposed operator by notifying Developer in writing.

(b) Performance Review. The City reserves the right to conduct a periodic review of the management practices and financial status of the Development and/or an on-site inspection within thirty (30) days after each anniversary of the issuance of the Certificate of Completion, or at such other time(s) as reasonably determined by the City. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Developer

shall, and shall cause the Operator (if any) to, cooperate with the City in such reviews.

(c) Books, Records and Reports. For purposes of such periodic reviews, the Developer and the Operator (if any) shall make available to the City for inspection all books and records with respect to the Development, including, but not limited to the Operating Agreement (if any).

(d) Replacement of Operator. If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement by a third-party Operator, the City shall deliver notice to the Developer of its intention to cause replacement of the Development's operator. Within fifteen (15) days after receipt by the Developer of such written notice, City staff and the Developer shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Developer as the operator of the Development, or the replacement of the Operator, or any other commercially reasonable methods, mutually acceptable to the City and the Developer.

If, forty-five (45) days after such meeting, the Development is not being operated and managed in accordance with any of the requirements and standards of this Agreement (whether by the Developer or by an Operator), then, in addition to any other available rights or remedies, the City may notify, in writing, the Developer that the Developer is required to either hire an Operator (in the event the Developer is the then-current operator) or replace the Operator (in the event the Development is operated by the Operator), and the Developer shall comply with such demand, and shall appoint as the replacement Operator a person or entity meeting the standards for a Operator set forth in subsection (a) above and approved by the City pursuant to subsection (a) above within fifteen (15) days following the City's delivery of the written notice.

The Operating Agreement and any contract for the operation or management of the Development entered into by the Developer (if any) shall provide that the contract can be terminated as set forth above. Failure to comply with the provisions of this Section shall constitute a Developer Event of Default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Article 8.

#### Section 6.8 Insurance Requirements.

(a) Required Coverage. The Developer shall maintain and keep in force, at the Developer's sole cost and expense, the following insurance applicable to the Development:

(i) To the extent required by law, Worker's Compensation insurance, including Employer's Liability coverage, with limits not less than required by applicable law.

(ii) Comprehensive or Commercial General Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage's for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(iii) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage's for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Developer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required and both parties to this Agreement shall initial this provision signifying same.

(iv) Property insurance covering the Development covering all risks of loss, including earthquake (but only if it is commercially affordable at a reasonable price and with a reasonable deductible, in City's reasonable opinion, and if City requests in writing that such coverage be carried) and flood, if the Property is located in a flood zone, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming the City as a Loss Payee, as its interest may appear.

(b) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Development under direct contract with the Developer (including, but not limited to, the Developer's architect) to maintain insurance of the types and in at least the minimum amounts described in subsections (a)(1), (a)(2), and (a)(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (c) below. Subcontractors working on the Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections (a)(1), (a)(2) and (a)(3) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name as additional insured's the City, the City, their board members, officers, agents, and employees.

(c) General Requirements. The required insurance shall be provided under an occurrence form, and the Developer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as additional insured's the City and its council members, officers, agents, and employees. All policies and bonds shall contain (a) the agreement of the insurer to give the City at least thirty (30) days' notice prior to cancellation (including, without limitation, for nonpayment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non contributing with any insurance that may be carried by the City; (c) a provision that no act or omission of the Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage thereby insured against.

(d) Certificates of Insurance. Upon the City's request at any time during the term of this Agreement, the Developer shall provide certificates of insurance, in form and with insurers reasonable acceptable to the City, evidencing compliance with the requirements of this

Section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the City as additional insured, if requested by the City.

Section 6.9 Audits. The Developer shall make available for examination at reasonable intervals and during normal business hours to City all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records. City may make audits of any conditions relating to this Agreement.

## ARTICLE 7. ASSIGNMENT AND TRANSFERS

Section 7.1 Definitions. As used in this Article, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Development or any part thereof or any interest therein or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer or any contract or agreement to do any of the same; or
- (c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or
- (d) The leasing of individual units in accordance with the requirements of this Agreement and the City Regulatory Agreement shall not be deemed a "Transfer" for purposes of this Article.

Section 7.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Development and its subsequent use in accordance with the terms hereof. The Developer recognizes that the qualifications and identity of the Developer are of particular concern to the City, in view of:

- (a) The importance of the development of the Property to the general welfare of the community; and
- (b) The land acquisition assistance and other public aids that have been made available by law and by the government for the purpose of making such development possible; and
- (c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; and

(d) The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(f) The importance to the City and the community of the standards of use, operation, and maintenance of the Property.

(g) The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 7.3 Prohibited Transfers. The limitations on Transfers set forth in this Section shall apply until expiration of the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 7.4 Permitted Transfers. Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and are hereby approved by the City.

(a) Any Transfer creating a Security Financing Interest permitted pursuant to the approved Financing Plan;

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest or as otherwise permitted under Article 7.

(c) Any Transfer to an entity Controlled by the Developer, provided that, (1) the Developer has submitted such entity's organizational documents to the City and the City has determined that such entity is Controlled by the Developer, and (2) upon such Transfer, the transferee, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations of the Developer under this Agreement and the City Documents (including, but not limited to the repayment obligations of the City Note) and agrees to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement and the City Documents.

Section 7.5 Other Transfers with City Consent. The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, there shall be submitted to the City for review all instruments and other legal documents proposed to affect any such Transfer. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within thirty (30) days after receipt by the City of Developer's request for approval of a Transfer. Upon such approval, if granted, the transferee, by an instrument in writing prepared by the City and in form recordable among the land records, shall expressly assume the obligations of the Developer under this Agreement and agree to be subject to the conditions and restrictions to which the Developer is subject arising during this Agreement, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Development conveyed in such Transfer. In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

## ARTICLE 8. DEFAULT AND REMEDIES

Section 8.1 General Applicability. The provisions of this Article shall govern the Parties' remedies for breach or failure of this Agreement.

Section 8.2 No Fault of Parties. The following events constitute a basis for a party to terminate this Agreement without the fault of the other:

(a) The Developer, despite good faith and diligent efforts, is unable to satisfy all of the conditions precedent to the City's obligation to execute the City Grant Deed set forth in Article 2 by no later than the dates set forth in the Schedule of Performance; or

(b) The City, despite good faith and diligent efforts, is unable to execute the City Grant Deed and convey the Property to the Developer and the Developer is otherwise entitled to the conveyance of the Property.

