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<td>BOUDAMES FAMILY TRUST</td>
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<td>WILST PARTNERS LP</td>
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<td>NEWBERRY 1 LLC</td>
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<td>CIRCA 1850 LLC (S J REAL ESTATE)</td>
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<td>MACIEL</td>
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<td>New Directions</td>
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<tr>
<td>LSP336</td>
<td>ACLC, Inc</td>
<td>9537 Kelley Dr</td>
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<td>LSP362</td>
<td>Center for Pos Prev (Family &amp; Youth)</td>
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<td>LSP364</td>
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<td>Boys &amp; Girls Club</td>
<td>303 Olympic Cir</td>
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<td>LSP371</td>
<td>Service First of North Calif</td>
<td>102 W Bianchi Rd</td>
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<td>LSP372</td>
<td>New Directions</td>
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<td>LSP373</td>
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<td>Christopher Bennitt/Dignity's Alcove</td>
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<td>LSP398</td>
<td>Salvation Army</td>
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## 2015-16 SOURCES AND USES
COMMUNITY DEVELOPMENT BLOCK GRANT

### SOURCES OF FUNDS:

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<tbody>
<tr>
<td>New Entitlement</td>
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<td>$3,312,531</td>
<td>$3,235,647</td>
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<td>$150,000</td>
<td>$275,000</td>
<td>$125,000</td>
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<tr>
<td>Revolving Loan Fund Program Income</td>
<td>$30,000</td>
<td>$80,000</td>
<td>$60,000</td>
<td>($20,000)</td>
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<tr>
<td>Reprogrammed Funds (includes $150,000 of RL)</td>
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<td>$1,826,409</td>
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<tr>
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<td>$5,368,940</td>
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<td>$87,785</td>
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### USES OF FUNDS:

#### Program Delivery Costs

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<tr>
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#### Housing Programs

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<tbody>
<tr>
<td>Emergency Repair Program (RL)</td>
<td>$15,000</td>
<td>$80,000</td>
<td>$60,000</td>
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#### Subrecipient Assistance

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<tbody>
<tr>
<td>San Joaquin Fair Housing</td>
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<td>$163,000</td>
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<td>$12,400</td>
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<td>$25,000</td>
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<td>Give Every Child A Chance</td>
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<td>Dignity’s Alcove</td>
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#### Economic Development Program

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**TOTAL USES OF FUNDS**

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<tbody>
<tr>
<td></td>
<td>$5,691,103</td>
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### 2016-17 SOURCES AND USES
COMMUNITY DEVELOPMENT BLOCK GRANT

#### SOURCES OF FUNDS:

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#### USES OF FUNDS:

**Program Delivery Costs**

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**Housing Programs**

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**Subrecipient Assistance**

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<tbody>
<tr>
<td>San Joaquin Fair Housing</td>
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<td>$168,781</td>
<td>$176,800</td>
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<tr>
<td>Delta College Small Business Development Center</td>
<td>$15,000</td>
<td>$10,000</td>
<td>$0</td>
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<tr>
<td>SJC HSA – Meals on Wheels</td>
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<tr>
<td>SJC Child Abuse Prevention Council</td>
<td>$35,000</td>
<td>$25,000</td>
<td>$20,000</td>
<td>($5,000)</td>
</tr>
<tr>
<td>Give Every Child A Chance</td>
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<tr>
<td>Community Center for the Blind</td>
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<tr>
<td>Salvation Army – Stockton Corps</td>
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<td>$21,825</td>
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<td>Cold Weather Shelter</td>
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<td>Women’s Center – Youth &amp; Family Services</td>
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**Economic Development Program**

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<tr>
<th></th>
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<tbody>
<tr>
<td>Façade Improvement Program</td>
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<td>$300,000</td>
<td>$50,000</td>
</tr>
<tr>
<td>Micro-Business Loan Pool (funded with RL)</td>
<td>$150,000</td>
<td>$150,000</td>
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<td>($90,000)</td>
</tr>
<tr>
<td>Micro-Business Loan Pool (funded with EN)</td>
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<td>$60,000</td>
<td>$60,000</td>
<td>$0</td>
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<tr>
<td>Emergency Grant Program</td>
<td>$15,000</td>
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<td>$10,000</td>
<td>$0</td>
</tr>
<tr>
<td>Entrepreneurship/Business Incubator</td>
<td>$25,000</td>
<td>$80,000</td>
<td>$80,000</td>
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<tr>
<td><strong>Economic Development Total</strong></td>
<td>$490,000</td>
<td>$490,000</td>
<td>$510,000</td>
<td>$20,000</td>
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**Debt Service - Section 108 Loan**

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>$2,159,098</td>
<td>$2,119,835</td>
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</table>

**TOTAL USES OF FUNDS**

<table>
<thead>
<tr>
<th></th>
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</tr>
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<tbody>
<tr>
<td>$5,368,940</td>
<td>$5,456,725</td>
<td>$4,900,292</td>
<td>($556,433)</td>
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Revised: 8/9/2018
### 2017-18 SOURCES AND USES

#### COMMUNITY DEVELOPMENT BLOCK GRANT

<table>
<thead>
<tr>
<th><strong>SOURCES OF FUNDS:</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>New Entitlement</td>
<td>$3,235,647</td>
<td>$3,143,822</td>
<td>$3,225,590</td>
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<tr>
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<td>Revolving Loan Fund</td>
<td>$60,000</td>
<td>$60,000</td>
<td>$65,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Program Income (Rehab)</td>
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<td></td>
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</tr>
<tr>
<td>Revolving Loan Fund</td>
<td>$0</td>
<td>$60,000</td>
<td>$50,000</td>
<td>($10,000)</td>
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<tr>
<td>Program Income (Micro)</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Successor Agency</td>
<td>$0</td>
<td>$0</td>
<td>$648,417</td>
<td>$648,417</td>
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<tr>
<td>Reprogrammed Funds</td>
<td>$1,866,078</td>
<td>$1,051,490</td>
<td>$790,219</td>
<td>($561,271)</td>
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<tr>
<td><strong>TOTAL SOURCES</strong></td>
<td><strong>$5,466,725</strong></td>
<td><strong>$4,900,292</strong></td>
<td><strong>$5,054,226</strong></td>
<td><strong>$153,934</strong></td>
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</table>

#### USES OF FUNDS:

<table>
<thead>
<tr>
<th><strong>Program Delivery Costs</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
</tr>
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<tbody>
<tr>
<td>Administration</td>
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<td>$709,760</td>
<td>$652,801</td>
<td>$143,941</td>
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<td>Program Delivery</td>
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<td>Code Enforcement</td>
<td>$261,752</td>
<td>$239,498</td>
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<table>
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<tr>
<th><strong>Housing Programs</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
</tr>
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<tbody>
<tr>
<td>Emergency Repair Program</td>
<td>$60,000</td>
<td>$60,000</td>
<td>$65,000</td>
<td>$5,000</td>
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<tr>
<td>Housing Loan Pool</td>
<td>$1,063,143</td>
<td>$764,179</td>
<td>$629,542</td>
<td>($134,637)</td>
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<tr>
<td>Homeless Initiative (public service/facility/clean-up)</td>
<td>$0</td>
<td>$0</td>
<td>$300,000</td>
<td><em>$300,000</em></td>
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<table>
<thead>
<tr>
<th><strong>Subrecipient Assistance</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
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<tbody>
<tr>
<td>San Joaquin Fair Housing</td>
<td>$168,781</td>
<td>$176,800</td>
<td>$176,810</td>
<td>$10</td>
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<tr>
<td>Emergency Food Bank - Food Programs</td>
<td>$20,625</td>
<td>$20,000</td>
<td>$35,000</td>
<td>$15,000</td>
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<tr>
<td>Second Harvest Food Bank</td>
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<td>$20,000</td>
<td>$30,000</td>
<td>$10,000</td>
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<td>Stockton Shelter for the Homeless</td>
<td>$0</td>
<td>$60,000</td>
<td>$90,000</td>
<td>$30,000</td>
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<tr>
<td>SJC HSA - Meals on Wheels</td>
<td>$7,500</td>
<td>$7,500</td>
<td>$14,000</td>
<td>$6,500</td>
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<td>Salvation Army - Stockton Corps</td>
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<tr>
<td>Disability Resource Agency for Indep Living</td>
<td>$0</td>
<td>$0</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Read to Me Stockton</td>
<td>$0</td>
<td>$0</td>
<td>$50,000</td>
<td>$50,000</td>
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<tr>
<td>Gospel Center Rescue Mission</td>
<td>$0</td>
<td>$0</td>
<td>$12,000</td>
<td>$12,000</td>
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<tr>
<td>Tuleburg Press</td>
<td>$0</td>
<td>$0</td>
<td>$35,000</td>
<td>$35,000</td>
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<tr>
<td>SJC Child Abuse Prevention Council</td>
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<td>($20,000)</td>
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<td>S.T.A.N.D.</td>
<td>$75,000</td>
<td>$75,000</td>
<td>$0</td>
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<tr>
<td>Other Subrecipients</td>
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<td>$63,842</td>
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<td>($63,842)</td>
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<tr>
<td><strong>Subrecipient Assistance Total</strong></td>
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<td><strong>$443,142</strong></td>
<td><strong>$476,810</strong></td>
<td><strong>$33,668</strong></td>
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<table>
<thead>
<tr>
<th><strong>Economic Development Program</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
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</thead>
<tbody>
<tr>
<td>Façade Improvement Program</td>
<td>$250,000</td>
<td>$300,000</td>
<td>$350,000</td>
<td><em>$50,000</em></td>
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<tr>
<td>Micro-Business Loan Pool (funded with RL)</td>
<td>$0</td>
<td>$60,000</td>
<td>$50,000</td>
<td>($10,000)</td>
</tr>
<tr>
<td>Micro-Business Loan Pool (funded with EN)</td>
<td>$150,000</td>
<td>$60,000</td>
<td>$0</td>
<td>($60,000)</td>
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<tr>
<td>Emergency Grant Program</td>
<td>$10,000</td>
<td>$10,000</td>
<td>$10,000</td>
<td>$0</td>
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<tr>
<td>Entrepreneurship/Business Incubator</td>
<td>$30,000</td>
<td>$80,000</td>
<td>$90,000</td>
<td>$0</td>
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<tr>
<td>Fresh Produce Access Grant</td>
<td>$0</td>
<td>$0</td>
<td>$40,000</td>
<td><em>$40,000</em></td>
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<tr>
<td><strong>Economic Development Total</strong></td>
<td><strong>$490,000</strong></td>
<td><strong>$510,000</strong></td>
<td><strong>$530,000</strong></td>
<td><strong>$20,000</strong></td>
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<table>
<thead>
<tr>
<th><strong>Debt Service - Section 108 Loan</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
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<tbody>
<tr>
<td>$2,119,835</td>
<td>$1,682,259</td>
<td>$1,918,559</td>
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<table>
<thead>
<tr>
<th><strong>TOTAL USES OF FUNDS</strong></th>
<th><strong>2015-16 ALLOCATION</strong></th>
<th><strong>2016-17 ALLOCATION</strong></th>
<th><strong>2017-18 ALLOCATION</strong></th>
<th><strong>DIFFERENCE: 2016-17 &amp; 2017-18</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>$5,466,725</strong></td>
<td><strong>$4,900,292</strong></td>
<td><strong>$5,054,226</strong></td>
<td><strong>$153,934</strong></td>
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</table>

*2017-18 allocation contains funding contingent upon receipt of Successor Agency payment.*
# 2018-2019 Sources and Uses
## Community Development Block Grant

<table>
<thead>
<tr>
<th>Sources of Funds:</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Entitlement</td>
<td>3,143,802</td>
<td>3,225,690</td>
<td>3,451,760</td>
<td>226,170</td>
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<tr>
<td>Program Income</td>
<td>285,000</td>
<td>275,000</td>
<td>200,000</td>
<td>(75,000)</td>
</tr>
<tr>
<td>Revolving Loan Fund Program Income (Rehab)</td>
<td>60,000</td>
<td>65,000</td>
<td>60,000</td>
<td>(5,000)</td>
</tr>
<tr>
<td>Revolving Loan Fund Program Income (Micro)</td>
<td>60,000</td>
<td>50,000</td>
<td>50,000</td>
<td>-</td>
</tr>
<tr>
<td>Successor Agency Repayment Program Income</td>
<td>-</td>
<td>648,417</td>
<td>1,856,742</td>
<td>1,208,325</td>
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<tr>
<td>Reprogrammed Funds</td>
<td>1,351,490</td>
<td>790,219</td>
<td>1,098,000</td>
<td>307,781</td>
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<tr>
<td><strong>Total Sources</strong></td>
<td><strong>$4,900,292</strong></td>
<td><strong>$5,054,226</strong></td>
<td><strong>$6,718,502</strong></td>
<td><strong>$1,664,276</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Uses of Funds:</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
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<tbody>
<tr>
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<td>852,801</td>
<td>1,078,886</td>
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<td>281,414</td>
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<td><strong>Total</strong></td>
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<td><strong>$1,134,215</strong></td>
<td><strong>$1,378,886</strong></td>
<td><strong>$244,667</strong></td>
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<th>Housing Programs</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
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</thead>
<tbody>
<tr>
<td>Emergency Repair Program</td>
<td>60,000</td>
<td>65,000</td>
<td>60,000</td>
<td>(5,000)</td>
</tr>
<tr>
<td>Housing Loan Pool</td>
<td>764,179</td>
<td>629,542</td>
<td>362,688</td>
<td>(266,854)</td>
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<tr>
<td>Homeless Initiative</td>
<td>-</td>
<td>300,000</td>
<td>435,000</td>
<td>135,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$824,179</strong></td>
<td><strong>$994,542</strong></td>
<td><strong>$857,688</strong></td>
<td><strong>$(136,854)</strong></td>
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<table>
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<tr>
<th>Subrecipient Assistance</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
</tr>
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<tbody>
<tr>
<td>San Joaquin Fair Housing</td>
<td>176,800</td>
<td>176,610</td>
<td>185,745</td>
<td>8,935</td>
</tr>
<tr>
<td>Gospel Center Rescue Mission</td>
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<td>12,000</td>
<td>118,255</td>
<td>106,255</td>
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<tr>
<td>Tuleburg Press</td>
<td>-</td>
<td>50,000</td>
<td>50,000</td>
<td>-</td>
</tr>
<tr>
<td>Emergency Food Bank – Food Programs</td>
<td>20,000</td>
<td>35,000</td>
<td>30,000</td>
<td>(5,000)</td>
</tr>
<tr>
<td>Second Harvest Food Bank</td>
<td>20,000</td>
<td>30,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Disability Resource Agency for Indep Living</td>
<td>-</td>
<td>10,000</td>
<td>30,000</td>
<td>20,000</td>
</tr>
<tr>
<td>SJC HSA – Meals on Wheels</td>
<td>7,500</td>
<td>14,000</td>
<td>10,000</td>
<td>(4,000)</td>
</tr>
<tr>
<td>Community Medical Centers, Inc - Public Facility</td>
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<td>46,000</td>
<td>46,000</td>
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<tr>
<td>Kelly's Angels Foundation</td>
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<td>-</td>
<td>15,000</td>
<td>15,000</td>
</tr>
<tr>
<td>Stockton Shelter for the Homeless</td>
<td>60,000</td>
<td>80,000</td>
<td>-</td>
<td>(90,000)</td>
</tr>
<tr>
<td>Salvation Army – Stockton Corps</td>
<td>-</td>
<td>24,000</td>
<td>-</td>
<td>(24,000)</td>
</tr>
<tr>
<td>S.T.A.N.D.</td>
<td>75,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other Subrecipients</td>
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<td>-</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$550,000</strong></td>
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<table>
<thead>
<tr>
<th>Economic Development Program</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Façade Improvement Program</td>
<td>300,000</td>
<td>350,000</td>
<td>350,000</td>
<td>-</td>
</tr>
<tr>
<td>Micro-Business Loan Pool</td>
<td>120,000</td>
<td>50,000</td>
<td>50,000</td>
<td>-</td>
</tr>
<tr>
<td>Emergency Grant Program</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td>-</td>
</tr>
<tr>
<td>Entrepreneurship/Business Incubator</td>
<td>80,000</td>
<td>80,000</td>
<td>80,000</td>
<td>-</td>
</tr>
<tr>
<td>Fresh Produce Access Grant</td>
<td>-</td>
<td>40,000</td>
<td>-</td>
<td>(40,000)</td>
</tr>
<tr>
<td>Infrastructure &amp; Oak Park Ice Arena</td>
<td>-</td>
<td>-</td>
<td>1,500,000</td>
<td>1,500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$510,000</strong></td>
<td><strong>$530,000</strong></td>
<td><strong>$1,990,000</strong></td>
<td><strong>$1,460,000</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Debt Service - Section 108 Loan</th>
<th>2016-17 Allocation</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Uses of Funds</strong></td>
<td><strong>$4,900,292</strong></td>
<td><strong>$5,054,226</strong></td>
<td><strong>$6,718,502</strong></td>
<td><strong>$1,664,276</strong></td>
</tr>
</tbody>
</table>
## 2019-2020 SOURCES AND USES
### COMMUNITY DEVELOPMENT BLOCK GRANT

#### SOURCES OF FUNDS:

<table>
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<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>New Entitlement</td>
<td>3,225,590</td>
<td>3,451,760</td>
<td>3,329,801</td>
<td>(121,959)</td>
</tr>
<tr>
<td>Program Income</td>
<td>275,000</td>
<td>200,000</td>
<td>175,000</td>
<td>(25,000)</td>
</tr>
<tr>
<td>Revolving Loan Fund Program Income (Rehab)</td>
<td>65,000</td>
<td>60,000</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Revolving Loan Fund Program Income (Micro)</td>
<td>50,000</td>
<td>50,000</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>Successor Agency Repayment Program Income</td>
<td>648,417</td>
<td>1,856,742</td>
<td>708,426</td>
<td>(1,150,316)</td>
</tr>
<tr>
<td>Reprogrammed Funds</td>
<td>790,219</td>
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<td>1,000,000</td>
<td>(98,000)</td>
</tr>
<tr>
<td><strong>TOTAL SOURCES</strong></td>
<td><strong>$ 5,054,226</strong></td>
<td><strong>$ 6,718,502</strong></td>
<td><strong>$ 5,323,227</strong></td>
<td><strong>($1,395,275)</strong></td>
</tr>
</tbody>
</table>

#### USES OF FUNDS:

##### Program Delivery Costs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>852,801</td>
<td>1,078,836</td>
<td>864,645</td>
<td>(214,241)</td>
</tr>
<tr>
<td>Program Delivery</td>
<td>281,414</td>
<td>300,000</td>
<td>248,353</td>
<td>(51,647)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,134,215</strong></td>
<td><strong>$1,379,886</strong></td>
<td><strong>$1,112,998</strong></td>
<td><strong>($266,888)</strong></td>
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##### Housing Programs

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Emergency Repair Program</td>
<td>65,000</td>
<td>60,000</td>
<td>60,000</td>
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<tr>
<td>Housing Loan Pool</td>
<td>628,642</td>
<td>362,888</td>
<td>300,000</td>
<td>(62,688)</td>
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<tr>
<td>Homeless Initiative</td>
<td>300,000</td>
<td>435,900</td>
<td>106,343</td>
<td>(328,557)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$994,542</strong></td>
<td><strong>$857,888</strong></td>
<td><strong>$466,343</strong></td>
<td><strong>($391,545)</strong></td>
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##### Subrecipient Assistance

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<tr>
<th></th>
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<tbody>
<tr>
<td>San Joaquin Fair Housing</td>
<td>176,810</td>
<td>185,745</td>
<td>150,000</td>
<td>(35,745)</td>
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<tr>
<td>Gospel Center Missions</td>
<td>12,000</td>
<td>118,255</td>
<td>73,932</td>
<td>(44,323)</td>
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<td>Read to Me Stockton</td>
<td>50,000</td>
<td>50,000</td>
<td>25,000</td>
<td>(25,000)</td>
</tr>
<tr>
<td>Tuleburg Press</td>
<td>35,000</td>
<td>35,000</td>
<td>25,000</td>
<td>(10,000)</td>
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<tr>
<td>Emergency Food Bank – Food Programs</td>
<td>35,000</td>
<td>30,000</td>
<td>33,500</td>
<td>3,500</td>
</tr>
<tr>
<td>Second Harvest Food Bank</td>
<td>30,000</td>
<td>30,000</td>
<td>20,000</td>
<td>(10,000)</td>
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<tr>
<td>Disability Resource Agency for Independent Living</td>
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<td>30,000</td>
<td>15,000</td>
<td>(15,000)</td>
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<td>SJC HSA – Meals on Wheels</td>
<td>14,000</td>
<td>10,000</td>
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<td>Community Center for the Blind and Visually Impaired</td>
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<td>-</td>
<td>7,550</td>
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<tr>
<td>Bread of Life</td>
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<td>-</td>
<td>15,000</td>
<td>15,000</td>
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<tr>
<td>Children's Home of Stockton</td>
<td>-</td>
<td>-</td>
<td>25,000</td>
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<tr>
<td>Kelly's Angels Foundation</td>
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<td>-</td>
<td>15,000</td>
<td>15,000</td>
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<tr>
<td>Stockton Shelter for the Homeless</td>
<td>90,000</td>
<td>-</td>
<td>125,000</td>
<td>125,000</td>
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<tr>
<td>Salvation Army – Stockton Corps</td>
<td>24,000</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Community Medical Centers, Inc - Public Facility</td>
<td>46,000</td>
<td>-</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$476,810</strong></td>
<td><strong>$550,000</strong></td>
<td><strong>$541,882</strong></td>
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##### Economic Development Program

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<tr>
<th></th>
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<tbody>
<tr>
<td>Façade Improvement Program</td>
<td>350,000</td>
<td>350,000</td>
<td>350,000</td>
<td></td>
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<tr>
<td>Micro-Business Loan Pool</td>
<td>50,000</td>
<td>50,000</td>
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<tr>
<td>Emergency Grant Program</td>
<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>Entrepreneurship/Business Incubator</td>
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<td>Fresh Produce Access Grant</td>
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<td>30,000</td>
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<tr>
<td>Downtown Infill Infrastructure Program</td>
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<td>1,500,000</td>
<td>900,000</td>
<td>(600,000)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$530,000</strong></td>
<td><strong>$1,990,000</strong></td>
<td><strong>$1,420,000</strong></td>
<td><strong>($570,000)</strong></td>
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##### Debt Service - Section 108 Loan

<table>
<thead>
<tr>
<th>Year</th>
<th>2017-18 Allocation</th>
<th>2018-19 Allocation</th>
<th>2019-20 Allocation</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,916,650</td>
<td>1,941,928</td>
<td>1,781,904</td>
<td>(160,024)</td>
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<tr>
<td><strong>TOTAL USES OF FUNDS</strong></td>
<td><strong>$5,084,226</strong></td>
<td><strong>$6,718,502</strong></td>
<td><strong>$5,323,227</strong></td>
<td><strong>($1,395,275)</strong></td>
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</table>
I. **ADMINISTRATION**

Administration of the City of Stockton Commercial Loan Program shall be the responsibility of the Director of the Economic Development Department, including promoting the program and processing all applications.

The Commercial Loan Program will be funded using Community Development Block Grant (CDBG), or other funds that may become available. Funding is approved each fiscal year during the budget process.

II. **TYPES OF ASSISTANCE**

Three types of assistance will be available to eligible businesses under this program. The parameters of the various components of the Commercial Loan Program are set forth below.

A. **Facade Improvement Forgivable Loan Program**

The City will lend up to $20,000 in the form of a forgivable loan of up to $10,000 and up to an additional $10,000 dollar-for-dollar matching component based on owner contribution. The following terms apply:

1. Only commercial properties located within the Waterfront Merger, Midtown, South Stockton and North Stockton former Redevelopment Project Areas are eligible for this program. Properties outside of these areas will be reviewed on a case by case basis for eligibility in accordance with CDBG regulations.

2. Facade Improvement Forgivable Loans shall only be used for exterior, cosmetic improvements to the building.

3. Properties are eligible for one Facade Improvement Forgivable Loan and one matching component per eligible building or per 50 lineal feet of eligible building frontage.

4. The interest rate will be ten percent (10%) simple interest.

5. The term of the Facade Improvement Forgivable Loan, including matching component, will be six (6) years from the date of the deed of trust as defined in the Loan Agreement.
6. Principal and interest payments will be forgiven on an annual basis, beginning 12 months from the date of the deed of trust, if the property is in compliance with all other program guidelines and is maintained in a way consistent with the City of Stockton building and zoning codes, including keeping the property free of graffiti and blight. In the event of default, the borrower will be required to repay principal and interest on the remaining balance of the loan.

B. **Enterprise Zone Facade Improvement Loan Program**

The City will lend up to $25,000 in the form of a repayable loan to property owners for facade improvements on commercial/industrial, nonresidential properties.

1. Properties must be located in the San Joaquin Enterprise Zone within the Stockton city limits.

2. Enterprise Zone Facade Improvement Loans shall only be used for exterior, cosmetic improvements to the building.

3. Properties are eligible for one facade improvement loan per eligible building or per 50 lineal feet of building frontage.

4. The interest rate on the loan will be zero percent (0%).

5. The term of the loan will be a maximum of 10 years, based upon the total loan amount as follows:

   - $ 1,000 - $ 5,999  5 Year Term
   - 6,000 – 10,999    7 Year Term
   - 11,000 – 25,000   10 Year Term

6. Monthly amortized payments will be required beginning on the first day of the month first following the recordation of the deed of trust securing the loan.

C. **Emergency Grant Program**

The City will grant, on a one-time basis, up to $7,500, unsecured, per building to property owners and/or business owners for immediate relief of emergency conditions which endanger the health and safety of employees or the general public, and for which private funds are not readily available. These grants are provided at the discretion of the Director of the Economic Development Department based upon staff recommendation.
III. **ELIGIBILITY**

A. **Overall Eligibility**

In order to be eligible for CDBG funding, each activity must qualify as meeting one or more of the three National Objectives of the Community Development Block Grant (CDBG) program, as set forth by the U.S. Department of Housing and Urban Development (HUD) in 24 CFR Part 570.208. These National Objectives are summarized as follows:

1. **Low/Moderate Income Benefit** – The assisted activity must benefit low and/or moderate income persons in at least one of the four ways specifically defined by regulation. Low and Moderate income levels for the Stockton Metropolitan Statistical Area shall be determined by HUD.

2. **Aid in the Prevention or Elimination of Slums and Blight** – The assisted activity must address the prevention or elimination of slums or blight on either an area basis or a spot basis, or in an urban renewal area as further defined in the regulations. Assistance on the basis of spot blight is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety (24 CFR Part 570.208 (b)(2)).

3. **Meet an Urgent Need** – An assisted activity must meet a community development need having a particular urgency where a serious and immediate threat to the health or welfare of the community is involved and no other sources of funding are available. An example would be rebuilding after a flood or earthquake.

B. **Eligible Applicants**

1. **Facade Improvement Forgivable Loan**
   a. Eligible applicants are those persons who are owners of commercial and/or non-profit property located within the Waterfront Merger, Midtown, South Stockton and North Stockton former Redevelopment Project Areas. Preference will be given to office and/or retail establishments. Properties outside of these areas will be reviewed on a case by case basis for eligibility in accordance with CDBG regulations.
   b. Projects must be for the purpose of improving commercial or non-profit real property and must contribute to the economic development and/or qualify of life within targeted areas as
determined by the City Manager and/or Economic Development Director.

3. **Enterprise Zone Facade Improvement**
   a. Property owners applying for the above loan must be located in both the San Joaquin Enterprise Zone and Stockton City limits.
   b. Applicants must demonstrate a financial need.

4. **Emergency Grant**
   a. Both commercial property and/or businesses located within the Waterfront Merger, Midtown, South Stockton and North Stockton former Redevelopment Project Area are eligible. Properties outside of these areas will be reviewed on a case by case basis for eligibility in accordance with CDBG regulations.
   b. Funding is available strictly for the purpose of immediate relief of emergency conditions which endanger the health and safety of employees or the general public.
   c. Applicants must demonstrate a financial need.

All businesses must be properly zoned.

C. **Eligible Project Areas**

Commercial Loan Program projects must be located in one of the following areas unless otherwise determined through program restrictions as described in Section II.

- Incorporated areas located within the San Joaquin Enterprise Zone and Stockton City limits;
- Waterfront Merger, Midtown, South Stockton and North Stockton former Redevelopment Project Areas. Properties outside of these areas will be reviewed on a case by case basis for eligibility in accordance with CDBG regulations.
- Additional areas as designated by the City Manager or his designee.

D. **Eligible Projects**

Commercial Loan Program projects must be for the purpose of improving commercial or non-profit real property and must contribute to the economic development within targeted areas as determined by the City Manager and/or Economic Development Director.
1. Eligible Emergency Grant projects shall include the following:

- Allieviate any code violations where health and safety of employees and/or public is endangered
- Any other improvements to real property eligible under guidelines established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR Part 570.201, 570.202, 570.203).

2. Eligible Facade Improvement Forgivable Loan and Enterprise Zone Facade Improvement Loan projects are limited to exterior and cosmetic improvements to the structure.

E. Ineligible Projects

1. Ineligible Commercial Loan Program activities shall include the following:

- Purchase of equipment or tools
- Expenses incurred prior to loan/grant approval and environmental review
- Any assistance to religious entities to the extent that the structures are used for inherently religious activities as outlined in 24 CFR Part 570.200(j). Funds may be used for rehabilitation of structures only to the extent that those structures are used for eligible activities as authorized under 24 CFR Part 570.201-570.206.
- Any activity which is not authorized under 24 CFR Part 570.201-570.206 or that is expressly stated as ineligible under 24 CFR Part 570.207

2. Properties under consideration for development projects and/or acquisition by the City are not eligible without prior approval by the City Manager or his designee.

IV. LOAN APPROVAL

Loans in amounts below the current City Council threshold shall be approved by the City Manager, or his designee, upon staff review and recommendation. With respect to loans over the approved Council threshold, approval action by the City Manager shall be in the form of a recommendation to the City Council. The Council threshold is adjusted each fiscal year and approved by the City Council at the time of budget adoption.
V. **LOAN REQUIREMENTS**

A. **Loan-to-Value**

The loan-to-value ratio for loans under the Commercial Loan Program shall not ordinarily exceed ninety percent (90%) of the total estimated value of the property and the cost of rehabilitation. An appraisal of the property may be ordered by the City if necessary to establish an accurate estimate of value. The Economic Development Director may elect to waive this requirement.

B. **Maximum Loan Amount**

The maximum loan amount to be expended for commercial rehabilitation under this program may not exceed $20,000 per 50-lineal feet of building frontage in Facade Improvement Loan funds not to exceed $100,000. The Economic Development Director shall have discretionary authority to reduce or increase funding for a project based upon specific criteria such as remaining funds, impact on surrounding neighborhoods, and financial need.

C. **Security**

All loans shall be secured by a Promissory Note and Deed of Trust containing an acceleration clause in the event of default and an alienation clause to preclude unauthorized transfer of the secured property.

VI. **LOAN APPLICATIONS**

A. **Separate Applications**

Applicants may submit separate applications for an Emergency Grant, a Facade Improvement Forgivable Loan, and an Enterprise Zone Facade Improvement Loan, for the same building/parcel.

B. **Additional Facade Assistance**

A property owner can qualify for additional facade improvement forgivable loans on a match basis only after a previous facade improvement forgivable loan has been completely forgiven. Additional assistance is subject to funding limits per building or per lineal footage.

C. **Change of Ownership**

Properties previously awarded a Facade Improvement Forgivable Loan can qualify for a new forgivable loan upon a change of ownership, subject to funding limitations and existing loan balance outstanding. The change of ownership must represent a complete change in owners and not a name change or partner substitution.
VII. **LOAN FEES**

A. **Loan Application Fee**

An application fee is required for all projects except Emergency Grants. The application fee is adjusted each fiscal year and is approved by the City Council at the time of budget adoption. The current application fee can be found in the City of Stockton’s adopted Fee Schedule. This fee is non-refundable and is used to pay for loan processing fees incurred by the City.

B. **Loan Processing Fees**

Additional fees and costs incurred by the City to process the loan application shall be paid by the applicant at closing. These may include appraisal fees, credit checks, title search fees, or other fees which are a necessary part of the loan application process.

VIII. **DISBURSEMENT OF FUNDS**

A. **Total Project Costs Less Than $100,000**

Upon submission and review of required weekly labor compliance documentation and work invoices, funds will be authorized to the contractor. City funds (both CDBG and/or other funds) will be the last funds used for a project after private funding commitments have been exhausted. Final payment is subject to all required documentation completed satisfactorily, and the submittal of mechanic’s/workman's lien releases. Weekly labor compliance documentation is still required for the non-City funded work.

B. **Total Project Costs Greater Than $100,000**

City funds (i.e., CDBG and/or other funds) and all private funding must be committed to the project prior to a Notice to Proceed from the City. The City will consider alternate arrangements that suitably secure the funds and ensure that all funding necessary for the project is committed prior to construction beginning. Payments will be authorized to the general contractor by the City upon submission of required weekly labor compliance documentation and work invoices in the same manner as smaller projects. City funds will be the last funds used.
IX. LOAN SERVICING

A. Loan Servicing

1. Loan servicing shall be the responsibility of the Director of the Economic Development Department with authority, at their discretion, to utilize the services of a bank, a lending institution, a loan servicing institution, or staff in the actual servicing of loans, commencing with the loan closing and terminating either at the time the loan is forgiven in entirety or is paid in full.

2. Loan repayment shall begin three (3) months from the date of the Loan Agreement. Interest shall begin to accrue the first day of the month following the date of recordation of the deed of trust. Facade Improvement Forgivable Loans shall begin forgiveness of annual debt service twelve (12) months from date of recordation of the deed of trust.

B. Delinquency

1. In the event of delinquencies, the loan service provider shall so notify the Director of the Economic Development Department of said delinquency and commence collection of the delinquent account using Economic Development staff and/or City Attorney staff as deemed appropriate.

2. All accounts delinquent fifteen (15) days or more shall be assessed a late charge equal to four percent (4%) of the monthly payment. Late charges shall be assessed on the 16th day of each month that the account remains delinquent. Loan service provider shall send past due notices and assessment of late charges to all accounts when said account is sixteen (16) days past due.

C. Default

1. Facade Improvement Forgivable Loan Default

Keeping graffiti and other blight off of CDBG and/or other funds assisted commercial buildings is a requirement of a Facade Improvement Forgivable Loan. Redevelopment staff will periodically inspect buildings with outstanding Facade Improvement loans to ensure compliance. If blight is detected, staff will notify the property owner, who will then have fifteen (15) days to remove the blight. If graffiti is detected, staff will notify the property owner that to comply with the Stockton Municipal Code (SMC) graffiti must be removed within twenty-four (24) hours. If the borrower fails to comply with the SMC graffiti removal requirement or blight is not removed within the stated period or if an extension is not
authorized, monthly billing for the amount outstanding plus interest shall begin. Billings shall continue until the graffiti or blight is satisfactorily removed. The borrower is required to pay for any amounts billed due to enforcement of the Forgivable Loan Agreement, and that amount is not eligible for forgiveness. Nonpayment will be treated in accordance with the City’s regular loan policies as outlined above.

Additionally, failure to pay and properly document Davis-Bacon and/or State prevailing wages will constitute a default.

2. Enterprise Zone Facade Improvement Loan Default

Keeping graffiti and other blight off of CDBG and/or other funds assisted commercial buildings is a requirement of an Enterprise Zone Facade Improvement Loan. Economic Development staff will periodically inspect buildings with outstanding Facade Improvement Loans to ensure compliance. If blight is detected, staff will notify the property owner who will then have fifteen (15) days to remove the blight. If graffiti is detected, staff will notify the property owner that to comply with the Stockton Municipal Code (SMC) graffiti must be removed within twenty-four (24) hours. If the borrower fails to comply with the SMC graffiti removal requirement or blight is not removed within the stated period or if an extension is not authorized, the loan will be considered in default. Nonpayment of the facade improvement loan will be treated in accordance with the City’s regular loan policies as outlined above and referred to the City Attorney’s Office. The City Attorney’s Office may, at its discretion, initiate formal foreclosure procedures. The City Attorney shall proceed with formal “Notice of Default” and “Notice of Trustee’s Sale,” under the provisions of the Deed of Trust securing such a loan, to accomplish the sale under said Deed of Trust.

Additionally, failure to pay and properly document Davis-Bacon and/or State prevailing wages will constitute a default.

X. ASSUMPTION POLICY

All loans are assumable, providing the successor in interest would otherwise qualify for the loan they are assuming and subject to the approval of the Economic Development Director. Approval of a loan assumption will be based on the same criteria used to evaluate new applications. These include compatibility with the goals and objectives of the program, the assignee’s ability to repay the loan, and willingness to comply with the terms and conditions of the existing loans.
XI. REFINANCING OF EXISTING DEBT

The Economic Development Director shall have discretionary authority to allow the refinancing of existing debt consistent with federal guidelines and restrictions. The City Manager, or his designee, will have signing authority for all subordination agreements.