Upon the happening of any of the above-described events, and at the election of either party, this Agreement may be terminated by written notice to the other party. After termination, neither party shall have any rights against or liability to the other under this Agreement, except that the waiver and indemnification provisions set forth herein shall survive such termination and remain in full force and effect.

Section 8.3 Fault of City. Except as to events constituting a basis for termination under Section 8.2, the following events each constitute a City Event of Default and a basis for the Developer to take action against the City:

(a) The City, without good cause, fails to convey the Property to the Developer within the time and in the manner set forth in Article 3 and the Developer is otherwise entitled by this Agreement to such conveyance; or

- (b) The City breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City forty-five (45) days from receipt of such notice to cure or, if cure cannot be accomplished within forty-five (45) days, to commence to cure such breach, failure, or act. In the event the City does not then so cure within said forty-five (45) days, or if the breach or failure is of such a nature that it cannot be cured within forty-five (45) days, the City fails to commence to cure within such forty-five (45) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the Developer shall be afforded all of its rights at law or in equity, by taking all or any of the following remedies: (1) terminating in writing this Agreement (provided, however, that the waiver and indemnification provisions set forth herein shall survive such termination); and (2) prosecuting an action for damages or specific performance.

Section 8.4 Fault of Developer. Except as to events constituting a basis for termination under Section 8.2, the following events each constitute a Developer Event of Default and a basis for the City to take action against the Developer:

- (a) The Developer is declared in default under the Right of Entry Agreement;
- (b) The Developer fails to exercise good faith and diligent efforts to satisfy, within the time set forth in the Schedule of Performance, one or more of the conditions precedent to the City's obligation to convey the Property to the Developer; or
- (c) The Developer refuses to execute the City Grant Deed within the time set forth in the Schedule of Performance and under the terms set forth in Article 3; or
- (d) The Developer constructs or attempts to construct the Improvements or otherwise redevelop the Property in violation of Article 4; or
- (e) The Developer has not satisfied all preconditions set forth in this Agreement to commencement of construction of the Improvements by the date set forth in the Schedule of Performance, or fails to commence or complete construction of the Improvements within the times set forth in the Schedule of Performance, or abandons or suspends construction of the Improvements prior to completion of all construction for a period of sixty (60) days after written notice by the City of such abandonment or suspension;
- (f) The Developer fails to comply with any obligation or requirement set forth in Article 5 (including, but not limited to the Developer's failure to repay the City Loan); or
- (g) The Developer fails to comply with, or fails to cause the Operator to comply with, any obligations or requirement set forth in Article 6; or
- (h) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 7;

(i) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made.

(j) A Developer Event of Default or an event of default occurs under any of the City Documents.

(k) A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection (i) as well; or the Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (1) to (4), inclusive; or

(l) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection (i) as well) or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer is diligently working to obtain a return or release of the property, as determined in the City's reasonable business judgment, and the City's interests under the Agreement are not immediately threatened, in the City's reasonable business judgment, the City shall not declare a default under this subsection; or

(m) The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated; or

(n) The Developer breaches any other material provision of this Agreement.

Upon the happening of any of the above-described events, the City shall first notify the Developer in writing of its purported breach, failure or act above described, giving the Developer in writing forty-five (45) days from receipt of such notice to cure, or, if cure cannot be accomplished within said forty-five (45) days, to commence to cure such breach, failure, or act. In the event the Developer fails to cure within said forty-five (45) days, or if such breach is of a nature that it cannot be cured within forty-five (45) days, Developer fails to commence to cure, or to the extent applicable fails to cause the Operator to commence to cure within said forty-five (45) days and diligently complete such cure within a reasonable time thereafter but in no event

later than one hundred twenty (120) days, then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies:

(i) Termination of this Agreement by written notice to the Developer; provided, however, that the City's remedies pursuant to this Article 8 or any other City Document and the waiver and indemnification provisions of this Agreement shall survive such termination;

(ii) Any of the remedies specified in Article 9; and/or

(iii) Acceleration of the City Loan.

Section 8.5 Right to Cure at Developer's Expense. The City shall have the right to cure any monetary default by the Developer under a loan in connection with the Development. The Developer agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Developer upon demand therefor, together with interest thereon at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law from the date of expenditure until the date of reimbursement.

Section 8.6 Construction Plans. If this Agreement is terminated pursuant to Section 8.2 or Section 8.4, then the Developer shall promptly deliver to the City, within ten (10) days of such termination, copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development (collectively, the "Section 8.6 Documents"). The delivery of the Section 8.6 Documents shall be accompanied by an assignment, in form reasonably satisfactory to the City, of the Developer's right, title and interest in the Section 8.6 Documents; provided however, that any use of the Section 8.6 Documents by the City or any other person shall be without liability of any kind to the Developer and without any representation or warranty of the Developer or its employees, as to the quality, validity, or usability of the Section 8.6 Documents.

Section 8.7 Acceleration of City Note. The City shall have the right to cause all indebtedness of the Developer to the City under this Agreement, and the City Note together with any accrued interest thereon, to become immediately due and payable. The Developer waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the City as a creditor and secured party under the law, including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Developer shall be liable to pay the City on demand all expenses, costs and fees (including, without limitation, reasonable attorneys' fees and expenses and other professional service fees and expenses) paid or incurred by the City in connection with the collection of the City Loan and the amounts due under the City Note, and the preservation, maintenance, protection, sale, or other disposition of the security given for the City Loan and the amounts due under the City Note.

Section 8.8 Remedies Cumulative. No right, power, or remedy given by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right,

power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 8.9 Waiver of Terms and Conditions. No waiver of any default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to or of any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the other City Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under this Agreement, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the City are paid and discharged in full.

## ARTICLE 9. RIGHT OF REVERTER AND OPTION TO PURCHASE

Section 9.1 Right of Reverter. If there is an uncured Developer Event of Default or this Agreement is terminated pursuant to Section 8.4, and such default and/or termination occurs after the Closing, but prior to issuance of the Certificate of Completion pursuant to Section 4.15, then the City shall have the right to reenter and take possession of the Property and all improvements thereon, and to revest in the City the estate of Developer in the Property. The Developer hereby agrees to execute such documents as reasonably necessary to cause the Developer's interest in the Property to revert and revest in the City.