XII. ANTI-DISPLACEMENT PROVISIONS

It is neither the intent nor desire of this program to displace existing businesses, but to improve and upgrade the physical facilities of such businesses, and strengthen and expand their existing markets. The following provisions, therefore, provide a mechanism through which both property owners and business tenants can benefit from this program.

A. Existing Tenants

If there is an existing tenant, the term of the lease must cover a period of one year from loan closing. If not, a new lease agreement between the property owner and tenant, covering a period of at least one (1) year from the date of the loan closing, must be submitted prior to loan closing.

B. Displaced Tenants

Should displacement occur, reasonable relocation costs will be provided to displaced tenant businesses and included as part of the loan package, consistent with federal relocation requirements.

XIII. CERTIFICATION AND COMPLIANCE REQUIREMENTS

A. Environmental Review Requirements

All projects shall be subject to a preliminary assessment of potential environmental impacts.

B. Davis-Bacon Federal and/or State Wage Rate Requirements

Because federal and/or local funds are used, Davis-Bacon and/or State prevailing wage rates must be paid to onsite laborers or mechanics employed by contractors or subcontractors when the total construction cost is greater than $2,000. Davis-Bacon and/or State wage rates will apply to an entire project whenever that project is financed “in whole or in part” by federal or local funds. Use of volunteer labor is not allowed.

C. Conformance to Codes

All rehabilitation activities must conform with City of Stockton building and zoning codes, and be performed by a licensed general contractor or
subcontractor. The borrower is responsible for any and all building permits or other permits that may be necessary.

D. Competitive Bid

The applicant must submit a minimum of two competitive bids for the project as defined. The project loan amount will be based on the lowest acceptable bid as determined by the assigned Commercial Loan Program administrator. The applicant may select a contractor other than the lowest bidder unless the low bidder is a Minority or Women Owned Business (MBE/WBE). However, if a higher bidder is selected, the applicant will be required to pay the difference between the bid submitted by chosen contractor and lowest bidder. Prior to the soliciting of bids, the borrower is required to provide the City with a written scope of work to be performed. From that scope of work, the City’s Labor Compliance Consultant will obtain the current prevailing wage determination for each labor trade involved.

E. Contractor Requirements

1. For facade improvement projects and emergency grants the City, at its option and depending on the work to be done, may authorize the use of contractors licensed to perform specialized tasks.

2. Under federal and state law, all contractors working on projects utilizing federal and/or local funds must pay prevailing wage rates. Established hourly prevailing wage rates shall be paid to all employees performing work on the project site. The current Davis-Bacon and/or State prevailing wage determination will be obtained by the Labor Compliance Consultant prior to the bidding of each job. All contracts and subcontractors selected will pay prevailing wage rates, and provide the City with the necessary supporting documentation required by federal and state law. No payment will be authorized until the required paperwork has been turned into the City and the City is satisfied that the contractor is in full compliance with federal and state law. Borrower is responsible for ensuring that contractor and all subcontractors are aware of and are paying prevailing wage rates. Noncompliance with this requirement is grounds for default.

3. The contractor shall comply with Equal Employment Opportunity (EEO) provisions relative to Executive Order 11246 and related acts, rules and regulations. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. All bidders are required to complete the City’s Affirmative Action forms.
F. **Relocation Benefits**

Relocation benefits and assistance to permanently displaced businesses as a result of rehabilitation activities must be paid by the owner, either out of pocket or as part of the loan proceeds. The amount and level of such assistance must be specified prior to loan closing, consistent with federal relocation requirements.

G. **Hiring Plan (for CDBG-funded projects only)**

Where the activities are determined to be eligible based on the creation or retention of low and moderate income jobs, a Hiring Plan must be submitted, assuring the availability of such jobs to low and moderate income individuals and economically disadvantaged persons. Such a plan must meet the public benefit standard as noted in 24 CFR 570.209(b)(3)(i)(A) or (B). Such a Hiring Plan may be prepared in conjunction with WorkNet of San Joaquin County.

XIV. **INTERNAL ADMINISTRATIVE PROCEDURES**

A. **Pre-Application Conference**

City staff will meet with prospective applicants to determine eligibility and provide information about the City’s Commercial Loan Program.

B. **Loan Application and Detailed Scope of Work**

The applicant must submit a complete application and detailed scope of work, along with the current application fee adopted by Council each fiscal year and listed in the City’s Fee Schedule. No loan application will be processed by City staff until all required documents have been submitted. The Labor Compliance Consultant will request the appropriate wage rate determinations based upon the submitted scope of work and a ballpark estimate of cost.

C. **Determination of Eligibility**

Loan applicants will be reviewed by Economic Development Department staff regarding the location and eligibility of the proposed property for rehabilitation and conformance of the project with program guidelines. City staff shall conduct an initial inspection of the property. When necessary, a joint inspection of the property will be performed by the appropriate Building Department staff. The purpose of these inspections is to discover any obvious code violations that must be addressed and to point out any code required upgrades that would be triggered by a rehabilitation.
D. **Bidding Process**

The applicant is required to submit at least two bids from minority or woman owned (MBE/WBE) firms for each component of work to be completed, or document the Good Faith Efforts attempted. City staff will provide information on locating MBE/WBE firms to the applicant. A minimum of two competitive bids are required for all work to be performed.

E. **Architectural Review**

Facade Improvement Loans require that any changes or additions to the exterior of a building financed by CDBG funds be authorized by the City’s Design Review Committee in conformance with the Stockton Citywide Design Guidelines. Additionally, the Cultural Heritage Board must authorize a Certificate of Appropriateness for all facade improvements to buildings with historical significance. The City will contribute up to $2,500 for architectural services. If for any reason the applicant should decide not to proceed with his/her facade improvement project, any expenses incurred by the City for such architectural services shall be reimbursed by the applicant.

F. **Environmental Review**

An environmental review is required for all CDBG-funded projects. When necessary, the State Historic Properties Office (SHPO) and/or the National Advisory Council must be consulted. The actual procedures will vary on a case by case basis as mandated by 24 CFR Part 58. Projects funded with Redevelopment tax increment are categorically exempt per Title 14, Chapter 3, Article 19, Section 15301 of the California Environmental Quality Act (CEQA).

G. **Bid Review and Evaluation of Proposed Project Costs**

The assigned program administrator shall review all bids for consistency to the detailed scope of work and shall evaluate the proposed project costs to ensure that the bids are fair and equitable.

J. **Loan Approval**

Based on the analysis of the information obtained, a loan decision will be made by the City Manager or his designee.

K. **Pre-Construction Conference**

The City’s Economic Development Department staff and Labor Compliance Consultant shall conduct a Pre-Construction Conference with the applicant and all contractors and sub-contractors to ensure understanding of and compliance with the prevailing wage requirements and reporting responsibilities. Federal Labor Standards Provisions,
required prevailing wages and documentation, and Affirmative Action Guidelines will be provided to the applicant during the preconstruction meeting.

L. Construction Documents Prepared

Prior to loan closing, copies of construction contracts, approved construction plans, building permits, verification of insurance and any other required documentation will be submitted to the program manager at the Economic Development Department.

M. Loan Closing/Notice to Proceed

Loan documents will be executed between the borrower and the City (e.g. Note, Loan Agreement, Deed of Trust, and any other document appropriate to the specific project).

N. Inspection of Property/Disbursement of Funds

City staff will inspect the property to ensure compliance with program guidelines and that the submitted work invoices represent work actually completed. Staff and/or the City’s Labor Compliance Consultant may perform project site interviews with laborers as required to ensure payment of prevailing wages and shall inspect to ensure that the proper bulletin notices are posted.

Funds for CDBG and/or other sources funded commercial activities will be disbursed in the form of periodic payments according to a prearranged schedule of payments. Payments will be made upon the completion and inspection of various components of the project by the assigned program administrator. Funds will only be disbursed upon completion of the required work and the submission of any necessary documentation regarding Federal Labor Standards and Prevailing Wage Rates.

Adopted December 8, 1986
Revised October 24, 1988 (Resolution No. 88-0680)
Revised September 5, 1995 (Resolution No. 95-0436)
Revised November 9, 1999 (Resolution No. 99-0530)
Revised December 16, 2003 (Resolution No. 03-0741)
Revised July 10, 2007 (Resolution No. R07-028 & 07-0286)
Revised March 20, 2012 Housing Committee approval
Guidelines

For

Commercial Loan Programs

Administered By

City of Stockton Economic Development Department

Funded With

Community Development Block Grant Funds
(CDBG)

Revised December 22, 2020
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1.0 Administration

Administration of the City of Stockton Commercial Loan Program shall be the responsibility of the Director of the Economic Development Department, or designee, including promoting the program and processing applications.

The Commercial Loan Program is funded with Community Development Block Grant (CDBG) dollars, or other funds that may become available. Funding is approved each fiscal year during the budget process.

2.0 Types of Assistance

Two types of assistance will be available to eligible businesses under this program. The parameters of the various components of the Commercial Loan Program are set forth below.

2.1 Facade Improvement Forgivable Loan Program

The City will lend up to $20,000 in the form of a forgivable loan, with up to $10,000 in base loan funds and up to an additional $10,000 on a dollar-for-dollar matching basis depending on owner contribution. The following terms apply:

A. Only commercial properties located within a Low/Moderate Income area of the Stockton city limits are eligible for this program. Properties outside of these areas will be reviewed on a case-by-case basis for eligibility in accordance with CDBG regulations.

B. Facade Improvement Forgivable Loans shall only be used for exterior, cosmetic improvements to the building.

C. Properties are eligible for one Facade Improvement Forgivable Loan and one matching component per eligible building or per 50 linear feet of eligible building frontage.

D. The interest rate will be ten percent (10%) simple interest.

E. The term of the Facade Improvement Forgivable Loan, including matching component, will be six (6) years from the date of the deed of trust as defined in the Loan Agreement.

F. Principal and interest payments will be forgiven on an annual basis, beginning 12 months from the date of the deed of trust, if the property is in compliance with all program guidelines and is maintained consistent with the City of Stockton building and zoning codes, which includes maintaining the property and keeping it free of graffiti and blight. In the event of default, the borrower will be required to repay principal and interest on the remaining balance of the loan.
2.2 EMERGENCY GRANT PROGRAM
The City will grant, on a one-time basis, up to $7,500, unsecured, per building to property owners and/or business owners for immediate relief of emergency conditions which endanger the health and/or safety of employees or the general public, and for which private funds are not readily available. These grants are provided at the discretion of the Director of the Economic Development Department, or designee, based upon staff recommendation.

3.0 ELIGIBILITY

3.1 OVERALL ELIGIBILITY
In order to be eligible for CDBG funding, each activity must meet one or more of the National Objectives of the Community Development Block Grant (CDBG) program, as set forth by the U.S. Department of Housing and Urban Development (HUD) in 24 CFR Part 570.208. These National Objectives are summarized as follows:

- Low/Moderate Income Benefit – The assisted activity must benefit low and/or moderate-income persons in at least one of the four ways specifically defined by regulation. Low- and Moderate-income levels for the Stockton Metropolitan Statistical Area shall be determined by HUD.

3.2 ELIGIBLE APPLICANTS
A. Facade Improvement Forgivable Loan
   - Eligible applicants are those persons who are owners of commercial and/or private non-profit property located within Low/Moderate Income Areas of the Stockton city limits. Preference will be given to office and/or retail establishments. Properties outside of these areas will be reviewed on a case-by-case basis for eligibility in accordance with CDBG regulations.
   - Projects must be for the purpose of improving commercial or private non-profit real property and must contribute to the economic development and/or quality of life within targeted areas.

B. Emergency Grant
   - Commercial properties and/or businesses located within Low/Moderate Income Areas are eligible of the Stockton city limits. Properties outside of these areas will be reviewed on a case-by-case basis for eligibility in accordance with CDBG regulations.
   - Funding is available strictly for the purpose of immediate relief of emergency conditions which endanger the health and/or safety of employees or the public.
   - Applicants must demonstrate a financial need.

All businesses must be properly zoned.

3.3 ELIGIBLE PROJECT AREAS
Commercial Loan Program projects must be located in one of the following areas unless otherwise determined through program restrictions as described in Section II:
• Low/Moderate Income Areas; properties outside of these areas will be reviewed on a case by case basis for eligibility in accordance with CDBG regulations.

• Additional areas as designated by the City Manager or designee.

3.4 ELIGIBLE PROJECTS
Commercial Loan Program projects must be for the purpose of improving commercial or private non-profit real property and must contribute to the economic development within targeted areas as determined by the City Manager and/or Economic Development Director.

A. Eligible Facade Improvement Forgivable Loan projects are limited to exterior cosmetic improvements to the structure’s facade.

B. Eligible Emergency Grant projects shall include the following:

- Alleviate any code violations where the health and/or safety of employees and/or the public is endangered.

- Any other improvements to real property eligible under guidelines established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR Part 570.201, 570.202, 570.203).

3.5 INELIGIBLE PROJECTS
A. Ineligible Commercial Loan Program activities shall include the following:

- Purchase of equipment or tools.

- Expenses incurred prior to loan/grant approval and environmental review.

- Any assistance to religious entities to the extent that the structures are used for inherently religious activities as outlined in 24 CFR Part 570.200(j). Funds may be used for rehabilitation of structures only to the extent that those structures are used for eligible activities as authorized under 24 CFR Part 570.201-570.206.

- Any activity which is not authorized under 24 CFR Part 570.201-570.206 or that is expressly stated as ineligible under 24 CFR Part 570.207.

B. Properties under consideration for development projects and/or acquisition by the City are not eligible without prior approval by the City Manager or designee.

4.0 LOAN APPROVAL
Loans in amounts below the current City Council threshold shall be approved by the City Manager, or designee, upon staff review and recommendation. With respect to loans over the approved Council threshold, approval action by the City Manager shall be in the form of a recommendation to the City Council.
5.0 LOAN REQUIREMENTS

5.1 MAXIMUM LOAN AMOUNT
The maximum loan amount to be expended for the commercial rehabilitation may not exceed $20,000 per 50-linear feet of building frontage in Facade Improvement Loan funds, with a total amount not to exceed $100,000. The Economic Development Director, or designee, shall have discretionary authority to reduce or increase funding for a project based upon specific criteria such as remaining funds, impact on surrounding neighborhoods, and financial need.

5.2 SECURITY
All loans shall be secured by a Promissory Note and Deed of Trust containing an acceleration clause in the event of default and an alienation clause to preclude unauthorized transfer of the secured property.

6.0 LOAN APPLICATIONS

6.1 SEPARATE APPLICATIONS
Applicants may submit separate applications for an Emergency Grant and a Facade Improvement Forgivable Loan for the same building/parcel.

6.2 ADDITIONAL FACADE ASSISTANCE
A property owner can qualify for additional Facade Improvement Forgivable Loans on a matching basis only after a previous Facade Improvement Forgivable Loan has been completely forgiven. Additional assistance is subject to approval and funding limits per building or per linear footage.

6.3 CHANGE OF OWNERSHIP
Properties previously awarded a Facade Improvement Forgivable Loan can qualify for a new forgivable loan upon a change of ownership, subject to approval and funding limitations only after a previous Façade Improvement Loan has been completely forgiven. The change of ownership must represent a complete change in owners and not a name change or partner substitution.

Should the new owner assume an existing loan, the new property owner would qualify for a new loan once the original loan has been forgiven, subject to funding availability.

7.0 LOAN FEES

7.1 LOAN APPLICATION FEE
An application fee is required for only the Commercial Façade Improvement Forgivable Loan. The application fee is adjusted each fiscal year and is approved by the City Council at the time of budget adoption. The current application fee can be found in the City of Stockton’s adopted Fee Schedule. This fee is non-refundable and is used to pay for loan processing fees incurred by the City.

7.2 LOAN PROCESSING FEES
Additional fees and costs incurred by the City to process the loan application shall be paid by the applicant at closing, if applicable. These may include appraisal fees, credit checks, title search fees, or other fees which are a necessary part of the loan application process.
8.0 DISBURSEMENT OF FUNDS

8.1 TOTAL CITY PROJECT COSTS LESS THAN $100,000
Upon submission and review of required weekly labor compliance documentation and work invoices, funds will be authorized to the contractor. City funds (both CDBG and/or other funds) will be the last funds used for a project after private funding commitments have been exhausted. Final payment is subject to all required documentation completed satisfactorily, verified certified payroll documentation, final building inspection approval, and the submittal of mechanic’s/workman’s lien releases, if applicable. Weekly labor compliance documentation is still required for the non-City funded work.

8.2 TOTAL PROJECT COSTS GREATER THAN $100,000
City funds (i.e. CDBG and/or other funds) and all private funding must be committed to the project prior to a Notice to Proceed from the City. The City will consider alternate arrangements that suitably secure the funds and ensure that all funding necessary for the project is committed prior to construction beginning. Payments will be authorized to the general contractor by the City upon submission of required weekly labor compliance documentation, work invoices and final building approval in the same manner as smaller projects. City funds will be the last funds used.

9.0 LOAN SERVICING

9.1 LOAN SERVICING
A. Loan servicing shall be the responsibility of the Economic Development Director, or designee, with authority to utilize the services of a bank, a lending institution, a loan servicing institution, or staff in the actual servicing of loans, commencing with the loan closing and terminating either at the time the loan is forgiven in entirety or is paid in full.

B. Interest shall begin to accrue the first day of the month following the date of recordation of the deed of trust. Facade Improvement Forgivable Loans shall begin forgiveness of annual debt service twelve (12) months from date of recordation of the deed of trust.

9.2 DEFAULT
Keeping graffiti and other blight off CDBG and/or other government funded commercial building projects is a requirement of the Facade Improvement Forgivable Loan. Economic Development staff will periodically inspect buildings with outstanding Facade Improvement loans to ensure compliance. If blight is detected, staff will notify the property owner, who will then have fifteen (15) days to remove the blight. If graffiti is detected, staff will notify the property owner that to comply with the Stockton Municipal Code (SMC) graffiti must be removed within twenty-four (24) hours.

If the borrower fails to comply with the SMC graffiti removal requirement or blight is not removed within the stated period or if an extension is not authorized, monthly billing for the amount outstanding plus interest shall begin. Billings shall continue until the graffiti or blight is satisfactorily removed. The borrower is required to pay for any amounts billed due to enforcement of the Forgivable Loan Agreement, and that amount is not eligible for forgiveness. Nonpayment will be treated in accordance with the City’s regular loan policies as outlined above. Additionally, failure to pay and properly document Davis-Bacon and/or State
prevailing wages will constitute a default.

10.0 ASSUMPTION POLICY

All loans are assumable, providing the successor in interest would otherwise qualify for the loan they are assuming and subject to the approval of the Economic Development Director. Approval of a loan assumption will be based on the same criteria used to evaluate new applications. These include compatibility with the goals and objectives of the program, the assignee’s ability to repay the loan, and willingness to comply with the terms and conditions of the existing loans. The City Manager, or designee, will have signing authority for all assumption agreements.

11.0 CERTIFICATION AND COMPLIANCE REQUIREMENTS

11.1 ENVIRONMENTAL REVIEW REQUIREMENTS

All projects shall be subject to a preliminary assessment of potential environmental impacts.

11.2 DAVIS-BACON FEDERAL AND/OR STATE WAGE RATE REQUIREMENTS

Because federal and/or local funds are used, Davis-Bacon and/or State prevailing wage rates must be paid to onsite laborers or mechanics employed by contractors or subcontractors when the total labor construction cost is greater than $2,000. Davis-Bacon and/or State wage rates will apply to an entire project whenever that project is financed “in whole or in part” by federal or local funds. Use of volunteer labor is not allowed.

11.3 CONFORMANCE TO CODES

All rehabilitation activities must conform with City of Stockton building and zoning codes, and be performed by a licensed general contractor or Subcontractor registered with the State of California Department of Industrial Relations (DIR). Proof of DIR registration is required. The borrower is responsible for all building permits or other permits that may be necessary.

11.4 COMPETITIVE BID

The applicant must submit a minimum of two (2) competitive bids for the project as defined. Solicitation of Disadvantaged Business Enterprise (DBE) and documentation is required to submit with bids. The project loan amount for Façade Improvement Forgivable Loan projects will be based on the lowest acceptable bid as determined by the assigned Commercial Loan Program administrator, whereas the project grant amount for Emergency Grant program projects offer a maximum of $7,500. Bids must state on-site labor paid at prevailing wage.

The applicant may select a contractor other than the lowest bidder unless the low bidder is a MBE/WBE. However, if a higher bidder is selected, the applicant will be required to pay the difference between the bid submitted by chosen contractor and lowest bidder. Prior to the soliciting of bids, the borrower is required to provide the City with a written scope of work to be performed. From that scope of work, the City’s Labor Compliance Consultant will obtain the current prevailing wage determination for each labor trade involved.

11.5 CONTRACTOR REQUIREMENTS

A. For Facade Improvement projects and Emergency Grant projects, the City, at its option and depending on the work to be done, may authorize the use of contractors licensed to perform specialized tasks.
B. Under federal and state law, all contractors working on projects utilizing federal and/or local funds must pay prevailing wage rates. Established hourly prevailing wage rates shall be paid to all employees performing work on the project site. The current Davis-Bacon and/or State prevailing wage determination will be obtained by the Labor Compliance Consultant prior to the bidding of each job. All contracts and subcontractors selected will pay prevailing wage rates and provide the City with the necessary supporting documentation required by federal and state law. No payment will be authorized until the required paperwork has been turned into the City and the City is satisfied that the contractor is in compliance with federal and state law. Borrower is responsible for ensuring that contractor and all subcontractors are aware of and are paying prevailing wage rates. Noncompliance with this requirement is grounds for default.

The contractor shall comply with Equal Employment Opportunity (EEO) provisions relative to Executive Order 11246 and related acts, rules, and regulations. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. All bidders are required to complete the City’s Affirmative Action forms.

11.6 HIRING PLAN (CDBG-FUNDED PROJECTS ONLY)
Where the activities are determined to be eligible based on the creation or retention of low- and moderate-income jobs, a Hiring Plan must be submitted, assuring the availability of such jobs to low- and moderate-income individuals and economically disadvantaged persons. Such a plan must meet the public benefit standard as noted in 24 CFR 570.209(b)(3)(i)(A) or (B). Such a Hiring Plan may be prepared in conjunction with WorkNet of San Joaquin County.

12.0 INTERNAL ADMINISTRATIVE PROCEDURES

12.1 PRE-APPLICATION CONFERENCE
City staff will meet with prospective applicants to determine eligibility and provide information about the City’s Commercial Loan Program.

12.2 LOAN APPLICATION AND DETAILED SCOPE OF WORK
The applicant must submit a complete application and detailed scope of work, along with the current application fee adopted by Council each fiscal year and listed in the City’s Fee Schedule, and a copy of the property Grant Deed. No loan application will be processed by City staff until all required documents have been submitted. The Labor Compliance Consultant will request the appropriate wage rate determinations based upon the submitted scope of work and a ballpark estimate of cost.

12.3 DETERMINATION OF ELIGIBILITY
Loan applicants will be reviewed by Economic Development Department staff regarding the location and eligibility of the proposed property for rehabilitation and conformance of the project with program guidelines. City staff shall conduct an initial inspection of the property. When necessary, a joint inspection of the property will be performed by the appropriate Building Department staff. The purpose of these inspections is to discover any obvious code violations that must be addressed and to point out any code required upgrades that would be triggered by a rehabilitation.
12.4 BIDDING PROCESS
The applicant is required to submit at least two bids and solicit bids minority or woman owned (Disadvantaged Business Enterprise or DBE) firms for each component of work to be completed. City staff will provide information on locating DBE firms to the applicant. A minimum of two competitive bids are required for all work to be performed.

12.5 ARCHITECTURAL REVIEW
Facade Improvement Loans require that any changes or additions to the exterior of a building financed by CDBG funds be authorized by the City’s Design Review Committee in conformance with the Stockton Citywide Design Guidelines. Additionally, the Cultural Heritage Board or City Community Development Department must authorize a Certificate of Appropriateness for all facade improvements to buildings with historical significance. The City will contribute up to $2,500 for architectural services. If for any reason the applicant should decide not to proceed with its facade improvement project, any expenses incurred by the City for such architectural services shall be reimbursed by the applicant.

12.6 ENVIRONMENTAL REVIEW
An environmental review is required for all CDBG-funded projects. When necessary, the State Historic Properties Office (SHPO) and/or the National Advisory Council must be consulted. The actual procedures will vary on a case by case basis as mandated by 24 CFR Part 58.

12.7 BID REVIEW AND EVALUATION OF PROPOSED PROJECT COSTS
The assigned program administrator shall review all bids for consistency to the detailed scope of work and shall evaluate the proposed project costs to ensure that the bids are fair and equitable.

12.8 FUNDING APPROVAL
Based on the analysis of the information obtained, a final funding amount will be made by the City Manager or designee. Loans over the approved Council threshold will require approval action by the City Manager in the form of a recommendation to the City Council.

12.9 PRE-CONSTRUCTION CONFERENCE
The City’s Economic Development Department staff and Labor Compliance Consultant shall conduct a Pre-Construction Conference with the applicant and all contractors and subcontractors to ensure understanding of and compliance with the prevailing wage requirements and reporting responsibilities. Federal Labor Standards Provisions required prevailing wages and documentation, and Affirmative Action Guidelines will be provided to the applicant during the preconstruction meeting.

12.10 CONSTRUCTION DOCUMENTS PREPARED
Prior to issuing loan disbursements, copies of construction contracts, approved construction plans, building permits, verification of insurance and any other required documentation will be submitted to the program manager at the Economic Development Department.

12.11 LOAN CLOSING/NOTICE TO PROCEED
Loan documents will be executed between the borrower and the City (e.g. Promissory Note, Loan Agreement, Deed of Trust, and any other document appropriate to the specific project). A Notice to Proceed will be issued to the borrower and contractor, with a copy to the Labor Compliance Consultant, after the loan documents have been executed and the pre-construction meeting has been conducted.
12.12 INSPECTION OF PROPERTY/DISBURSEMENT OF FUNDS
City staff and the Labor Compliance Consultant will inspect the property to ensure compliance with program guidelines and that the submitted work invoices represent work completed. Staff and/or the City’s Labor Compliance Consultant may perform project site interviews with laborers as required to ensure payment of prevailing wages and shall inspect to ensure that the proper bulletin notices are posted.

Commercial activities funded by CDBG and/or other sources will be disbursed in the form of periodic payments according to a prearranged schedule of payments. Payments will be made upon the completion and inspection of various components of the project by the assigned program administrator. Funds will only be disbursed upon completion of the required work and the submission of any necessary documentation regarding Federal Labor Standards and Prevailing Wage Rates.
### New Loan Set Up Sheet

**Client Information**

- **Client Name:** City of Stockton
- **Client Contact:** Nicole Snyder
- **Contact Phone #:** 209-937-8539
- **Contact Email Address:** nicole.snyder@stocktonca.gov
- **Project #:** CRF 166
- **Reference #:** 611
- **Project Name:** CDBG Commercial façade Forgivable Loan
- **Funding Source:**
  - [ ] Multiple Funding Sources - see notes in special instructions

### Borrower and Co-Borrower Information (If co-borrower is applicable)

- **Primary Borrower:** Pink Ocean Hospitality LLC
  - **First Name:**
  - **Middle Name or Initial:**
  - **Last Name:**
- **Primary Borrower SS# or Tax ID:** 45-2388499
- **Co-Borrower:**
  - **First Name:**
  - **Middle Name or Initial:**
  - **Last Name:**
- **Co-Borrower SS# or Tax ID:**
- **Main Phone #:** 714-213-5698
- **Additional Contact #:**
- **Email Address 1:** pinkocean@att.net
- **Email Address 2:**

### Mailing and Property Address

- **Mailing Address:** 33 N. Center Street
- **Mailing City:** Stockton
- **Mailing State:** CA
- **Mailing Zip Code:** 95202
- **Parcel #:** 137-280-07
- **Property Type:**
  - [ ] Single Family
  - [x] Commercial
  - [ ] Multi Family
  - [ ] 2nd Mortgage
- **Property County:** San Joaquin

### General Information

- **Is property address the same as the mailing address?** [ ] Yes  [ ] No
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</tr>
</thead>
<tbody>
<tr>
<td>Lien Position</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>1st</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lien Status</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Secured</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unsecured</td>
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</table>
### Terms / Payment Details

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate %</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>Term (# of Months)</td>
<td>Monthly PI or PO Payment Amount</td>
<td>$5</td>
</tr>
<tr>
<td>Note Date</td>
<td>Monthly Escrow Payment Amount</td>
<td>$5</td>
</tr>
<tr>
<td>Maturity Date</td>
<td>Monthly Client Fund Amount</td>
<td>$5</td>
</tr>
<tr>
<td>First Payment Due Date</td>
<td>Monthly Reserve/Maintenance Amount</td>
<td>$5</td>
</tr>
<tr>
<td>Interest Start Date</td>
<td>Other Funds Payment Amount</td>
<td>$5</td>
</tr>
<tr>
<td>Grace Days</td>
<td>Late Fee Amount (If Flat Late Fee) – or-</td>
<td>$5</td>
</tr>
<tr>
<td>Next Payment Due Date</td>
<td>Late Fee Percentage</td>
<td>%</td>
</tr>
<tr>
<td>Date Interest Paid To</td>
<td>Total Monthly Payment</td>
<td>$5</td>
</tr>
<tr>
<td></td>
<td>Date the last payment was made</td>
<td></td>
</tr>
</tbody>
</table>

### Monitoring and Escrow

Is ACS to review/monitor this loan annually for taxes?  
[ ] Yes  [ ] No  
If yes, fill out all of the applicable details below.

Is this loan escrowed/impounded for taxes?  
[ ] Yes  [ ] No  
If yes, fill out all of the applicable details below.

#### Tax Type 1

<table>
<thead>
<tr>
<th>City Tax</th>
<th>County Tax</th>
<th>Ground Rent</th>
<th>Sewer Rent</th>
<th>Installment Frequency</th>
<th>Installment Amounts</th>
<th>Installment Due Dates</th>
<th>Assessor Name</th>
<th>Assessment Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Monthly</td>
<td>1</td>
<td>3</td>
<td></td>
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<td>4</td>
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#### Tax Type 2

<table>
<thead>
<tr>
<th>City Tax</th>
<th>County Tax</th>
<th>Ground Rent</th>
<th>Sewer Rent</th>
<th>Installment Frequency</th>
<th>Installment Amounts</th>
<th>Installment Due Dates</th>
<th>Assessor Name</th>
<th>Assessment Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Monthly</td>
<td>1</td>
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<td></td>
<td></td>
<td></td>
<td>2</td>
<td>4</td>
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<td></td>
</tr>
</tbody>
</table>

#### Tax Type 3

<table>
<thead>
<tr>
<th>City Tax</th>
<th>County Tax</th>
<th>Ground Rent</th>
<th>Sewer Rent</th>
<th>Installment Frequency</th>
<th>Installment Amounts</th>
<th>Installment Due Dates</th>
<th>Assessor Name</th>
<th>Assessment Address</th>
</tr>
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<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td>Monthly</td>
<td>1</td>
<td>3</td>
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<td></td>
<td></td>
<td></td>
<td>2</td>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Tax Type 4

<table>
<thead>
<tr>
<th>City Tax</th>
<th>County Tax</th>
<th>Ground Rent</th>
<th>Sewer Rent</th>
<th>Installment Frequency</th>
<th>Installment Amounts</th>
<th>Installment Due Dates</th>
<th>Assessor Name</th>
<th>Assessment Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Monthly</td>
<td>1</td>
<td>3</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Is ACS to review/monitor this loan annually for Insurance?  
[ ] Yes  [ ] No  
If yes, fill out all of the applicable details below.

Will this loan be escrowed/impounded for Insurance?  
[ ] Yes  [ ] No  
If yes, fill out all of the applicable details below.

#### Insurance Type 1

<table>
<thead>
<tr>
<th>Hazard</th>
<th>Wind</th>
<th>Earthquake</th>
<th>Installment Frequency</th>
<th>Installment Amount</th>
<th>Policy Number</th>
<th>Vendor Name</th>
<th>Expiration Date</th>
<th>Vendor Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Monthly</td>
<td>Monthly</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
# New Loan Set Up Sheet

**Email Address:** LoanSetups@amerinational.net  
**Phone #:** 800-943-1988 ext. 7903  
**Department Fax #:** (562) 928-9171

## Insurance Type 2
- [ ] Hazard  
- [ ] Flood  
- [ ] Earthquake  
- [ ] Wind  
- [ ] Hail

**Installment Frequency:**  
- [ ] Monthly  
- [ ] Quarterly  
- [ ] Semi Annually  
- [ ] Annually

<table>
<thead>
<tr>
<th>Installment Amount</th>
<th>Installment Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Policy Number</th>
<th>Expiration Date</th>
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<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Vendor Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Will this loan be escrowed/impounded for HOA Dues?**  
- [ ] Yes  
- [x] No

If yes, fill out all of the applicable details below:

## HOA Details

<table>
<thead>
<tr>
<th>Installment Frequency</th>
<th>Installment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Installment Frequency</th>
<th>Installment Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Expiration Date</th>
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<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Vendor Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*If this loan requires additional escrowed/impounded items, please include additional pages as needed.*

## Documents included with new loan set up package (please scan or stack in the order below)

- [ ] Completed and Signed new Loan Set Up Sheet *Borrower(s) social security / tax ID number(s) required*
- [ ] Modified Note (if applicable)
- [ ] Promissory Note *
- [ ] Deed of Trust or Mortgage with Legal Description *
- [ ] Truth in Lending (if available)
- [ ] Loan Agreement (if available)
- [ ] Hazard Insurance Policy (if ACS is to monitor or escrow/impound)
- [ ] Property Tax Bill (If ACS is to monitor or escrow/impound)
- [ ] Home Owners Association Dues Bill (if escrowed/impounded)
- [ ] Escrow Deposit Worksheet (for escrowed/impounded loans) *
- [ ] Escrow Deposit Funds *(for escrowed/impounded accounts)*
- [ ] Bankruptcy Documents (if applicable)

## Comments / Special Instructions

_____

---

Set Up Sheet Approved By:  

[Signature]

Client Signature & Date sent to ACS
FACADE IMPROVEMENT LOAN PROGRAM
PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (the "BORROWER") promises to pay to
the order of the City of Stockton (the "LENDER") or its successors, the principal sum of
ninety-nine thousand five hundred dollars and 00/100 ($99,500) with interest at the rate
of ten percent (10%) in annual installments from the 1st day of July and continuing every
year until the principal balance has been paid.

All principal and interest shall be payable at City of Stockton, or at such other place
as shall be designated by LENDER.

This Note evidences a loan by LENDER to BORROWER for the sole and exclusive
purpose of rehabilitating, preserving and/or enhancing commercial real estate located at
and commonly known as (the "PROJECT"):

PROJECT SITE ADDRESS
33 North Center Street
Stockton, CA 95202

This Note is secured by a Deed of Trust of even date herewith in favor of LENDER,
as beneficiary, on the above-referenced PROJECT.

The parties hereto have entered into a Facade Improvement Forgivable Loan
Agreement of even date herewith under the City of Stockton Commercial Rehabilitation
Loan Program (the “Agreement”). The Agreement contains various terms and conditions
upon which LENDER has conditioned forgiveness of the loan evidenced by this Note.

The term of this Note shall be until the balance due is paid in full, or a period ending
on the first day of the month first occurring five (5) years after the completion of the
PROJECT rehabilitation, preservation, or enhancement activities financed in whole or in
part by the loan evidenced by this Note. Unless prepaid, this Note shall be satisfied and be
released by LENDER on the first day of July, 2022. The anniversary of this Note shall be
the first day July in each year following the completion of activities financed by the Loan
evidenced by the Note.

At each anniversary date on which LENDER determines that BORROWER has
satisfied the terms and conditions of the Agreement, LENDER shall reduce the balance due hereunder by twenty (20) percent of the original amount of the Note. LENDER shall waive and forgive any interest accrued under the terms and conditions of this Note since the previous anniversary date providing BORROWER is found to be eligible for said reduction. During the term of this Note, BORROWER shall make no payments of principal or interest.

In the event of any transfer, sale or assignment of the real property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWER. Any successor(s) to or assignee(s) of BORROWER shall execute and deliver to LENDER a Deed of Trust on the PROJECT to secure repayment of said Note.

In the event of any default by the undersigned, the unpaid principal amount of the Note, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.

If suit is instituted by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER'S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:
LENDER: City of Stockton
Economic Development Department
City Hall, 3rd Floor
Stockton, CA 95202

BORROWER: Pink Ocean Hospitality, LLC
33 North Center Street
Stockton, CA 95202

This Note shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

BORROWER reserves the right to prepay at any time all or any part of the remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of its date.

Dated: 06/17/16

BORROWER: Pink Ocean Hospitality, LLC

BY: __________________________

Print Name: YAN SHI

Title: OWNER

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

DEPUTY CITY ATTORNEY
DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) "Deed of Trust" means this document, which is dated June 17, 2016, together with all Riders to this document.

(B) "Borrower" is Pink Ocean Hospitality, LLC, a California Limited Liability. Borrower is the trustor under this Deed of Trust.