Upon revesting in the City of title to the Property, or any portion thereof, the City shall promptly use its best efforts to resell the revested portion of the Property consistent with its obligations under state law and the Redevelopment Plan. The City may also determine, in its sole discretion, to complete the construction of all or any of the Improvements, prior to the sale of the Property. Upon sale, the proceeds shall be applied as follows:

- (a) First, to reimburse the City, for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the construction of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Developer;
- (b) Second, to the Developer in the amount of the reasonable costs expended by Developer in undertaking the construction of the Improvements on the Property;
- (c) Any balance to be retained by the City.

The right of reverter contained in this Section 9.1 shall be set forth in the City Grant Deed.

Section 9.2 Option to Repurchase, Reenter and Repossess.

(a) The City shall have the additional right at its option to repurchase, reenter and take possession of the Property, or any portion thereof owned by the Developer for which a Certificate of Completion has not been issued, with all improvements thereon, if after conveyance of title to the Property, and prior to the issuance of the Certificate of Completion for the Improvements, there is a Developer Event of Default pursuant to Section 8.4 with respect to the construction of the Improvements or portion thereof.

(b) To exercise its right to repurchase, reenter and take possession, the City shall pay to the Developer in cash an amount equal to the Purchase Price paid in cash (or repaid under the City Note for the Purchase Price) to the City for the applicable portion of the Property pursuant to Section 3.2. Upon vesting in the City of title to all or a portion of the Property, the City shall promptly use its best efforts to resell it, subject to a requirement that the Property be developed in accordance with this Agreement. Upon any resale of the Property or portion thereof by the City, the City shall apply such sale proceeds as follows:

(i) To the Developer, the fair market value of any improvements existing on the applicable portion of the Property at the time of the repurchase, reentry and repossession; less

(A) Any gains or income withdrawn or made by the Developer from the applicable portion of the Property or the improvements thereon; less

(B) The value of any unpaid liens or encumbrances on the applicable portion of the Property which the City assumes or takes subject to said encumbrances.

(ii) The remaining sale proceeds, if any, shall be retained by the City.

Section 9.3 Rights of Mortgagees. Any rights of the City under Section 9.1 or Section 9.2, above, shall not defeat, limit or render invalid any lease, mortgage, deed of trust or any other security interest permitted by this Agreement or otherwise consented to by the City in writing or any rights provided for in this Agreement for the protection of holder of security interests in the Property. The City acknowledges that, upon obtaining ownership of the Property pursuant to the this Article, the City shall be subject to all applicable obligations of any Security Financing Interest, defined below, arising on, or after, the date the City re-acquires the Property (other than any obligation personal to the Developer, including, but not limited to any guaranty or indemnification obligation).

ARTICLE 10.  
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 10.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Developer's fee interest in the Property but only for the purpose of securing loans approved by the City pursuant to the approved Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development.

Section 10.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 10.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's fee interest in the Property or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon completion and written request made to the City, to a Certificate of Completion from the City, in a form acceptable by the City.

Section 10.4 Failure of Holder to Complete Improvements. In any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct (pursuant to the assignment and assumption agreement more particularly described in Section 10.4), has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against Developer under this Agreement, including, but not limited to declaring a default in accordance with Article 8.

Section 10.5 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of development, and the holder has not exercised its option to complete the development called for on the Property, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by Developer to effect such subordination.

Section 10.6 Right of City to Satisfy Other Liens. After the conveyance of the fee interest in the Property or any portion thereof and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the fee interest in the Property or any portion thereof (including, but not limited to, any breach or default under a Security Financing Interest) the City shall have the right to satisfy any such lien or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 10.7 Holder to be Notified. The provisions of this Article shall be incorporated into the relevant deed of trust or mortgage evidencing each Security Financing Interest to the extent deemed necessary by, and in form and substance reasonably satisfactorily to the City, or shall be acknowledged by the holder of a Security Financing Interest prior to its coming into any security right or interest in the Property.

## ARTICLE 11. GENERAL PROVISIONS

Section 11.1 Notices, Demands and Communications. Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by registered or certified mail, postage prepaid, return receipt requested, by reputable overnight delivery service, or delivered personally, to the principal office of the City and the Developer as follows:

City: City of Vacaville  
40 Eldridge Avenue, Suite 7  
Vacaville, CA 95688  
Attn: City Manager

Developer: Vacaville Social Services Corporation  
785 Alamo Drive, Suite #150  
Vacaville, CA 95688

Attention: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section.

Section 11.2 Non-Liability of City Officials, Employees and Agents; Non-Liability of Developer's Members. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 11.3 Forced Delay. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather (provided that such claim is documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse impact on the Party's ability to satisfy its obligation hereunder); inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or governmental agency or entity (other than the acts or failure to act of the City); or any other causes (other than Developer's inability to obtain financing for the Improvements) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the date the party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other party within ten (10) days after receipt of the notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer. In no event shall the cumulative delays exceed one hundred eighty (180) days, unless otherwise agree to by the Parties in writing.

Section 11.4 Inspection of Books and Records. Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement. The Developer also has the right at all reasonable times to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 11.5 Provision Not Merged with City Grant Deed. None of the provisions of this Agreement are intended to or shall be merged by the City Grant Deed transferring title to any real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 11.6 Title of Parts and Sections. Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 11.7 General Indemnification. The Developer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of: (i) the Developer's performance or non-performance under the Right of Entry Agreement, this Agreement, or any other agreement executed pursuant to this Agreement, (ii) acts or omissions of Developer or any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, (iii) the Developer's ownership, construction, use and operation of the Development (including, but not limited to, any claim made against the City in connection with the approval of this Agreement or the use or operation of the Improvements) except as directly caused by the City's willful misconduct or gross negligence, or (iv) the Developer's breach of this Agreement. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 11.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.9 No Brokers. Each party represents to the other that it has not had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, if necessary, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the venue for such action shall be the Superior Court of the County of Solano.

Section 11.12 Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator,

executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. However, on the termination of this Agreement, such covenants and restrictions shall expire. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the Property from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Time of the Essence. In all matters under this Agreement, the Parties agree that time is of the essence.

Section 11.15 Action by the City. Except as may be otherwise specifically provided in this Agreement or another City Document, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement or another City Document, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City, without further approval by the City Council. Any such action shall be in writing.

Section 11.16 Representations and Warranties of the Developer. The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing California nonprofit public benefit corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement, and the other City Documents to be executed and delivered pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance with Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the City Grant Deed, the Developer will have good and marketable title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of the Developer and other financial data and information furnished by the Developer to the City fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(j) Sufficient Funds. Upon the Developer's acquisition of the Property, the Developer holds sufficient funds or binding commitments for sufficient funds to purchase the Property, and complete the construction of the Improvements in accordance with this Agreement

Section 11.17 Complete Understanding of the Parties. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the

matters set forth in this Agreement. This Agreement and the attached exhibits constitute the entire understanding and agreement of the Parties with respect to the matters set forth in this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 11.18 Operating Memoranda; Implementation Agreements. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments shall be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution shall be attached to this Agreement as addenda and become a part hereof.

Operating memoranda or implementation agreements may be executed on the City's behalf by the City Manager, or his or her designee. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Agreement, including but not limited to amendments or modifications to the Purchase Price (or the terms for the payment of the Purchase Price), shall be processed as an amendment of this Agreement in accordance with Section 11.19 and must be approved by the City Council in accordance with applicable law.

Section 11.19 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties, following approval by the City Council, in accordance with applicable law.

Section 11.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on or as of the Effective Date.

DEVELOPER:

VACAVILLE SOCIAL SERVICES  
CORPORATION, a California nonprofit public  
benefit corporation

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

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

Its: \_\_\_\_\_

CITY:

CITY OF VACAVILLE, a municipal corporation

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

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

GOLDFARB & LIPMAN LLP

By: \_\_\_\_\_  
City Special Counsel

**NOTE: Developer must initial Section 3.6**

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

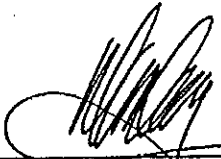
BEING LOTS 13, 14 AND 15 AS SAID LOTS ARE SHOWN ON THE MAP OF BENNETT HILL SUBDIVISION UNIT NO. 4, FILED AUGUST 3, 1967 IN BOOK 23 OF MAPS AT PAGE 85, SOLANO COUNT RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE ALONG THE NORTHERLY LINE OF LAST SAID LOT SOUTH  $85^{\circ}35'14''$  EAST, 110.00 FEET THENCE ALONG THE EASTERLY LINE OF LOTS 15, 14 AND 13 SOUTH  $04^{\circ}24'46''$  WEST, 171.22 FEET TO THE SOUTHERLY LINE OF SAID LOT 13; THENCE WESTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTH WHICH A RADIAL BEARS NORTH  $27^{\circ}33'11''$  WEST TO THE RADIUS POINT, HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $31^{\circ}57'57''$  AND AN ARC DISTANCE OF 94.85 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ALONG A COMPOUND CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF  $90^{\circ}00'00''$  AND AN ARC DISTANCE OF 31.42 FEET; THENCE ALONG THE WESTERLY LINE OF SAID LOTS 13, 14 AND 15 NORTH  $04^{\circ}24'46''$  EAST, 177.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,836 SQUARE FEET (MORE OR LESS).

END OF DESCRIPTION.

THIS DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECTION OF:

  
ALVIN LEUNG, RLS 6630  
LICENSE EXPIRATION DATE 12/31/11



APN 029 271 180

EXHIBIT B

FINANCING PLAN

<b>VSSC</b>	<b>VCH</b>	<b>Capital Campaign</b>	<b>Total Project Cost</b>
\$350,367	\$480,000	\$637,133	\$1,467,500

EXHIBIT C  
(Form of City Grant Deed)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Vacaville  
40 Eldridge Avenue, Suite 7  
Vacaville, CA 95688  
Attention: Director of Housing

No fee for recording pursuant to  
Government Code Section 27383

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GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, the City of Vacaville, a municipal corporation (the "Grantor"), acting to carry out redevelopment purposes pursuant to the Community Redevelopment Law of the State of California, hereby grants to Vacaville Social Services Corporation, a California nonprofit corporation (the "Grantee"), the real property (the "Property") described in Exhibit A attached hereto and incorporated in this grant deed (this "Grant Deed") by this reference.

1. The Property is conveyed subject to the Disposition, Development and Loan Agreement entered into by and between Grantor and Grantee dated as of \_\_\_\_\_, 2012 (the "Agreement" or the "DDA"). Capitalized terms used, but not defined in this Grant Deed, shall have the meaning set forth in the DDA.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that the Grantee and such successors and assigns shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the improvements required to be constructed pursuant to the DDA (the "Improvements"), and that such construction shall be commenced and completed within the times provided in the DDA.

Promptly after completion of the Improvements on the Property in accordance with the provisions of the DDA, the Grantor will furnish the Grantee with an appropriate instrument so certifying (a "Certificate of Completion"). Such Certificate of Completion by the Grantor shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDA and in this Grant Deed with respect to the obligations of the Grantee and its successors and assigns to construct the Improvements and the dates for the beginning and completion of such construction.

3. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall devote the Property only to the uses specified in the DDA.

4. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall operate and maintain the Property and Improvements thereon in compliance with all requirements for operation and maintenance set forth in the DDA.

5. The Grantee covenants and agrees, for itself and its successors and assigns that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sexual orientation, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Property and the Improvements thereon.

All deeds, leases or contracts made relative to the Property, Improvements thereon or any part thereof, shall contain or be subject to substantially the following non-discrimination clauses:

a. In Deeds:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

b. In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926,

12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

c. In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

6. The Grantee represents and agrees that the Property will be used for the purposes of timely redevelopment as set forth in the DDA and not for speculation in landholding. The Grantee further recognizes that in view of the following factors, the qualifications of the Grantee are of particular concern to the community and the Grantor:

a. The importance of the redevelopment of the Property to the general welfare of the community; and

b. The fact that a change in ownership or control of the owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in

a significant change in ownership or with respect to the identity of the parties in control of the Grantee or the degree thereof is for practical purposes a transfer or disposition of the Property.

The Grantee further recognizes that it is because of such qualifications and identity that the Grantor has entered into the DDA and has conveyed the Property to the Grantee.