(C) "Lender" is City of Stockton, a municipal corporation. Lender's address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) "Trustee" is City of Stockton, a municipal corporation.

(E) "Note" means the promissory note(s) signed by Borrower and dated July 1, 2016. The Note(s) states that Borrower owes City ninety-nine thousand five hundred and 00/100 Dollars ($99,500). Borrower has promised to pay this debt in full not later than July 1, 2022.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) “Miscellaneous Proceeds” means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) “RESPA” means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) “Successor in Interest of Borrower” means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 33 North Center Street, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender’s opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.
4. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender’s right to disapprove Borrower’s choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender’s option and Borrower’s expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower’s equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender’s right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect
such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower’s rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of Borrower’s rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower’s obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.
6. **Borrower’s Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower’s knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower’s occupancy of the property as Borrower’s place of business.

7. **Protection of Lender’s Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender’s actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys’ fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. **Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured
by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. “Opposing Party” means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender’s judgment, could result in forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender’s judgment, precludes forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender’s interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be require to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any
Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to
Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word “may” gives sole discretion without any obligation to take any action.

14. Borrower’s Copy. Borrower shall be given one copy of the Note and of this Deed of Trust.

15. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 15, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. Borrower’s Right to Reinstatement After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney’s fees, property inspection and
valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Hazardous Substances. As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.
NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

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

Trustee shall deliver to the purchaser Trustee’s deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee’s deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee’s and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. **Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee
charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. **Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

PINK OCEAN HOSPITALITY, LLC

BY:

Print Name: **YAN SHI**

Title: **OWNER**

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY: **DEPUTY CITY ATTORNEY**
EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of STOCKTON, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

ALL OF BLOCK 1 OF WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP THEREOF.

EXCEPTING THEREFROM ALL OF LOTS 8, 10, 12 AND A PORTION OF LOTS 6, 14 AND 16 IN BLOCK 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET TO THE EASTERLY LINE OF SAID BLOCK 1; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET TO THE POINT OF BEGINNING.

APN: 137-280-07
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of _______San Joaquin_______)

On ______June 17, 2016______ before me, ______Audrey E. Ogden, Notary Public______  
(insert name and title of the officer)

personally appeared ______Yan Shi______,  
who 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.

Signature ______Audrey E. Ogden______ (Seal)
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM
FACADE IMPROVEMENT FORGIVABLE LOAN
($99,500.00)

This Agreement (the "Agreement") is made as of this 15th day of June, by and between the City of Stockton (the "CITY"), a municipal corporation, and Pink Ocean Hospitality, LLC, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 33 North Center Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of ninety-nine thousand five hundred Dollars and 00/100 ($99,500) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed ninety-nine thousand five hundred dollars and 00/100 ($99,500) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER’s choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR
to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the **PROPERTY** or a stop notice affecting the **PROJECT** is served on **CITY** or other third party in connection with the **PROPERTY**, **CONTRACTOR** shall, within 20 days of 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 **CITY** a surety bond in sufficient form and amount, or provide **CITY** with other assurance satisfactory to **CITY** that the claim of lien or stop notice will be paid or discharged.

If **CONTRACTOR** fails to discharge bond or otherwise satisfy **CITY** with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, **CITY** may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at **BORROWER'S** expense. Alternatively, **CITY** may require **CONTRACTOR** to immediately deposit with **CITY** the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. **CITY** may use such deposit to satisfy any claim or lien that is adversely determined against **CONTRACTOR**.

4.11 **BARRIERS TO THE DISABLED.** The **PROJECT** shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** **BORROWER** shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the **PROPERTY** or the **PROJECT**, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by **CITY**, if any building or improvement on the **PROPERTY** is damaged or destroyed by an insurable cause, **BORROWER** shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter.

All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, **BORROWER** shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the **PROJECT** or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the **PROJECT** must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT in the PROJECT CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncompliant party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed
by any other agreements with respect to the financing, development, or operation of the
PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of
BORROWER representations or warranties made in the Loan Documents, any statements
made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that
BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the
PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct
the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any
instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy,
dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary
filing brought by another party before the earlier of final relief or 60 days after the filing; (2)
making a general assignment for the benefit of creditors; (3) applying for the appointment
of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any
such involuntary application brought by another party before the earlier of final relief or 60
days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its
inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be
considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of
Default which are not exclusively monetary, CITY shall give written notice to BORROWER
of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to
the Default, (b) the action required to cure the deficiency, if any action to cure is possible,
and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the
notice or the date the notice was refused, by which such action to cure must be taken. If
the BORROWER fails to take corrective action to cure the default within the time specified,
the CITY will seek remedies to accelerate the Agreement as well as any monies advanced
to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by
BORROWER and a failure to cure said Event of Default within the time specified in the
notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall
terminate, and CITY may also, in addition to other rights and remedies permitted by the
Agreement or applicable law, proceed with any or all of the following remedies in any order
or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount
outstanding and all accrued interest under the NOTE, as well as any other monies
advanced to BORROWER by CITY including administrative costs, shall immediately
become due and payable at the option of the CITY;
B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 **TIME.** Time is of the essence in this Agreement.

10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S): PINK OCEAN HOSPITALITY, LLC

By: 

Print Name: YAN SHI

Title: Owner

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By: 

APPROVED BY:

Laurie Montes
Deputy City Manager

ATTEST:

BONNIE L. PAIGE
CLERK OF THE CITY OF SPOKANE

By: 

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EXHIBIT “A”

LEGAL DESCRIPTION

Real property in the City of STOCKTON, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

ALL OF BLOCK 1 OF WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP THEREOF.

EXCEPTING THEREFROM ALL OF LOTS 8, 10, 12 AND A PORTION OF LOTS 6, 14 AND 16 IN BLOCK 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET TO THE EASTERLY LINE OF SAID BLOCK 1; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET TO THE POINT OF BEGINNING.

APN: 137-280-07
Exhibit “B”

Description of Work
Contract #050716-01

To: Ms. Karen Shi and Mr. Ron P

Property: 33 N. Center St, Stockton Ca 95202 Exterior Façade Improvement Project

From: Randolph Pierson, Stratus Construction Co.

Date: 4/18/2016 Total pages: (3)

Description of work to include materials and labor paid at prevailing wage rates:

1. Paintwork:
   Pressure wash building and all paintable areas complete. Prepare and paint all
   surfaces: Exterior body, trim, eves, ceilings, iron work fencing and hand railing, doors
   and door casings. Prepare and paint monument sign base. Repair all surface cracks and
   holes on stucco.
   Areas to include all surfaces on main hotel, pool house, and exterior walls as outlined in
   plans A2, A3.
   Paint colors, Howard Johnson PPG and Kelly Moore corporate colors:

   432 Milky Quartz
   EPT 08 Candy Corn
   EPT 03 Aquamarine
   PT 01 Blanco
   PT 05 Synchronicity SG

Total: $95,300.00
2. Store front:
   Demo existing east wall lobby store front. This store front consists of three sections. Two sections left and right of main lobby entry door. Each section area is approximately 6’x10’. Prepare openings for new storefront units. Frame in and install storefront glass and frame work complete. Frame in as needed and install new automatic glass door unit with transom, approximate size 7’x10’.

   Total: $34,000.00

3. Finish Electrical:
   Remove existing broken or nonfunctioning light fixtures.
   Install a total of (13) 11” LED exterior ceiling light fixtures as needed to lobby carport area and hallway ceiling areas.
   Install a total of (27) 14” LED exterior ceiling light fixtures as needed for common hallway areas.
   Install a total of (15) wall pack lights outside hotel room doors
   Install a total of (2) 14”x6” LED exterior wall pack lights on south side wall.
   Install a total of (6) flood lights at tree bases on Center street frontage.
   (Electrical troubleshooting not included for inoperative lighting circuits)

   Total: $11,000.00

4. Heavy equipment for duration of project.
   Total: $8,700.00

Total materials and labor for lines 1-4: $149,000.00
Stratus Construction Company LLC and all Howard Johnson approved Sub Contractors agree to furnish and provide all labor and materials for the project described above. The scope of work for the project is outlined in the Bid Instructions and architectural plans sheets 1-2, provided by Streamline Digital Design Architects. The scope of work and cost is further defined in the Work Proposal #041816-01, page #1.

All work to be performed in a workman like manner in accordance to all local and State building codes. All work to be inspected and recorded on City of Stockton Building Permit, and to be completed in a reasonable time frame period weather permitting. All labor rates of pay are to conform to the most recent and highest rate of pay, be it Davis Bacon Federal or Area 3, San Joaquin prevailing wage. All bonding and insurances to be in effect naming Howard Johnson as additional insured, Acord limited liability Certificate $1,000,000/$2,000,000.

Acceptance of Contract #050716-01 for a sum total amount of: $149,000.00

Randolph Pierson, Stratus Construction Co.  Date  5/7/2016

Karen Shi, Howard Johnson  Date
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

COPY ($25,297.00)

CLOSED

date APPROVED JAN 1, 2019

This Agreement (the "Agreement") is made as of this 21st day of February, by and between the City of Stockton (the "CITY"), a municipal corporation, and The Boudames Family 2008 Revocable Trust, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 25 South Hunter Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of twenty five thousand two hundred ninety-seven Dollars and 00/100 ($25,297.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustee with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed twenty five thousand two hundred ninety-seven Dollars and 00/100 ($25,297.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. **CITY** may use such deposit to satisfy any claim or lien that is adversely determined against **CONTRACTOR**.

4.11 **BARRIERS TO THE DISABLED.** The **PROJECT** shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** **BORROWER** shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the **PROPERTY** or the **PROJECT**, and shall pay such charges prior to delinquency.

4.14 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by **CITY**, if any building or improvement on the **PROPERTY** is damaged or destroyed by an insurable cause, **BORROWER** shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, **BORROWER** shall make up the deficiency.

4.15 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the **PROJECT** or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the **PROJECT** must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

**ARTICLE 5. NONDISCRIMINATION**

5.1 **NONTDISCRIMINATION.** **BORROWER** shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the **PROPERTY** on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. **BORROWER** shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 **INSURANCE ADVANCES.** In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 **INDEMNITY.** Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement or on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 **USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

**ARTICLE 8. HAZARDOUS MATERIALS**

8.1 **NOTIFICATION TO CITY.** BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 **BORROWER REMEDIES.** Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

**ARTICLE 10. GENERAL PROVISIONS**

10.1 **GOVERNING LAW.** The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 **STATUTORY REFERENCES.** All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

10.4 **TIME.** Time is of the essence in this Agreement.
10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

Elias Boudames, Trustee

Mountaha Boudames, Trustee

**APPROVED BY:**

BOB DEIS

CITY MANAGER

**APPROVED AS TO FORM:**

JOHN M. LUEBBERKE

CITY ATTORNEY

DEPUTY CITY ATTORNEY

**ATTEST:**

CLERK OF THE CITY OF STOCKTON

By: [Signature]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 149-030-04

A PORTION OF LOTS 10, 12 AND 16 IN BLOCK 11 EAST OF CENTER STREET IN THE CITY OF STOCKTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE NORTHLY ALONG THE EAST LINE THEREOF 83.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE WESTERLY PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 11, 51.50 FEET; THENCE NORTHLY PARALLEL WITH THE EAST LINE OF SAID BLOCK 11, 68.00 FEET TO THE NORTH LINE OF SAID LOT 16; THENCE EASTERLY ALONG THE SAID NORTH LINE OF LOT 16, 51.50 FEET TO THE EAST LINE OF SAID BLOCK 11; THENCE SOUTHERLY ALONG THE EAST LINE OF BLOCK 11, 68.00 FEET TO THE TRUE POINT OF BEGINNING
Exhibit "B"

Description of Work
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($20,000.00)

This Agreement (the "Agreement") is made as of this 12th day of February, 2013, by and between the City of Stockton (the "CITY"), a municipal corporation, and Kevin and Julie Dougherty Family Trust Dated 6/12/99 and WLKST a California Family Limited Partnership, ("the BORROWER").

REQUITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 621 East Market Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of twenty thousand Dollars and 00/100 ($20,000.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.
1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed twenty thousand Dollars and 00/100 ($20,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unreasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONdemNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 728.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of **CITY** or **BORROWER** required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of **BORROWER** and **CITY** for this **PROPERTY** under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. **CITY** neither undertakes nor assumes any responsibility or duty to **BORROWER** (except as provided for herein) or any third party with respect to the **PROPERTY**, the **PROPERTY**, or the Agreement. Except as **CITY** may specify in writing **BORROWER** shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by **CITY** of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by **CITY** to take action on any breach or default of **BORROWER** or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to **BORROWER** to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by **CITY** to any act or omission by **BORROWER** shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for **CITY**'s written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by **BORROWER** for the **PROPERTY**, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** **BORROWER** represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. **BORROWER** shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by **CITY** in writing.

10.10 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both **BORROWER** and **CITY**.
10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S): Kevin and Julie Dougherty Family Trust Dated 6/12/99 and WLKST a California Family Limited Partnership

By: Kevin Dougherty
Print Name: Kevin Dougherty
Title: Trustee

By: Lenore C. Dougherty
Print Name: Lenore C. Dougherty
Title: General Manager

By: Julie Dougherty
Print Name: Julie Dougherty
Title: Trustee

APPROVED BY:
BOB DEIS
CITY MANAGER

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

DEPUTY CITY ATTORNEY

ATTEST:
CLERK OF THE CITY OF STOCKTON
By: [Signature]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 149-200-07

Lot 6 and the East 1/3 of Lot 14 in Block 16 of EAST of CENTER STREET, in the City of Stockton, as per map thereof in San Joaquin County Records
Exhibit “B”

Description of Work
STRATUS CONSTRUCTION COMPANY
License Number: 973827  Bond Number: 100196036
5151 N. Highway 99
Stockton, CA  95212
(209) 406-1502

December 15, 2012

To:  Kevin Dougherty
     First Commercial Real Estate
     2920 Pacific Avenue
     Stockton, CA  95204

Re:  Proposal for Exterior Building Improvements for 621 E. Market St., Stockton, CA

All work to be performed as specified in plans

Description of Work:

- Remove aluminum window screen, sublet to powder coat company to strip and powder coat color as indicated on plans
- Reinstall screen, and repair failing mounting points for screen fixture
- Remove all existing tile, mortar, trim, and metal from building facade
- Pressure wash, scrape and repair all cracks to existing building facade and top coving
- Anchor and install stucco pop outs as described in plans, including framing, lath, metal trim, and base weep screed
- Install 2 coats of stucco to all new pop outs as described in plans
- Prime and paint building body pop outs, trim and top coving as described in plans
- Prepare building face and install lath, metal trim, base weep screed for new slate tile installation
- Install tile, grout and seal as per plans
- Install electrical light fixture and timer, land light circuit to electrical panel inside utility room

All work to be performed in a workman like manner as per all local and state codes. All workmen to be covered by workers' compensation and paid prevailing wages at the local area rate.

Proposal includes all permits and debris disposal

Grand Total for Above: $35,900.00
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($59,821.00)

This Agreement (the "Agreement") is made as of this 1st day of May, by and between the City of Stockton (the "CITY"), a municipal corporation, and Newberry 1, LLC, ("the BORROWER").

RECATIALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 331 E Weber Avenue, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of fifty nine thousand eight hundred twenty-one and 00/100 Dollars ($59,821.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed fifty nine thousand eight hundred twenty-one and 00/100 Dollars ($59,821.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER’s choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or any third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2  INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3  NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4  INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER’S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5  USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1  NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER’S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

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10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):** Newberry 1, LLC

BY: ____________________________  PRINT NAME: Zachary Cart

Title: Manager

BY: ____________________________  PRINT NAME: 

Title: 

BY: ____________________________  PRINT NAME: 

Title: 

APPROVED BY: 

BOB DEIS
CITY MANAGER

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By: ____________________________

ATTEST: 

CLERK OF THE CITY OF STOCKTON

By: ____________________________
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 139-120-20

The land referred to is situated in the County of San Joaquin, City of Stockton, State of California, and is described as follows:

Parcel I:

The East Twenty-Three (E.23) feet of Lot Eight (8) and all of lost Ten (10) and Fourteen (14) in Block Sixty-Five (65) East of Center Street, in the said City of Stockton, according to the official map or plat thereof.

Parcel II:

Easement over and across the West 10 Feet of Lot Five (5) and the East one-third (E 1/3) of lot Thirteen (13) in Block Sixty-Five (65) East of Center, in the said City of Stockton, according to the Map or Plat thereof.
Exhibit “B”

Description of Work
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($11,250.00)

This Agreement (the "Agreement") is made as of this 27th day of April, 2013, by and between the City of Stockton (the "CITY"), a municipal corporation, and Delfino Maciel and Soledad Maciel, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 742 E Dr. Martin Luther King Boulevard, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of eleven thousand two hundred fifty and 00/100 Dollars ($11,250.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed eleven thousand two hundred fifty and 00/100 Dollars ($11,250.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter.

All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER’S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):** Delfino Maciel and Soledad Maciel

[Signatures]

DELFINO MACIEL

SOLEDAD MACIEL

**APPROVED BY:**

[Signature]

BOB DEIS
CITY MANAGER

**APPROVED AS TO FORM:**

JOHN M. LUEBBERKE
CITY ATTORNEY

[Signature]

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14
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 167-170-04

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

LOT 3 IN BLOCK 1 OF VISHTR TRACT, FILED FOR RECORD SEPTEMBER 24, 1892 IN VOL. 2 OF MAPS AND PLATS, PAGE 69, SAN JOAQUIN COUNTY RECORDS.
Exhibit "B"

Description of Work
DR. MARTIN REET VIEW

1. REFRAME SILL - FIELD VERIFY
   EXIST. CEM. PLAST. BEHR, NEW

2. REPLACE EXIST. STOREFRONT 3" WITH DAP
   STOREFRONT SYSTEM WITH DAP

3. FILL-IN OPENING DOWN TO 8'
   PAINT EXIST. CEM. PLAST. BEHR

4. EXISTING SIGNAGE TO BE REMOVED
   AND RE-INSTALLED

5. RETURN NEW PAINT 5'-0"

6. SIDE WALL REMAIN AS IS

Project For
Mr. Delfino Macial

Project
Exterior Facade Improvement
740 E. Martin Luther King Blvd.
Stockton, CA 95202

Sheet Contents
Proposed Exterior Rendering
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN
($20,802.00)

[CLOSED]

[APPROVED APR - 1 2019]

date [Sign]
type [Sign]

This Agreement (the "Agreement") is made as of this 1st day of May 2013 by and between the City of Stockton (the "CITY"), a municipal corporation, and Cort Tower, LLC, a California Limited Liability Company, ("the BORROWER").