For the reasons stated above, the Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA, or the Property and the Improvements thereon or any part thereof, or of other ownership interest in the Grantee, in violation of the DDA.

No voluntary or involuntary successor in interest of the Grantee shall acquire any rights or powers under this Grant Deed or the DDA except as expressly set forth in this Grant Deed or the DDA.

7. The covenants contained in this Grant Deed shall remain in effect for the period set forth in the DDA.

8. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust, or other financing or security instrument permitted by the DDA. However, any successor of Grantee to the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

9. The covenants contained in this Grant Deed shall be, without regard to technical classification or designation, legal or otherwise specifically provided in this Grant Deed, to the fullest extent permitted by law and equity, binding for the benefit and in favor of and enforceable by the Grantor, its successor and assigns, the City of Vacaville, and any successor in interest to the Property or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. In the event of any breach of any of such covenants, the Grantor and such aforementioned parties shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors, and such aforementioned parties.

10. The Grantor shall have the right, at its option, to reenter and take possession of the Property, or any portion thereof, with all Improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, if the DDA is terminated pursuant to Section 8.4 of the DDA prior to recordation of a Certificate of Completion. Upon reverting in the Grantor of title to the Property, the Grantor shall promptly use its best efforts to resell the Property consistent with its obligations under state law. Upon sale the proceeds shall be applied as follows:

(a) First, to reimburse the Grantor, for any reasonable costs it incurs in managing or selling the Property, or in connection with the completion of the construction of the Improvements, including but not limited to amounts to discharge, or to prevent liens or encumbrances arising from any acts or omissions of Grantee;

(b) Second, to the Grantee in the amount of the reasonable costs expended by Grantee in undertaking the construction of the Improvements on the Property; and

(c) Any balance to be retained by the Grantor.

Such right to reenter, repossess and revest shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by the DDA; and

(b) Any rights or interest provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

The Grantor shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section 10, including also the right to execute and record or file with the Recorder of the County of Solano a written declaration of the termination of all rights and title of the Grantee, and its successors in interest and assigns, in the Property, and the revesting of title thereto in the Grantor. Any delay by the Grantor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section 10 shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that Grantor should not be constrained so as to avoid the risk of being deprived of or limited to the exercise of the remedy provided in this Section 10 because of concepts of waiver, laches, or others), nor shall any waiver in fact made by the Grantor with respect to any specific default by the Grantee, its successors and assigns, be considered or treated as a waiver of the rights of the Grantor with respect to any other defaults by the Grantee, its successors and assigns, or with respect to the particular default except to the extent specifically waived.

11. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed or to subject the Property to additional covenants, easements, or other restrictions. For purposes of this Section 11, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and not to include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property.

12. As more particularly set forth in the DDA, the Grantee agrees to use the Property for the specific purpose of developing and operating the Improvements as set forth in the DDA and the Applicable Land Use Approvals.

In accordance with Section 6.3 of the DDA, in the event that there arises at any time prior to the expiration of the Term a condition in contravention of these maintenance and use standards, then the Grantor shall give written notice to the Grantee of the deficiency. If the Grantee fails to cure the deficiency within thirty (30) days of the Grantor's notice (or, if the deficiency is not susceptible of cure within such thirty (30) day period, the Grantee fails to commence the cure and thereafter to diligently pursue the cure to completion), then the Grantor shall have the right to perform all acts necessary to cure the deficiency or to take other recourse at law or in equity the Grantor may then have and to receive from Grantee the Grantor's cost in taking such action. The Parties further mutually agree that the rights conferred upon the Grantor expressly include the right to enforce or establish a lien or other such encumbrance against the Property.

13. In the event there is a conflict between the provisions of this Grant Deed and the DDA, it is the intent of the parties hereto and their successors in interest that the DDA shall control.

14. This Grant Deed may be executed and recorded in two or more counterparts, each of which shall be considered for all purposes a fully binding agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Deed this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

GRANTOR:

CITY OF VACAVILLE, a municipal corporation

By: \_\_\_\_\_  
Laura C. Kuhn, City Manager

GRANTEE:

VACAVILLE SOCIAL SERVICES  
CORPORATION, a California nonprofit corporation

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

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

Its: \_\_\_\_\_

**SIGNATURES MUST BE NOTARIZED**

EXHIBIT A  
(Property Description)

The land referred to herein is situated in the State of California, County of Solano, City of Vacaville, and is described as follows:

REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:


BEING LOTS 13, 14 AND 15 AS SAID LOTS ARE SHOWN ON THE MAP OF BENNETT HILL SUBDIVISION UNIT NO. 4, FILED AUGUST 3, 1967 IN BOOK 23 OF MAPS AT PAGE 85, SOLANO COUNT RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE ALONG THE NORTHERLY LINE OF LAST SAID LOT SOUTH  $85^{\circ}35'14''$  EAST, 110.00 FEET THENCE ALONG THE EASTERLY LINE OF LOTS 15, 14 AND 13 SOUTH  $04^{\circ}24'46''$  WEST, 171.22 FEET TO THE SOUTHERLY LINE OF SAID LOT 13; THENCE WESTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTH WHICH A RADIAL BEARS NORTH  $27^{\circ}33'11''$  WEST TO THE RADIUS POINT, HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $31^{\circ}57'57''$  AND AN ARC DISTANCE OF 94.85 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ALONG A COMPOUND CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF  $90^{\circ}00'00''$  AND AN ARC DISTANCE OF 31.42 FEET; THENCE ALONG THE WESTERLY LINE OF SAID LOTS 13, 14 AND 15 NORTH  $04^{\circ}24'46''$  EAST, 177.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,836 SQUARE FEET (MORE OR LESS).

END OF DESCRIPTION.