RE bâtalS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 343 E Main Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of twenty thousand eight hundred two and 00/100 Dollars ($20,802.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed twenty thousand eight hundred two and 00/100 Dollars ($20,802.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.
2.10 **ARCHITECTURAL SERVICES REIMBURSEMENT.** BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

**ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF PROCEEDS.** Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 **TITLE.** BORROWER warrants that it will maintain good and marketable title to the PROJECT.

**ARTICLE 4. DEVELOPMENT OF PROPERTY**

4.1 **CONFIGURATION OF THE PROPERTY.** The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 **COMMENCEMENT OF REHABILITATION.** The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 **QUALITY OF WORK.** CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 **ADDITIONS OR CHANGES IN WORK.** CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 **RECORDS.** **BORROWER** shall be accountable to **CITY** for all funds disbursed to **CONTRACTOR** pursuant to the Agreement and **CITY** agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the **PROJECT**.

**CITY** shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. **CITY** shall promptly supply any and all information and documentation which involves the **PROJECT** and cooperate with **BORROWER** in the rehabilitation of the **PROJECT**.

4.7 **INSPECTIONS.** **BORROWER**, by contract, shall permit and facilitate, and require its **CONTRACTOR** to permit and facilitate, observation and inspection at the job site by **CITY** and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES.** **BORROWER** shall be solely responsible for all aspects of conduct in connection with the **PROJECT**, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by **CITY** with reference to the **PROJECT** is solely for the purpose of determining whether **BORROWER** is properly discharging its obligations to **CITY**, and should not be relied upon by **BORROWER** or by any third parties as a warranty or representation by **CITY** as to the quality of the rehabilitation of the **PROJECT**.

4.9 **TRANSFER OF PROPERTY.** The **LOAN** can be assumed or be subordinated, however, **BORROWER** shall not make or create, and shall not, prior to the completion of the **PROJECT** and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the **PROJECT**, or the **PROPERTY**, or any part thereof, including the sale of any interests of **BORROWER** without prior notice to **CITY**. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to **CITY**.

4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the **PROPERTY** or a stop notice affecting the **PROJECT** is served on **CITY** or other third party in connection with the **PROPERTY**, **CONTRACTOR** shall, within 20 days of 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 **CITY** a surety bond in sufficient form and amount, or provide **CITY** with other assurance satisfactory to **CITY** that the claim of lien or stop notice will be paid or discharged.

If **CONTRACTOR** fails to discharge bond or otherwise satisfy **CITY** with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, **CITY** may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at **BORROWER**'s expense. Alternatively, **CITY** may require **CONTRACTOR** to immediately deposit with **CITY** the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 **INSURANCE ADVANCES.** In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 **INDEMNITY.** Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 **USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

**ARTICLE 8. HAZARDOUS MATERIALS**

8.1 **NOTIFICATION TO CITY.** BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):** Cort Tower, LLC, a California Limited Liability Company

**BY:**

Print Name: Elizabeth Cort

Title: Partner

**BY:**

Print Name: Andrew E. Cort

Title: Partner

**APPROVED BY:**

Bob Deis

CITY MANAGER

**APPROVED AS TO FORM:**

John M. Luebberke

CITY ATTORNEY

By [Signature]
APN: 149-160-08

A PORTION OF LOTS 10 AND 16; ALL OF LOT 12 IN BLOCK 4, EAST OF CENTER STREET IN THE SAID CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 12 IN BLOCK 4; THENCE NORTH 151.60 FEET TO THE NORTHEAST CORNER OF LOT 14 IN BLOCK 4; THENCE WEST 151.65 FEET TO THE NORTHWEST CORNER OF SAID LOT 16; THENCE SOUTH 36 FEET TO A POINT BEARING NORTHERLY 115.60 FEET FROM THE SOUTHWEST CORNER OF LOT 8 IN BLOCK 4; THENCE EAST AND PARALLEL TO THE NORTH LINE OF LOT 16, 60.83 FEET TO THE NORTHEAST CORNER OF THE PROPERTY CONVEYED TO THE UNION SAFE DEPOSIT BANK BY DEED DATED NOVEMBER 20, 1923, RECORDED JANUARY 10, 1924 IN BOOK OF DEEDS, VOL. 557, PAGE 371, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 50.60 FEET TO A POINT BEARING NORTHERLY 65 FEET FROM THE SOUTH LINE OF SAID BLOCK 4; THENCE EAST 40.295 FEET TO THE WEST LINE OF SAID LOT 12; THENCE SOUTH 65 FEET TO THE SOUTHWEST CORNER OF LOT 12; THENCE EAST 50.565 FEET TO THE POINT OF BEGINNING (ALL DISTANCES ARE UNITED STATES STANDARD MEASUREMENTS)
Exhibit "B"

Description of Work
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($91,377.00)

This Agreement (the "Agreement") is made as of this first day of February, 2015, by and between the City of Stockton (the "CITY"), a municipal corporation, and Stockton One, LLC, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 201-215 North California Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY’S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of ninety-one thousand three hundred seventy-seven Dollars and 00/100 ($91,377.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 “CONTRACTOR” is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit “A,” which is incorporated into this Agreement by this reference.

1.10 “PROJECT” is the rehabilitation work as itemized in the attached Exhibit “B,” which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed ninety-one thousand three hundred seventy-seven dollars and 00/100 ($91,377.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 **RECORDS.** BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 **INSPECTIONS.** BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES.** BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 **TRANSFER OF PROPERTY.** The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit
to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and
maintained to comply with all applicable federal, state, and local requirements for access
for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for
payment of all fees, assessments, taxes, charges, and levies imposed by any public
authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay
such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of
the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any
building or improvement on the PROPERTY is damaged or destroyed by an insurable
cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore
said buildings and improvements. Such work or repair shall be commenced within ninety
(90) days after the damage or loss occurs and shall be complete within one year thereafter.
All insurance proceeds collected for such damage or destruction shall be applied to the
cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for
such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of
provisions of this Agreement by either party shall be extended for a period equal to the
period of any delay directly affecting the PROJECT or this Agreement which is caused by:
war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires;
casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight
embargoes; lack of transportation; suits filed by third parties concerning or arising out of
this Agreement; or unseasonable weather conditions. An extension of time for any of the
above-specified causes will be deemed granted only if written notice by the party claiming
such extension is sent to the other party within ten (10) calendar days from the
commencement of the cause and such extension of time is either accepted by the other
party in writing, or is not rejected in writing by the other party within ten (10) calendar days
of receipt of the notice. In any event, construction of the PROJECT must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein,
any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in
the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY
on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and
preference, age, marital status, family status, source of income, physical or mental
disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions
(ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all
applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER’S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROJECT. BORROWER’S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER’S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER’S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER’S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 CONSENITS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S): Stockton One, LLC

By: [Signature]

Print Name: Zachary Cort

Title: Manager

APPROVED BY: Laurie Montes
Deputy City Manager

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By: [Signature]

ATTEST: [Stamp]
EXHIBIT “A”

LEGAL DESCRIPTION

APN: 139-250-03

Lots 10, 12 and 16 in Block 73, EAST OF CENTER STREET, in the said City of Stockton, according to the Official Map of Plat thereof, San Joaquin County Records.
Exhibit “B”

Description of Work
Proposal submitted 12/10/14 to: Zac or Charlene

Name: Stockton One, LLC
Address: 115 N. Sutter St. #301 Stockton, CA 95202
Phone: (209) 469-2678 Fax: (209) 729-5906

Work to be performed at:

Name: California Street Facade
Address: 201-215 N. California St., Stockton
Phone:

Measure, supply and install into customer's clean clear opening 2 x 4 ½ Old Castle storefront system with (6) pair 3070 doors with (2) sidelights and transom. All doors are double acting with OHCC. Also, install into clean clear opening (48) retro-fit PlyGem Pro 200 Single Hung windows in white vinyl (brass on exterior) with lowE on clear annealed glass (to be tempered where required). All windows measure approximately 44x73 and (2) 24x36 single hung with obscure dual pane glass.

All storefront glass is dual pane with lowE temp except doors. Doors are ¾" clr temp

All on site labor will be performed at prevailing wages per plan from City of Stockton at Davis Bacon Prevailing Wages.

Proposal includes: Paint Emergency Exits, pressure wash the building, and any necessary repair to the façade of the building.

Total price installed -- $132,755.00

NOTE: Price is good for 30 days.

Respectfully submitted,

Peter Gruettner
PG/kl

Accepted ________________________________ Date __________________________

Order will not be processed until this proposal is signed and returned with $20,000.00 down payment with balance due upon completion.

Carefully review proposal for accuracy before signing. If you have any questions, please ask them before signing. Please note, after signing this proposal no changes in materials, sizes, specifications, etc. may be made without additional charges

On all job-site deliveries, materials must be checked in immediately. Any items damaged in shipping, missing parts, incorrect sizes, etc., MUST be reported within 4 days of delivery in order to be replaced by our supplier at no additional cost to you.
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM
FACADE IMPROVEMENT FORGIVABLE LOAN
($49,747.00)

This Agreement (the "Agreement") is made as of this first day of April, 2015, by and between the City of Stockton (the "CITY"), a municipal corporation, and Assistance League of Stockton, Inc. ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 1323 E. Harding Way, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 " AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 " NOTE" (the NOTE) is that certain promissory note in the total principal amount of forty-nine thousand seven hundred forty-seven Dollars and 00/100 ($49,747.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.
ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed forty-nine thousand seven hundred forty-seven Dollars and 00/100 ($49,747.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.
4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy
such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.
7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of
written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.
ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an “Event of Default” under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to
CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.
10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of **CITY** or **BORROWER** required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of **BORROWER** and **CITY** for this **PROPERTY** under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. **CITY** neither undertakes nor assumes any responsibility or duty to **BORROWER** (except as provided for herein) or any third party with respect to the **PROPERTY**, the **PROPERTY**, or the Agreement. Except as **CITY** may specify in writing **BORROWER** shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by **CITY** of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by **CITY** to take action on any breach or default of **BORROWER** or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to **BORROWER** to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by **CITY** to any act or omission by **BORROWER** shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for **CITY**'s written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by **BORROWER** for the **PROPERTY**, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** **BORROWER** represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. **BORROWER** shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by **CITY** in writing.

10.10 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both **BORROWER** and **CITY**.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

Assistance League of Stockton, Inc.

BY: [Signature]

Print Name: Robin DeCoite

Title: President-Assistance League

BY: [Signature]

Print Name: Jann Mayo

Title: Treasurer-Assistance League

**APPROVED AS TO FORM:**

John M. Luebberke
City Attorney

By: [Signature]

**APPROVED BY:**

Laurie Montes
Deputy City Manager

**ATTEST:**

CLERK OF THE CITY OF STOCKTON

By: [Signature]
EXHIBIT “A”

LEGAL DESCRIPTION

APN: 117-190-48

A portion of Section 31 of C. M. Weber Grant, El Rancho del campo del los Franceses, more particularly described as follows:

Beginning at the point on the West line of Sierra Nevada Street (60 feet wide) and Southeast corner of Lot 615 as shown on the map entitled West Jackson Subdivision No. 6, filed in Vol. 11 of Maps and Plats, at page 92, San Joaquin County Records; thence along the West line of Sierra Nevada Street, South 11 degrees 30’ 50” East 124.41 feet to a point on the North line of Harding Way (91.70 feet wide); thence Westerly along the North line of Harding Way, South 78 degrees 24’ 07” West, 125.06 feet to a point on the South line of said Lot 615; thence Easterly along the South line of said Lot 615, North 78 degrees 24’ 07” East, 164.36 feet to the point of beginning.
Exhibit “B”

Description of Work

(see attached proposal)
Proposal

To: The Assistance League of Stockton

From: Randolph Pierson, Stratus Construction Co.

Re: Proposal and breakdown for Façade Improvements for 1319-1323 East Harding Way

Date: Revised 3/9/2015

All operations listed below are quoted for materials and labor as per plans. All work to be performed in accordance to all local and State building codes. All labor rates will be paid at the current Davis Bacon/ or Prevailing Wage Rate. Certified payroll statements will be submitted to the Labor Compliance officer, as well as all other documentation in the compliancy package.

1. All glass and storefront: $22,467.00

2. All demolition and disposal: $3,700.00

3. Temporary framing and plywood as needed to secure the building at all phases: $2,800.00

4. All framing, hardware, siding, heavy metal door and wall insulation: $9,800.00

5. Sheetrock, taped and textured: $4,560.00

6. All interior and exterior electrical: $1,800.00

7. All tile work and surface preparation: $3,700.00

8. All interior and exterior prep, prime and paint: $7,600.00

9. All signage, and address numbers: $2,000.00

10. Install 7" Commercial Rain Gutters: $2,920.00
11. Cut all concrete as needed for installation of downspout drains. Install downspouts and 
drains to divert water away from pedestrian path of travel. Pour and repair concrete. 
$3,400.00

Total cost for lines 1-11 above: $64,747.00

Thank you,

Randolph Pierson
Stratus Construction Co.
Floor Plan - Improvements

1. Existing frame wall to remain. Wall to be refinished on Interior and Exterior (paint), and re-insulated with injected or blown-in insulation at maximum capacity.

2. New Frame Wall to be constructed. Sheetrock 3 1/4" w/ minimum R-19 Thermal Insulation Batts; 58" GEOW on exterior side to be taped, troweled and painted (TVP); exterior siding to match existing (E) 1x3 V-grooved, painted.

- New Storefront. 2'x4 3/4'' aluminum frames with powder-coated paint finish (Blue), and dual pane tempered low-E glass.
- Entrance Doors: Aluminum Glass frames and core to match storefront. 3'-6" x 8'-0" height with safety glass. Doors, Hardware, Threshold, Closer, and all devices shall comply with the appropriate provisions of CBC Title 24, 2014 Section 1008.1.6, 1008.1.7, and 1008.1.9.

- (N) Pays/Wall at (N) Storefront: Frame construction to match 2 except that exterior side shall be clad with Slate the "Staple" over 1/4" Corrugated Backer board.
North Elevation
1. Existing Composition Shingle Roof to remain.
2. Existing Door, Windows & Frames to remain - to be finished with new Paint.
3. Existing Wood Siding Exterior Walls & Columns to remain - to be finished with new Paint.
4. New Frame Walls; Wood Siding to match existing and finished with new Paint.
5. New Aluminum & Glass Storm Door & Entrance Doors with Powder Coated (Paint) Finish - Royal Blue.
6. New SIH / Pony Walls with Slate Tile Exterior Cladding - " Raph.
7. New Signage: 48" x 48" wall mounted Acrylic as per AL specs.

Harding Way (South) Elevation

Assistance League of Stockton, Inc.
Thrift Store Expansion - Facade Improvements
1310 East Harding Way Stockton CA 95206

Phillip Kapalin / Architect C-6927
1375 North Yosemite Street
Stockton, California 95203
Sierra Nevada Street (East) Elevation

1. Existing Composition Single Roof to remain
2. Existing Doors, Windows & Frames to remain - to be finished with new Paint
3. Existing Wood Siding Exterior Walls & Columns to remain - to be finished with new Paint
4. New Frame Walls: Wood Siding to match existing and finished with new Paint.
6. New Sill / Jamb Walls with Slate Tile Exterior Cladding - "Rajah"
7. New Signage: 48" x 48" wall mounted Acrylic in per AU specs
8. New Graphic: 18" & 12" non metallic Letters & Numbers

West Elevation
B) TYPICAL WALL @ STOREFRONT

A) TYPICAL N.B. INFILL WALL
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM
FACADE IMPROVEMENT FORGIVABLE LOAN
($80,000.00)

This Agreement (the "Agreement") is made as of this first day of June, 2015, by and between the City of Stockton (the "CITY"), a municipal corporation, and Luis M. P. Lima, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 702 W. Fremont Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY’S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of eighty thousand Dollars and 00/100 ($80,000.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed eighty thousand Dollars and 00/100 ($80,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR
to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.14 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.15 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgement, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed
by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. **Representations and warranties.** A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. **Damage to PROPERTY.** Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. **Bankruptcy, dissolution, and insolvency.** BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. **Default in the note.** Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 **CITY'S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;
B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all
reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S): Luis M. P. Lima

Print Name: Luis M. P. Lima

Title: Pres.

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By: [Signature]

APPROVED BY:

Laurie Montes
Deputy City Manager

ATTEST:

CLERK OF THE CITY OF SEE

By: [Signature]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 135-460-05

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

A PARCEL OF REAL PROPERTY SITUATED IN THE CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA, AND BEING A PORTION OF SAN JOAQUIN COUNTY SURVEY NO. 3080 ALSO KNOWN AS WOOD ISLAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF FREMONT STREET WITH THE WEST LINE OF EDISON STREET IN SAID CITY OF STOCKTON, THENCE SOUTH 78° 05' 30" WEST, A DISTANCE OF 151.35 FEET TO THE NORTHEAST CORNER OF THE LAND DESCRIBED IN DEED TO CHASE CHEVROLET COMPANY, A CORPORATION RECORDED MARCH 28, 1956 IN BOOK OF OFFICIAL RECORDS, VOL. 1851, PAGE 466, SAN JOAQUIN COUNTY RECORDS, THENCE ALONG THE EASTERN BOUNDARY OF SAID LAND RECORDED IN BOOK OF OFFICIAL RECORDS, VOL. 1851, PAGE 466, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES AND DISTANCES:

SOUTH 12° 00' 30" EAST 239.02 FEET TO AN IRON BOLT; SOUTH 78° 06' 30" WEST 15.4 FEET TO AN IRON BOLT; SOUTH 12° 00' 30" EAST 64 FEET TO AN IRON PIPE IN THE NORTH LINE OF RIGHT OF WAY BEING THE EXTENSION OF THE NORTH LINE OF LINDSAY STREET; THENCE ALONG THE NORTH LINE OF SAID RAILROAD RIGHT OF WAY, NORTH 78° 06' 30" EAST 166.85 FEET TO A POINT IN THE WEST LINE OF SAID EDISON STREET; THENCE NORTHERLY ALONG THE EAST LINE OF SAID EDISON STREET, A DISTANCE OF 302.94 FEET, MORE OR LESS TO THE TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION DESCRIBED IN DEED TO ROY PHILLIP FOWLER, A SINGLE MAN RECORDED NOVEMBER 1, 1973 IN BOOK OF OFFICIAL RECORDS, VOL. 3814, PAGE 584, SAN JOAQUIN COUNTY RECORDS.
Exhibit “B”

Description of Work

(see attached proposal)
February 24, 2015  
Laurie Watts  
SUBJECT PROPERTY; 702 W Fremont, Stockton California.