THIS DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECTION OF:

  
ALVIN LEUNG, RLS 6630  
LICENSE EXPIRATION DATE 12/31/11



APN 029 271 180

EXHIBIT D  
(Form of City Note)

PROMISSORY NOTE  
(Bennett Court DDA)

\$1,260,000

Vacaville, California  
\_\_\_\_\_, 2012

FOR VALUE RECEIVED, VACAVILLE SOCIAL SERVICES CORPORATION, a California nonprofit corporation ("Borrower"), promises to pay to the CITY OF VACAVILLE, a municipal corporation (the "City"), or order, the principal sum of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000), disbursed by the City to the Borrower pursuant to that certain Disposition, Development and Loan Agreement dated as of \_\_\_\_\_, 2012, as may be amended from time to time (collectively, the "DDA"), or so much as is disbursed to Borrower, plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences the Borrower's obligation to pay the City the principal amount of One Million Two Hundred Sixty Thousand Dollars (\$1,260,000) (the "Loan" or the "City Loan"), for the funds loaned to the Borrower by City to finance the acquisition and development of the Property pursuant to the DDA. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDA.

2. Interest. The outstanding principal balance of this Note shall not bear interest; provided, however, if a Developer Event of Default occurs, interest on the principal balance shall begin to accrue, as of the date of the Developer Event of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Developer Event of Default is cured, at the default rate of ten percent (10%) compounded annually, or the highest rate permitted by law (whichever is lower).

3. Term and Repayment Requirements.

(a) The term of this Note (the "Term") shall commence on the date set forth above and shall expire on the earliest of: (i) fifty-five (55) years following the date of this Note, (ii) the date of a Developer Event of Default, or (iii) the expiration of termination of the DDA. In the event Borrower has not paid all amounts owed under this Note by the fifty-fifth (55<sup>th</sup>) anniversary of the date of this Note, then the City shall forgive all remaining amounts, and shall mark this Note as "cancelled" and return this Note to the Borrower.

(b) Subject to the provisions of subsection (c) below, all principal and interest, if any, on the Loan shall, at the option of the City, be due and payable upon the earliest of: (i) a Transfer other than a Transfer permitted or approved by the City as provided in Article 7 below; (ii) the occurrence of a Developer Event of Default for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable; or (iii) the expiration of the

term specified in (a) above.

(c) The Borrower shall have the right to prepay the City Loan at any time without penalty or additional charge. However, the Regulatory Agreement shall remain in effect for its respective term regardless of any prepayment or timely payment of the City Loan.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in Article 7 of the DDA.

5. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (collectively, the "Deed of Trust") of even date herewith, wherein the Borrower is Trustor and the City is the Beneficiary, recorded against the Property.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to the City at the following address: The City of Vacaville, 40 Eldridge Avenue, Suite 7, Vacaville, CA 95688, Attention: Director of Housing, or to such other place as the City may from time to time designate in writing.

(c) All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Any of the following shall constitute an "Event of Default" or "Developer Event of Default" under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any other term, condition, provision or covenant set forth in this Note or the DDA subject to the notice and cure period set forth in Section 8.4 of the DDA; and

(iii) The occurrence of any Event of Default under the DDA, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the DDA or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the City become immediately due and payable upon written notice by the City to the Borrower without further demand.

(c) The failure to exercise the remedy set forth in subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

## 8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the City may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in Section 11.1 of the DDA, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the City in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the DDA, the Deed of Trust, and any other applicable City Document, contain the entire agreement between the parties as to the Loan.

VACAVILLE SOCIAL SERVICES  
CORPORATION, a California nonprofit  
corporation

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

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

Its: \_\_\_\_\_

EXHIBIT E  
(Form of City Deed of Trust)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Vacaville  
40 Eldridge Avenue, Suite 7  
Vacaville, CA 95688  
Attention: Director of Housing

No fee for recording pursuant to  
Government Code Section 27383

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DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING  
(Bennett Court DDA)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among Vacaville Social Services Corporation, a California nonprofit corporation ("Trustor"), \_\_\_\_\_ Title Company, a California corporation ("Trustee"), and the City of Vacaville, a municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Vacaville, County of Solano, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

#### FOR THE PURPOSE OF SECURING:

(a) Payment of just indebtedness of Trustor to Beneficiary as set forth in the Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Note. Said Note and all its terms are incorporated herein by

reference, and this conveyance shall secure any and all extensions thereof, however evidenced; and

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Article 1 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

## ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "DDA" means the Disposition, Development and Loan Agreement dated as of \_\_\_\_\_, 2012, as amended from time to time, providing for the Beneficiary to make a loan to the Trustor for the acquisition of the Property.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the DDA, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means the promissory note dated of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.).

Section 1.4 The term "Principal" means the principal amount required to be paid under the Note.

## ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and

necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said City being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Solano County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

## Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law and as approved, in writing, by Beneficiary.

## Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor shall apply the rents and revenues so collected to the sums secured by this Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and

Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Except for the financing previously approved by the Beneficiary, Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies,

taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Deed of Trust, and thereafter, to subordinate deeds of trust, if any. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Beneficiary. The rights of the Beneficiary under this Section 2.3 are subject to the rights of any senior mortgage lender.

### ARTICLE 3 TAXES AND INSURANCE; ADVANCES

#### Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, at least five (5) days prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so

advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

### Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

### Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Beneficiary, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

## ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

### Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. Subject to the rights of any senior lenders, if any such Funds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired, as determined in the Beneficiary's reasonable discretion. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay any amounts due under this Deed of Trust with the excess, if any,

paid to Trustor. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender.

## ARTICLE 5 AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

### Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

### Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

### Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

### Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code. The Trustor hereby grants the Beneficiary a security interest in such items.

#### Section 5.5     Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with their terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Beneficiary may reasonably require. Without the prior written consent of the Beneficiary, Trustor shall not create or suffer to be created pursuant to the California Commercial Code any other security interest in the Security, including replacements and additions thereto.

#### Section 5.6     Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

#### Section 5.7     Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' written notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security. Such right shall be in addition to any inspection right granted to the Beneficiary pursuant to the DDA.

#### Section 5.8     Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

## ARTICLE 6 HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily kept and used in and about commercial office property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to a "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its boardmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment,

impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

The Trustor is aware that California Civil Code Section 2955.5(a) provides as follows: "No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."

## ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

### Section 7.1 Events of Default.

The following shall constitute Events of Default following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

### Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and the unpaid Principal of the Note shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

### Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Default and Election to Sell (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and Election to Sell and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Solano County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

#### Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give to the Trustee the Notice of Default and Election to Sell and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell, as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and Election to Sell and after such notice having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Default and Election to Sell, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

#### Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

#### Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

#### Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's expressed or implied consent to a breach by Trustor, or a waiver of any obligation of Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (iv) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of

Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

#### Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

#### Section 7.9 Beneficiary May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

#### Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

### ARTICLE 8 MISCELLANEOUS

#### Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

#### Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that (i) all sums secured hereby have been paid or forgiven, and (ii) that all obligations of the Trustor under the Loan Documents have been satisfied, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

### Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

City of Vacaville  
40 Eldridge Avenue, Suite 7  
Vacaville, CA 95688  
Attention: Director of Housing

and (2) if intended for Trustor shall be addressed to:

Vacaville Social Services Corporation  
785 Alamo Drive, Suite 150  
Vacaville, CA 95688  
Attention: Executive Director

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

### Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

### Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

### Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the

debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

#### Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

#### Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

#### Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

#### Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

#### Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

#### Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

*Remainder of this Page Intentionally Left Blank*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

VACAVILLE SOCIAL SERVICES  
CORPORATION, a California nonprofit  
corporation

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

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

Its: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SOLANO                    )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary  
Public, personally appeared \_\_\_\_\_, proved to me on the  
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

EXHIBIT A  
(Legal Description)

The land is situated in the City of Vacaville, County of Solano, State of California, and is described as follows:

REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:


BEING LOTS 13, 14 AND 15 AS SAID LOTS ARE SHOWN ON THE MAP OF BENNETT HILL SUBDIVISION UNIT NO. 4, FILED AUGUST 3, 1967 IN BOOK 23 OF MAPS AT PAGE 85, SOLANO COUNT RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE ALONG THE NORTHERLY LINE OF LAST SAID LOT SOUTH  $85^{\circ}35'14''$  EAST, 110.00 FEET THENCE ALONG THE EASTERLY LINE OF LOTS 15, 14 AND 13 SOUTH  $04^{\circ}24'46''$  WEST, 171.22 FEET TO THE SOUTHERLY LINE OF SAID LOT 13; THENCE WESTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTH WHICH A RADIAL BEARS NORTH  $27^{\circ}33'11''$  WEST TO THE RADIUS POINT, HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $31^{\circ}57'57''$  AND AN ARC DISTANCE OF 94.85 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ALONG A COMPOUND CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF  $90^{\circ}00'00''$  AND AN ARC DISTANCE OF 31.42 FEET; THENCE ALONG THE WESTERLY LINE OF SAID LOTS 13, 14 AND 15 NORTH  $04^{\circ}24'46''$  EAST, 177.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,836 SQUARE FEET (MORE OR LESS).

END OF DESCRIPTION.

THIS DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECTION OF:

  
ALVIN LEUNG, PLS 6630  
LICENSE EXPIRATION DATE 12/31/11



APN 029 271 180

EXHIBIT F

SCHEDULE OF PERFORMANCE

<u>Action</u>	<b>Completion Date (mm/dd/yy)</b>
Construction Plans Submitted to Agency [Agreement Section 2.3]	05/15/09
Management Plan to Agency [Agreement Section 2.6]	05/01/10
Apply for Applicable Land Use Approvals [Agreement Section 2.2]	05/01/10
Land Use Approvals [Agreement Section 2.2]	09/30/10
Apply for Building Permits [Agreement Section 2.5]	10/01/10
Building Permit Entitlement [Agreement Section 2.5]	02/01/11
Evidence of Available Financing [Agreement Section 2.6]	09/30/11
Evidence of Insurance to Agency [Agreement Section 2.8]	09/30/11
Construction Contract [Agreement Section 2.7]	09/30/11
Close of Escrow [Agreement Section 1.1(o) and 3.4]	03/15/12
Commencement of Construction [Agreement Section 4.3]	09/30/11
Completion of the Improvements [Agreement Section 4.4]	03/15/13

EXHIBIT G  
(Form of Memorandum of Agreement)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Vacaville  
40 Eldridge Avenue, Suite 7  
Vacaville, CA 95688  
Attention: Director of Housing

No fee for recording pursuant  
To Government Code Section 27383

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MEMORANDUM OF  
DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memorandum of DDA") is made as of \_\_\_\_\_, 2012, by and between the City of Vacaville, a municipal corporation (the "City"), and Vacaville Social Services Corporation, a California nonprofit corporation (the "Developer"), to confirm that the City and the Developer have entered into that certain Disposition, Development and Loan Agreement dated as of \_\_\_\_\_, 2012 (the "DDA"). The DDA imposes certain conditions (including but not limited to, construction requirements, operating covenants, and transfer restrictions) on the real property described in Exhibit A attached hereto and incorporated herein (the "Property"). The DDA is a public document and may be reviewed at the principal office of the City.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Memorandum of DDA to be duly executed as of the date first above written.

CITY:

CITY OF VACAVILLE, a municipal  
corporation

By: \_\_\_\_\_  
Laura C. Kuhn  
City Manager

DEVELOPER:

VACAVILLE SOCIAL SERVICES  
CORPORATION, a California nonprofit  
corporation

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

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

Its: \_\_\_\_\_

[SIGNATURES MUST BE NOTARIZED]



## EXHIBIT A

### Legal Description of the Property

REAL PROPERTY SITUATE IN THE CITY OF VACAVILLE, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:


BEING LOTS 13, 14 AND 15 AS SAID LOTS ARE SHOWN ON THE MAP OF BENNETT HILL SUBDIVISION UNIT NO. 4, FILED AUGUST 3, 1967 IN BOOK 23 OF MAPS AT PAGE 85, SOLANO COUNT RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 15; THENCE ALONG THE NORTHERLY LINE OF LAST SAID LOT SOUTH  $85^{\circ}35'14''$  EAST, 110.00 FEET THENCE ALONG THE EASTERLY LINE OF LOTS 15, 14 AND 13 SOUTH  $04^{\circ}24'46''$  WEST, 171.22 FEET TO THE SOUTHERLY LINE OF SAID LOT 13; THENCE WESTERLY ALONG LAST SAID LINE ALONG A NON-TANGENT CURVE CONCAVE TO THE NORTH WHICH A RADIAL BEARS NORTH  $27^{\circ}33'11''$  WEST TO THE RADIUS POINT, HAVING A RADIUS OF 170.00 FEET, A CENTRAL ANGLE OF  $31^{\circ}57'57''$  AND AN ARC DISTANCE OF 94.85 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ALONG A COMPOUND CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF  $90^{\circ}00'00''$  AND AN ARC DISTANCE OF 31.42 FEET; THENCE ALONG THE WESTERLY LINE OF SAID LOTS 13, 14 AND 15 NORTH  $04^{\circ}24'46''$  EAST, 177.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 20,836 SQUARE FEET (MORE OR LESS).