This is a prevailing wage project for prime contractor and all sub contractors.

Demo;  
1. Remove all window security bars  
2. Remove existing 3 metal awnings for re-installment later at a higher level.  
3. Remove sign at antique shop.

Windows and doors:  
1. Remove 4 office windows at east and south side, replace in existing opening with aluminum framed dual pane windows (opening).  
2. Remove existing store front windows and doors, Install new aluminum framed store front windows and doors in existing openings with existing configurations.

Exterior architectural additions.  
1. Repair/replace gutters as needed.  
2. Install foam pop outs around 4 office windows.  
3. Install 3 build outs for signage, per plans.  
4. Install 3 inch trim molding at upper area of walls and lower area of walls, per plans  
5. Install stone veneer (copper classic or to be specked by owner) as per plans.  
6. Construct and install 3 additional metal awnings to match original and install with originals.

Paint:  
1. Prep exterior, make repairs to concrete walls, paint exterior 4 colors as per plans.

Total Labor and material.................................................................$122,549.00

Note; This proposal includes city of Stockton building permit fee. Any other fees, ADA improvements, off site improvements or anything not included in this proposal is not part of this proposal.
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($17,530.00)

This Agreement (the "Agreement") is made as of this 1st day of December, by and between the City of Stockton (the "CITY"), a municipal corporation, and Anh-Trang Hoang, ("the BORROWER").

RE bâtALs

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 135 E. Dr. Martin Luther King Jr. Blvd., Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of seventeen thousand five hundred thirty Dollars and 00/100 ($17,530.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed seventeen thousand five hundred thirty Dollars and 00/100 ($17,530.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 **USE OF FUNDS.** Loan funds may be used only for the Eligible costs associated with the **LOAN** as well as any revisions to the **PROJECT** Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the **CITY**.

2.9 **BORROWER FUNDS.** **BORROWER** shall at or prior to the execution of this **AGREEMENT**, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of **BORROWER**’s choice in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan; or deposit equity funds with **CITY** in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan.

2.10 **ARCHITECTURAL SERVICES REIMBURSEMENT.** **BORROWER** shall reimburse **CITY** for the cost of architectural fees paid by the **CITY** in the event of cancellation of the **LOAN**.

**ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF PROCEEDS.** Disbursement of all proceeds for the **PROJECT** shall be made by the **CITY** upon presentation of approved invoices. Once invoices for payment have been received, **CITY** shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the **CITY**. **CITY** loan funds will be disbursed only after all **BORROWER** funds have been disbursed for the **PROJECT**.

3.2 **TITLE.** **BORROWER** warrants that it will maintain good and marketable title to the **PROJECT**.

**ARTICLE 4. DEVELOPMENT OF PROPERTY**

4.1 **CONFIGURATION OF THE PROPERTY.** The **BORROWER** may, by contract, require the **CONTRACTOR** to rehabilitate the **PROPERTY** pursuant to current building codes as they apply to a commercial structure by contract, as well as to **BORROWER** requirements. At a minimum, **CONTRACTOR** shall perform all rehabilitation by contract.

4.2 **COMMENCEMENT OF REHABILITATION.** The contract shall require that **CONTRACTOR** begin rehabilitation of the **PROPERTY** no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of **CONTRACTOR** to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. **CITY** may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to
CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other
transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unreasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other
party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor
as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any
Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions,
litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.
D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies
advanced to **BORROWER** by **CITY** including administrative costs, shall immediately become due and payable at the option of the **CITY**;

B. Bring an action in equitable relief: (1) seeking the specific performance by **BORROWER** of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding **CITY** from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by **BORROWER**.

9.4 **BORROWER REMEDIES.** Upon the fault or failure of **CITY** to meet any of its obligations under the Agreement, **BORROWER** may:

A. Demand payment from **CITY** of any sums due **BORROWER**;

B. Bring an action in equitable relief seeking the specific performance by **CITY** of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

**ARTICLE 10. GENERAL PROVISIONS**

10.1 **GOVERNING LAW.** The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 **STATUTORY REFERENCES.** All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S): **ANH-TRANG HOANG**

By: **ANH-TRANG HOANG**

Print Name: **ANH-TRANG HOANG**

Title: **Owner.**

APPROVED AS TO FORM:

John M. Luebberke  
City Attorney

By: **John M. Luebberke**

APPROVED BY:

Laurie Montes  
Deputy City Manager

By: **Laurie Montes**

**ATTERT**

**City Attorney**
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 147-170-39

Lots Eight (8) and Ten (10), in Block 116, SOUTH OF MORMON CHANNEL, in the City of Stockton, according to the official map or plat thereof.

EXCEPT the East 10.79 feed (standard measurement) of said Lot 10.

ALSO EXCEPTING THEREFROM the South 40 feet thereof in Charter Way
Exhibit “B”

Description of Work

(see attached proposal)
Proposal #081016-01

To: Ms. Trang Hoang

From: Randolph Pierson, Stratus Construction Co.

Date: 8/10/2016 Third Revision

Property: 135 East Charter Way Stockton, CA 95205 Building exterior façade improvement

All operations listed below include materials and labor if not otherwise indicated. All work to slightly deviate as described per the provided Architectural plans. All work to be performed in a workman like manner within a reasonable time period conforming to all local and state building codes. All wages to conform to both Davis Bacon, State and Federal Prevailing most current wages as outlined in Labor Code Section 1770.

1. Frame in and delete one 4060 storefront window. $1,000.00
2. Prep and paint existing metal awning. $500.00
3. Remove all exterior window security bars. Patch holes. Interior bars to remain. $400.00
4. Install all stucco flat stock trim detail around all windows, doors, sides of building, and flat stock at top bands of building. $5,800.00

5. Prep building as needed and install (3) coat stucco system to (3) sides, South, East, and West. $10,000.00

6. Paint building as described in plans to all conforming colors. $5,000.00

7. Install window tint film on (4) south facing windows. Remove plastic from (2) 4060 windows and install 3/4" glass. Materials: $3,000.00 Labor: $1,360.00

Total for lines 1-7 above: $25,060.00

Submitted,

Randolph Pierson, Stratus Construction Co.

Date 8/10/16
NOTE: COLOR ELEVATIONS ARE FOR REFERENCE ONLY. PLEASE REFER TO COLOR PALETTES FOR ACCURATE SHADES OF COLORS, MATERIALS, AND CONTRAST.
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($99,500.00)

This Agreement (the "Agreement") is made as of this 15th day of June, by and between the City of Stockton (the "CITY"), a municipal corporation, and Pink Ocean Hospitality, LLC, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 33 North Center Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed ninety-nine thousand five hundred dollars and 00/100 ($99,500) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
by any other agreements with respect to the financing, development, or operation of the 
PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of 
BORROWER representations or warranties made in the Loan Documents, any statements 
made to CITY by BORROWER, or any certificates, documents, or schedules supplied to 
CITY by BORROWER were untrue in any material respect when made, or that 
BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the 
PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct 
the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any 
instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, 
dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary 
filing brought by another party before the earlier of final relief or 60 days after the filing; (2) 
making a general assignment for the benefit of creditors; (3) applying for the appointment 
of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any 
such involuntary application brought by another party before the earlier of final relief or 60 
days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its 
inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be 
considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of 
Default which are not exclusively monetary, CITY shall give written notice to BORROWER 
of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to 
the Default, (b) the action required to cure the deficiency, if any action to cure is possible, 
and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the 
notice or the date the notice was refused, by which such action to cure must be taken. If 
the BORROWER fails to take corrective action to cure the default within the time specified, 
the CITY will seek remedies to accelerate the Agreement as well as any monies advanced 
to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by 
BORROWER and a failure to cure said Event of Default within the time specified in the 
notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall 
terminate, and CITY may also, in addition to other rights and remedies permitted by the 
Agreement or applicable law, proceed with any or all of the following remedies in any order 
or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount 
outstanding and all accrued interest under the NOTE, as well as any other monies 
advanced to BORROWER by CITY including administrative costs, shall immediately 
become due and payable at the option of the CITY;
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of STOCKTON, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

ALL OF BLOCK 1 OF WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP THEREOF.

EXCEPTING THEREFROM ALL OF LOTS 8, 10, 12 AND A PORTION OF LOTS 6, 14 AND 16 IN BLOCK 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 1; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET; THENCE NORTHERLY PARALLEL WITH THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET; THENCE EASTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID BLOCK 1, A DISTANCE OF 200 FEET TO THE EASTERLY LINE OF SAID BLOCK 1; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID BLOCK 1, A DISTANCE OF 128 FEET TO THE POINT OF BEGINNING.

APN: 137-280-07
Contract #050716-01

To: Ms. Karen Shi and Mr. Ron P

Property: 33 N. Center St, Stockton Ca 95202 Exterior Façade Improvement Project

From: Randolph Pierson, Stratus Construction Co.

Date: 4/18/2016 Total pages: (3)

Description of work to include materials and labor paid at prevailing wage rates:

1. Paintwork:
   Pressure wash building and all paintable areas complete. Prepare and paint all surfaces: Exterior body, trim, eyes, ceilings, iron work fencing and hand railing, doors and door casings. Prepare and paint monument sign base. Repair all surface cracks and holes on stucco.
   Areas to include all surfaces on main hotel, pool house, and exterior walls as outlined in plans A2, A3.
   Paint colors, Howard Johnson PPG and Kelly Moore corporate colors:

   432 Milky Quartz
   EPT 08 Candy Corn
   EPT 03 Aquamarine
   PT 01 Blanco
   PT 05 Synchronicity SG

Total: $95,300.00
Stratus Construction Company LLC and all Howard Johnson approved Sub Contractors agree to furnish and provide all labor and materials for the project described above. The scope of work for the project is outlined in the Bid Instructions and architectural plans sheets 1-2, provided by Streamline Digital Design Architects. The scope of work and cost is further defined in the Work Proposal #041816-01, page #1.

All work to be performed in a workman like manner in accordance to all local and State building codes. All work to be inspected and recorded on City of Stockton Building Permit, and to be completed in a reasonable time frame period weather permitting. All labor rates of pay are to conform to the most recent and highest rate of pay, be it Davis Bacon Federal or Area 3, San Joaquin prevailing wage. All bonding and insurances to be in effect naming Howard Johnson as additional insured, Acord limited liability Certificate $1,000,000/$2,000,000.

Acceptance of Contract #050716-01 for a sum total amount of: $149,000.00

[Signature]

Randolph Pierson, Stratus Construction Co.  Date

[Signature]

Karen Shi, Howard Johnson  Date
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($14,925)

This Agreement (the "Agreement") is made as of this fifteenth day of November 2016, by and between the City of Stockton (the "CITY"), a municipal corporation, and Jacob Benguerel, ("the BORROWER").

RECVITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 19 N. California Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of fourteen thousand nine hundred twenty-five dollars and 00/100 ($14,925) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustee with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed fourteen thousand nine hundred twenty-five dollars and 00/100 ($14,925) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to
CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other
transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other
party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor
as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any
Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions,
litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.
D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies
advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):** DELIBERATION ROOM, INC.

By: [Signature]

Print Name: Jacobo Benaroe

Title: President

**APPROVED AS TO FORM:**

John M. Luebberke
City Attorney

By: [Signature]

**APPROVED BY:**

Laurie Montes
Deputy City Manager

[Attestation Seal]

CITY CLERK
ACKNOWLEDGMENT

A notary public or other officer completing this
certificate verifies only the identity of the individual
who signed the document to which this certificate is
attached, and not the truthfulness, accuracy, or
validity of that document.

State of California
County of San Joaquin

On December 1, 2016 before me, Karen A. Costa, Notary Public
(insert name and title of the officer)

personally appeared Laurie Montes,
who 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.

Signature: Karen A. Costa (Seal)

[Stamp: KAREN A. COSTA
Commission # 2130153
Notary Public - California
San Joaquin County
My Comm. Expires Nov 10, 2019]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 149-170-26

The land described herein is situated in the State of California, County of San Joaquin, City of Stockton, described as follows:

Parcel Two (II), as shown upon that certain Parcel Map thereof filed for record February 27, 1976, in Book 2 or Parcel Maps, at Page 138, San Joaquin County Records, being more particularly described as follows:

Being the South 26.33 feet of the East 141.00 feet of Lot 16 in Block 5, EAST OF CENTER STREET, in the said City of Stockton, as said lot and block are shown upon the Official Map of the City of Stockton on July 23, 1894. Said map being on file in the Office of the City Clerk of said City.
Exhibit "B"

Description of Work

(see attached proposal)
Proposal

McMaster-Construction
General Contracting
3231 Michigan Avenue
STOCKTON, CA 95204

(209) 942-1925 • Cell (209)
CA Lic. #669006

Proposed Submitted To: JACOB BENSUEREL, Esq.
Job Name: DEBUTATION ROOM
Job Location: 19 S. CALIFORNIA ST.
Address: 10 N. CALIFORNIA ST.
STK, CA.
Date: 10-3-16
Phone #: (209) 978-2709
Fax #: 978-2709

We hereby submit specifications and estimates for:

This is the quote you requested for your project.

1. Remove existing tile, iron work, sign, Windows, roll up doors, any other material not to remain per architectural rendering.
2. Replace three ex. Windows with non opening white vinyl framed panels.
3. Replace ex. Front door with new 6/0 x 8/0 double door; oak, stain grade, owners choice.
4. Install 2 light fixtures per rendering.
5. Paint building per rendering.
6. Install thin brick veneer as shown on rendering.
7. Install sign and menu board; supplied by owner.
8. All work to be paid at Davis Bacon wages.
Material and labor...$19,850

We propose hereby to furnish material and labor — complete in accordance with the above specifications for the sum of:

$ Nineteen Thousand Eight Hundred Fifty Dollars 00

with payments to be made as follows: TBA

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted, [Signature]

Note — this proposal may be withdrawn by us if not accepted within ________ days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Date of Acceptance ____________________________

[Signature]

Date of Acceptance ____________________________

[Signature]
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM
FACADE IMPROVEMENT FORGIVABLE LOAN
($47,485)

This Agreement (the "Agreement") is made as of this first day of April 2017, by and between the City of Stockton (the "CITY"), a municipal corporation, and Louis Rubino, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 2850 N. California Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of forty-seven thousand four hundred eighty-five Dollars and 00/100 ($47,485) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450- 16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed forty-seven thousand four hundred eighty-five Dollars and 00/100 ($47,485) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER’s choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to
CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other
transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other
party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor
as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any
Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions,
litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.
D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies
advanced to **BORROWER** by **CITY** including administrative costs, shall immediately become due and payable at the option of the **CITY**;

B. Bring an action in equitable relief: (1) seeking the specific performance by **BORROWER** of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding **CITY** from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by **BORROWER**.

9.4 **BORROWER REMEDIES.** Upon the fault or failure of **CITY** to meet any of its obligations under the Agreement, **BORROWER** may:

A. Demand payment from **CITY** of any sums due **BORROWER**;

B. Bring an action in equitable relief seeking the specific performance by **CITY** of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

**ARTICLE 10. GENERAL PROVISIONS**

10.1 **GOVERNING LAW.** The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 **STATUTORY REFERENCES.** All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S):

By: Louis Rubin

Print Name: Louis Rubin

Title: Property Owner

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By: Yuli Asmer

APPROVED BY:

Laurie Montes
Deputy City Manager

ATTEST:

Bonnie L. Paige
CLERK OF THE CITY OF STOCKTON

By: Carol Smith
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 125-340-02

That certain Real Property situated in the State of California, County of San Joaquin, City of STOCKTON, described as follows:

PARCEL TWO:

BEGINNING AT A POINT THAT IS SOUTH 16° 55' EAST 1122.6 FEET DISTANT FROM A POINT THAT IS DESCRIBED AS THE SOUTHWEST CORNER OF MAXWELL'S TRACT, THE SAID SOUTHWEST CORNER BEING THE POINT OF INTERSECTION OF HUMLAUFF'S NORTH LINE PRODUCED WITH THE WEST LINE OF STOCKTON RURAL CEMETERY ASSOCIATION LAND AND WHICH POINT OF INTERSECTION IS THE SOUTHEAST CORNER OF WHAT WAS KNOWN AS GOOD WATER GROVE; THENCE (TRUE MERIDIAN MAGNETIC VARIATION 18° 00' EAST) SOUTH 72° 23' WEST 570.5 FEET; THENCE SOUTH 16° 55' EAST 9.5 FEET; THENCE NORTH 72° 23' EAST 570.5 FEET; THENCE NORTH 16° 55' WEST 9.5 FEET TO THE POINT OF BEGINNING.