END OF DESCRIPTION.

THIS DESCRIPTION WAS PREPARED BY OR UNDER THE DIRECTION OF:

  
ALVIN LEUNG, PLS 6630  
LICENSE EXPIRATION DATE 12/31/11



APN 029 271 180

## EXHIBIT H

### SCOPE OF DEVELOPMENT

The Developer is to demolish the existing 3,800 square foot apartment building and rehabilitate the existing 6,622 square foot apartment building to an approximately 9,609 square foot facility for use as affordable housing for homeless individuals and families. This will include 48 dormitory-style beds, laundry room, dining area, kitchen, and dayroom. The Developer will also construct a fenced children's play area, and all related parking, landscaping and other improvements.

**RESOLUTION NO. 2012-024**

**RESOLUTION OF THE CITY OF VACAVILLE TERMINATING THE AMENDED AND  
RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND  
VACAVILLE COMMUNITY HOUSING FOR 267 BENNETT HILL COURT (APN 129-271-180)**

**WHEREAS**, the Vacaville Redevelopment Agency (Agency) entered into a Disposition and Development Agreement (DDA) in February 2007, an Amended and Restated DDA (ARDDA) in January 2009, and a First Amendment to the ARDDA in June 2010, collectively referred to as the ARDDA with Vacaville Community Housing (VCH); and

**WHEREAS**, the purpose of these agreements was to sell 267 Bennett Hill Court (APN 0129-271-180) for fair market value to Vacaville Community Housing for the purpose of development of a new affordable housing facility for homeless individuals and families to replace the facility currently located at 712 Catherine Street in Vacaville and provide an acquisition loan in the amount of \$1,260,000 within the city limits of Vacaville; and

**WHEREAS**, the California State Legislature enacted Assembly Billx1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, per Section 34176(a) of California Redevelopment Law, on January 10, 2012 the City of Vacaville elected to retain the housing assets and functions previously performed by the former redevelopment agency in accordance with Section 34176 of the Redevelopment Law; and

**WHEREAS**, both VCH and the City have mutually determined that the project will benefit from the termination of the ARDDA.

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Vacaville does hereby approve the termination of the agreements collectively referred to as the ARDDA, and authorizes the City Manager, or her designee, to execute, implement and make minor modifications to all documents necessary to complete the approved actions.

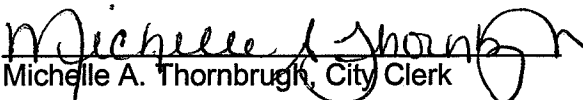
**I HEREBY CERTIFY** that the foregoing resolution was introduced and passed at a noticed meeting of the City Council of the City of Vacaville held on the 13th day of March 2012, by the following vote:

**AYES:** Council members Hunt, Mashburn, and Vice-Mayor Rowlett

**NOES:** None

**ABSENT:** Council member Harris, Mayor Hardy

**ATTEST:**

By:   
Michelle A. Thornbrugh, City Clerk

**RESOLUTION NO. 2012-025**

**RESOLUTION OF THE CITY OF VACAVILLE APPROVING THE DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT BETWEEN THE CITY OF VACAVILLE AND VACAVILLE SOCIAL SERVICES CORPORATION (VSSC) FOR THE SALE OF 267 BENNETT HILL COURT (APN 129-271-180) TO VSSC FOR THE RELOCATION AND EXPANSION OF OPPORTUNITY HOUSE**

**WHEREAS**, the City of Vacaville ("City") owns the parcel in Vacaville, California, APN 0129-271-180 on Bennett Hill Court, and the City acquired the property to remove blight and for the future development of land uses compatible with adjoining residential land uses; and

**WHEREAS**, the purpose of the transfer of the City property to Vacaville Social Services Corporation ("VSSC") is for the development of a new affordable housing facility for homeless individuals and families to replace the facility currently located at 712 Catherine Street in Vacaville; and

**WHEREAS**, in accordance with Government Code Section 37350, the proposed transfer of property is for the "common benefit" because it is transferred at a reasonable price (i.e. fair market value) and is subject to affordability restrictions, which will increase the availability of affordable housing for homeless individuals and families within the City; and

**WHEREAS**, the California State Legislature enacted Assembly Billx1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

**WHEREAS**, per Section 34176(a) of California Redevelopment Law, on January 10, 2012 the City of Vacaville elected to retain the housing assets and functions previously performed by the former redevelopment agency in accordance with Section 34176 of the Redevelopment Law; and

**WHEREAS**, the City and VSSC will transfer the property according to the terms of a Disposition, Development and Loan Agreement and the price per square foot is not less than fair market value as determined by an independent appraiser; and

**WHEREAS**, pursuant to Section 15332 (Class 32, In-fill Development Projects-Existing Facilities) of the California Environmental Quality Act (CEQA), this project is Categorically Exempt from the requirements of CEQA; and

**WHEREAS**, the City Council, as the Planning Agency for the City of Vacaville, determines that the homeless facility project conforms to and is consistent with the General Plan Land Use Element, which designates the site for Residential High Density land use, and the General Plan Housing Element, which provides for a homeless shelter on the site.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Vacaville does hereby approve the Disposition, Development and Loan Agreement between the City of Vacaville and Vacaville Social Services Corporation (VSSC) for the acquisition of 267 Bennett Hill Court (APN 129-271-180) by VSSC for the relocation and expansion of Opportunity House and authorizes the City Manager, or her designee, to execute, implement and make minor modifications to all documents necessary to complete the approved actions.

**I HEREBY CERTIFY** that the foregoing resolution was introduced and passed at a noticed meeting of the City Council of the City of Vacaville held on the 13th day of March 2012, by the following vote:

**AYES:** Council members Hunt, Mashburn, and Vice-Mayor Rowlett

**NOES:** None

**ABSENT:** Council member Harris, Mayor Hardy

**ATTEST:**

By: Michelle A. Thornbrugh  
Michelle A. Thornbrugh, City Clerk