EXCEPT FROM THE ABOVE THAT PROTION IN CALIFORNIA STREET ALONG THE WESTERLY LINE.
Exhibit "B"

Description of Work

(SEE ATTACHED-SOHA BUILDERS)
Submitted to:
Alpine Market and Steve Rodrigues
2850 N. California Street
Stockton, CA 95204
Mobier: (707) 321-8514
Fax: (707) 635-8185
Personal: Steven.R.Rodrigues@gmail.com

Submitted by:
Soha Builders
P.O. Box 4802
Stockton, CA. 95204
Business: CSLB #886929
Mobile: 209-607-2129
Fax: 209-466-7711
Business: sohabuilders@yahoo.com

February 07, 2017

EXHIBIT "A"
"Scope of work" Remove awnings on west side of building and remove existing cover on south side of building.
Provide and install (6) storefront bronze widow frames with (2) 72" x 72" and (2) 36" x 72" 1/4" thick tempered glass panels in each frame.
Provide and install new set of double doors with side lights and lock set.
Install (7) sections , (above windows and doors) of metal canopy.
Prep and paint west and south walls, color TBD

This public works project and this proposal are subject to prevailing wages for all workers employed under the guidelines set forth by the director of the department of industrial relations. These rates are established twice yearly, February 22nd and August 22nd. If the commencement of this project is after June 26th, 2017, these rates may change.
General Project Contents

PROJECT PREPARATION
- Deliver 1.00 dumpster, pickup and dump after 7 days, 10 cubic yards, 1.5 tons. $396.00

CONCRETE DEMOLITION
- Demolish block wall, 8W x 24"H x 36'L by hand, no reinforcement $7,327.48

GENERAL DEMOLITION
- Remove existing awnings and cover, patch mounting holes $1,565.70

ROOFING AND GUTTERS
- Provide and install (7) metal canopies above new windows and doors $9,072.00

ALUMINUM WINDOWS
- Provide and install (1) set of commercial entry doors with side lights and (6) 72" x 108"
  1/4" tempered glass panels $27,577.00

EXTERIOR PAINTING
- Prep and paint smooth masonry, spray, 2 coats on south and west sides of building only $8,800.00

PROJECT FINALIZATION
- sub-contractor cleaning budget, exterior $1,500.00

Sub-Total is $56,238.18

Project Cost is $56,238.18
Profit and overhead: $11,247.64
Total Cost is $67,485.82

California contractors board information
As a contractor, we are required by law to be licensed and are regulated by the Contractors' State License Board. If you have questions concerning us or any other contractor, your questions should be referred to the registrar of the board at the following address:
Contractors' State License Board
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($80,000.00)

This Agreement (the "Agreement") is made as of this first day of October 2017, by and between the City of Stockton (the "CITY"), a municipal corporation, and Community Medical Center's Inc., a California corporation, a public benefit non-profit 501(c)(3), and a Charitable Trust registered in the State of California, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 701 East Channel Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of eighty thousand dollars and 00/100 ($80,000.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450- 16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.
1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed eighty thousand dollars and 00/100 ($80,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of
reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the
provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 **QUALITY OF WORK.** CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ** ADDITIONS OR CHANGES IN WORK.** CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 **RECORDS.** BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 **INSPECTIONS.** BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES.** BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 **TRANSFER OF PROPERTY.** The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER.
without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the
commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the
amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON- LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security
to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement—other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER’S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a “hazardous waste property” or as a “border zone property” under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER’S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.
8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and hold harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of the same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.
C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY's obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:
A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such
other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.
10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S):

By: [Signature]

Print Name: Arthur R. Feicles

Title: Chief Financial Officer

APPROVED AS TO FORM:
John M. Luebberke
City Attorney

By: [Signature]

APPROVED BY:
Laurie Montes
Deputy City Manager

ATTEST:
CLERK OF THE CITY OF
by [Signature]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 139-290-15

PARCEL ONE:

LOTS 6 AN 8, AND THE EAST 1/3 OF LOT 14, THE WEST 50 FEET OF LOT 16, THE SOUTH 50 FEET OF THE WEST 2/3 OF LOT 13, ALL IN CLOCK 76, EAST OF CENTER STREET, IN THE SAID CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PARCEL TWO:

LOTS 2 AND 4, AND THEIR WEST 100 FEET OF LOT 14, ALL IN BLOCK 76, EAST OF CENTER STREET, IN THE SAID CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.
Exhibit "B"

Description of Work

(see attached)
Proposal #052517-02

To: Community Medical Center Project
Re: Property: 701 East Channel St, Stockton CA 95202
From: Randolph Pierson, Stratus Construction Co.
Date: 7/11/2017

Scope of work:

It is our understanding that the scope of work includes:

Provide all materials and labor as required to complete project as described during Job walk on 5/26/2017 and outlined in WMB rendering provided. All work is to be performed in a workman like manner in accordance with all local and State building codes. All labor rates to conform and paid to the latest published Davis-Bacon prevailing wage federal determination 16004.

Stratus Construction will maintain current DIR Prevailing Wage Registration # 1,000,017,747 and maintain all mandatory correspondence during the duration of the project with the DIR, i.e. DAS 140, DAS 142, Apprenticeship Training Fund, Certified Payroll reporting, etc.
Stratus Construction Co. will maintain and furnish: 1,000,000/2,000,000 Limited liability Accord insurance certificate naming the property owner as additional insured prior to the commencement of construction.

Stratus Construction Co. will maintain and furnish: $1,000,000.00 Liability coverage on all vehicles and a $15,000.00 Builder and Tradesman Bond, as well as Workers Compensation $1,000,000.00 Insurance Certificate #XSL G27398595.

All work to be performed Monday through Friday during normal business hours.

All work to be completed in a reasonable timeframe with a completion date T.B.D.

Detailed scope of work includes materials, labor and sales tax:

1. **Paintwork:** Prepare and paint South and West exterior walls and trim. Repair as needed South and West walls as needed from patch repairs caused by any demo, removal and any new construction work.
   Materials and labor: $16,000.00

2. **Demo:** Maintain OSHA required safety barriers, pedestrian walkways, tunnels, barricades and dust control as needed. Provide temporary framing for board up, and maintain security board up during the duration of the project. Perform all sample testing and lab reports for disturbed locations as required. Dispose of all materials and submit dump receipts and reports to AQMD.
   Remove all awnings and framework attached to South and West side of building. Repair as needed.
   Terminate all electrical into approved boxes as needed from existing signage.
   Remove signage.
   Materials and labor: $3,500.00
3. **Glazing:** Remove and install new storefront metal, glass and all window units as shown in provided WMB rendering. Windows to be frosted with integral window security film:  
Materials and labor: $49,000.00

4. **Engineering:** Calculations for materials, hardware and field installation. Subcontract total $3,300.00

5. **Metalwork:** Fabricate, sandblast, and powder coat (8) metal shade canopy frame units above the storefront locations. Fabricate all mounting plates, tabs and hardware for turn buckles to mount to building and shade canopy units. Metal shed frame units to be approximate 12’, 28’ and 16’ long by 30”-36” wide. Frame work to protrude from face of building approx. 30”-36”. Material to be mild steel, 2”x 6”, 3/16”square tubing. Units to be fabricated off site, non-prevailing wage labor:  
Materials and labor: $27,800.00

6. **Installation of Metalwork:** Install (8) metal shade canopy frame units and (29) total turn buckle down rod supports to the face of the building over 8’ working height. Anchor system determined in Engineering cals.  
Install metal decking to frame units.  
Material and labor: $5,000.00

7. **Carpentry:** Remove all window board up at south elevation windows. Remove and replace all damaged wood and window trim at south and west elevations. Install new wood and trim to window locations at south elevation. Frame in as needed interior and exterior for new storefront system. Finish as needed all interior and exterior locations of new glazing.  
Materials and labor: $5,000.00

8. **Tile work:** Install tile and substrate to all areas indicated between windows on south elevation.  
Materials and labor: $8,000.00

9. **Equipment:** To include 40’ boom lift, 40’ grade all fork lift, debris box dump truck, portable restroom with hand wash station: $2,400.00
Total for materials and labor, lines #1-9 above: $120,000.00

Exclusions: Architectural Plans and building Permit.

Acceptance of Proposal #052517-02

Authorized Agent, Community Medical Center

Randolph Pierson, Stratus Construction Co.

Date

7/11/2017
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($20,000.00)

This Agreement (the "Agreement") is made as of this first day of November, by and between the City of Stockton (the "CITY"), a municipal corporation, and 116 N. Hunter Street, Inc., ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 116 N. Hunter Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of twenty thousand Dollars and 00/100 ($20,000.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed twenty thousand Dollars and 00/100 ($20,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the Loan as well as any revisions to the Project Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the City.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this Agreement, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject City loan; or deposit equity funds with City in the amount necessary to perform all he rehabilitation work not covered by the subject City loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse City for the cost of architectural fees paid by the City in the event of cancellation of the Loan.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the Project shall be made by the City upon presentation of approved invoices. Once invoices for payment have been received, City shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the City. City loan funds will be disbursed only after all BORROWER funds have been disbursed for the Project.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the Project.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. City may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to
CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other
transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other
party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor
as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any
Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions,
litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER’S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.
D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower’s (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies
advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

By: [Signature]

Print Name: **LAAS I. FULLER**

Title: **PRESIDENT**

**APPROVED AS TO FORM:**

John M. Luebberke
City Attorney

[Signature]

**APPROVED BY:**

[Signature]

Laurie Montes
Deputy City Manager

**ATTEST:**

[Stamp]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 149-170-16

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

The North 35 feet of Lot 2 in Block 6, "East of Center Street", in the City of Stockton, according to the Official Map or Plat thereof.
LColumna General Contractor  
3901 Clayton Rd #64, Concord, CA 94521  
(925) 698-0813  
Lic. #B-852468

PROPOSAL

July 4, 2017

LARS FULLER  
116 N, Hunter St., Stockton, CA

Re: FACADE REMODEL

The undersigned proposes to furnish all Labor, Tools & materials to complete the following:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DEMOLITION: Remove existing wall, roll-up door, iron grill, doors, minimal tiles, canvas owning. Disposal &amp; disposal fee. Note: Clerestory windows will be verified if glass still existing, then we can remove the cover to expose.</td>
<td>$4,500</td>
</tr>
<tr>
<td>2</td>
<td>NEW WALL CONSTRUCTION: Construct wood stud wall at leftside, mudsill headers, insulation, interior sheetrock, tape &amp; texture sheetrock ready for painting. Frame new doors at main &amp; right side. Debris disposal &amp; fee.</td>
<td>$3,800</td>
</tr>
<tr>
<td>3</td>
<td>IRON WORKS: Fabrication &amp; Installation of (3) windows (metal canopy &amp; ornamental side), Boom Crane rental, Iron gate. Street sign coordination. (Fabrication of (3) windows &amp; iron gate budget included in this price is ($4,200).</td>
<td>$8,970</td>
</tr>
<tr>
<td>4</td>
<td>ELECTRICAL: Replace (5) ceiling lights, Install (2) new interior outlets.</td>
<td>$2,500</td>
</tr>
<tr>
<td>5</td>
<td>DOORS: (1) Main Door, (1) Solid Wood Door, (1) Blind cut door. (Special order of Main Door budget included in this price is $2,500).</td>
<td>$5,750</td>
</tr>
<tr>
<td>6</td>
<td>METAL WALL FINISH: 1/8&quot; thk Sheet metal cutting &amp; fabrication. Cutting &amp; drilling holes on 3/16&quot; thk Angle bars &amp; Flat bars moulding.</td>
<td>$8,970</td>
</tr>
<tr>
<td>7</td>
<td>PLYWOOD FINISH/WOOD TRIMS: Intall exterior plywood/Trims, Brass kick plate.</td>
<td>$5,600</td>
</tr>
<tr>
<td>8</td>
<td>CEILING/Right Wall: Existing ceiling to remain. Cement Plaster, intall new ribbed lath. Cement plaster right side portion of the front post.</td>
<td>$500</td>
</tr>
<tr>
<td>9</td>
<td>PAINTING/STAIN: (2) Coats. Re-paint whole front, brick, metal canopy, Stain plywood &amp; trims, boom crane rental to reach high wall.</td>
<td>$7,970</td>
</tr>
<tr>
<td></td>
<td>TOTAL =</td>
<td>$48,560</td>
</tr>
</tbody>
</table>

10. CLERESTORY WINDOWS: Fabrication & Installation by Window/Glass Company Budget Only. (Re-bid after framing is up) (TO BE VERIFIED if glass is still exist) | $0     |
11. WINDOWS: Cladded Wood Fabrication & Installation by Window/Glass Company Budget Only. (Re-bid after framing is up)                         | $5,000 |
12. WALL ART: 2 pcs wall art w/ LED lighting background. (budget only)                                                                       | $1,500 |
13. CANOPY ROOF REPAIR: To be verified on the extent of repair (budget only)                                                                | $1,500 |

NOTE: Workers are to be paid at Prevailing Wage. Payable on: 10% or $1000 Down, then Progress Billing.

LColumna
Leandro C. Columna,  
Contractor
Exhibit “B”

Description of Work
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($19,975.00)

This Agreement (the "Agreement") is made as of this thirtieth day of August, 2018 by and between the City of Stockton (the "CITY"), a municipal corporation, and The Open Window Project, a limited liability company, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 630 East Weber Avenue, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of Nineteen Thousand Nine Hundred Seventy Five Dollars and 00/100 ($19,975.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments.
thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project,
to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed Nineteen Thousand Nine Hundred Seventy-Five Dollars and 00/100 ($19,975.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of six (6) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.
2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.
4.4 **QUALITY OF WORK.** CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 **ADDITIONS OR CHANGES IN WORK.** CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 **RECORDS.** BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 **INSPECTIONS.** BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES.** BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 **TRANSFER OF PROPERTY.** The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law,
and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for

Façade Improvement Loan Agreement
The Open Window Project, LLC

CRF 171
630 E. Weber Ave.
repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.
8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.
C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the
Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.
10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER

Façade Improvement Loan Agreement 13
The Open Window Project, LLC 630 E. Weber Ave.
shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

PROPERTY OWNER(S):

By:

Print Name: Zachary Cov

Title: Owner

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

APPROVED BY:

Laurie Montes
Deputy City Manager

ATTEST:

CLERK OF THE CITY OF STOCKTON

Façade Improvement Loan Agreement
The Open Window Project, LLC

CRF 171
630 E. Weber Ave.
EXHIBIT “A”

LEGAL DESCRIPTION

APN: 149-180-03

Lots 7 and 9 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.
Exhibit “B”

Description of Work

(See attached)
Contract of Service

Proposal submitted: 08/13/2018 to: Cynthia

Name: The Sycamore 10, LLC
Address: 110 N San Joaquin Street, 5th Floor, Stockton
Phone: 209-469-2678 Ext 304

Work to be performed at:

Name: The Sycamore
Address: 830 E Weber Avenue, Stockton
Phone:

Remove and install (6) openings. Install new storefront system 2 x 4 1/2 bronze anodized. 1 pair of 3/0 x 7/0 doors and transom glass. 1 3/0 x 7/0 single door
All labor in compliance with Davis Bacon prevail wages

Total price installed - $29,950.00

Respectfully submitted,

Kris Long

Agreed and Accepted by:

Signature: Zac Cort, Manager

Signature: Peter Gruettner
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FAÇADE IMPROVEMENT FORGIVABLE LOAN

($80,000.00)

This Agreement (the "Agreement") is made as of this thirtieth day of April, 2019 by and between the City of Stockton (the "CITY"), a municipal corporation, and DFA Medici Associates LP, a California limited partnership, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 228-246 North Sutter Street and 404-408 East Miner Avenue, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY’S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of Eighty Thousand Dollars and 00/100 ($80,000.00) to be executed by
BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials,
asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit “A,” which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit “B,” which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed Eighty Thousand Dollars and 00/100 ($80,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of six (6) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the
provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the
PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasoneable weather conditions. An extension of time for any
of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and
subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part
thereof, such event shall not constitute a default under the Agreement and the
BORROWER shall have the right to rebuild the affected PROPERTY, and to use all
available insurance or condemnation proceeds to that end, provided that; (a) the available
proceeds, together with any funds supplied by BORROWER from other sources, are
sufficient to rebuild the affected PROPERTY in a manner that provides adequate security
to the CITY for repayment of the funds; and (b) no material default then exists under any
Agreement other than defaults which are a result of a fire or other casualty or
condemnation.

ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in
writing of: (a) the discovery of any concentration or amount of Hazardous Materials on
or under the PROPERTY requiring notice to be given to any governmental entity or
agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after
verification of the veracity of such knowledge to BORROWER reasonable satisfaction)
that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt
by of written notice of any Hazardous Materials claims; and (d) the discovery by
BORROWER of any occurrence or condition on the PROPERTY or on any real property
located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part
thereof to be designated as a "hazardous waste property" or as a "border zone property"
under California Health and Safety Code Sections 25220, et seq., or regulations adopted
therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any
agent, employee, or contractor of BORROWER, nor any authorized user of the
PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the
generation, manufacture, storage, disposal, or release of Hazardous Materials.
BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials
Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the
presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall
immediately take, at no cost or expense to CITY, all handling, treatment, removal,
storage, decontamination, cleanup, transport, disposal or other remedial action, if any,
required by any Hazardous Materials Laws or by any orders or requests of any
governmental entity or agency or any judgment, consent decree, settlement or
compromise with respect to any Hazardous Materials claims. The foregoing, however,
shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim,
demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based
on a material question of law or fact raised by BORROWER in good faith, (b)
BORROWER promptly commences and thereafter diligently pursues the contest, (c) the
contest will not materially impair the taking of any remedial action with respect to such
claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits
with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER’S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S
failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.
9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.
ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.
10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

DFA MEDICI ASSOCIATES, a California limited partnership

By: ______________________________
Name: Daniel Fred
Title: Administrative Partner

CITY OF STOCKTON, a California municipal corporation

By: ______________________________
Name: Laure Montes
Title: Deputy City Manager

ATTEST:
City Clerk

APPROVED AS TO FORM:

John M. Luebberke
City Attorney
EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to is situated in the County of San Joaquin, City of Stockton, State of California, and is described as follows:

Lot 1 and portions of Lots 3 and 13, in Block 73, East of Center Street, in City of Stockton, according to the Official Map thereof, San Joaquin County Records and described as follows:

Beginning at the Northwest corner of said Block 73 and run North 78° 00' East along the North line of said Block 73, being also the South line of Miner Avenue, 92.2 feet to a point being 221.0 feet Westerly of the Northeast corner of said Block 73; thence South 12° 02' East, parallel with the East line of said Block 73, 101.0 feet to the North line of said Lot 13; thence North 78° 00' East along said North line of Lot 13, 14.4 feet; thence South 12° 02' East, parallel with and distant 45.0 feet Westerly of the East line of said Lot 13, 50.5 feet to the South line of said Lot 13; thence South 78° 00' West along said South line of Lot 13, 106.6 feet to the Southwest corner of said Lot 13; thence North 12° 02' West along the West line of said Block 73, being also the East line of Sutter Street, 151.5 feet to the point of beginning.

Together with the right to use the existing fire escape passageway over the lying East of the East line of the above described parcel in said Lot 13.

APN: 139-250-01, 139-250-28 and 139-250-29
Exhibit “B”

Description of Work

(See attached)
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM
FACADE IMPROVEMENT FORGIVABLE LOAN
($60,000)

This Agreement (the "Agreement") is made as of this 1st day of February 2020 by and between the City of Stockton (the "CITY"), a municipal corporation, and Robert Halwani, a single man, ("the BORROWER").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 2149-2157 E. Main Street, Stockton, CA hereinafter referred to as the “PROPERTY.”

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of Sixty Thousand Dollars ($60,000) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.
1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.
1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed Sixty Thousand Dollars ($60,000) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of six (6) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.

2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWER FUNDS. BORROWER shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER’s choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.
2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWER funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWER warrants that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWER may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any
additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.

4.10 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.
If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 DAMAGE TO PROPERTY. To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

4.14 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY.

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on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER's or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

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ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER’S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower’s use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER’S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR’S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY’S prior written consent; (2) CONTRACTOR’S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR’S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed
by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY.

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B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWER shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWER and CITY.

10.11 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable
by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

BORROWER, a single man

By: [Signature]

[Signature]

Date: 02-13-2020

CITY OF STOCKTON, a municipal corporation

By: [Signature]

[Signature]

Harry Black
City Manager

ATTEST:

Eliza R. Garza, City Clerk

APPROVED AS TO FORM:

Ryan Meyerhoff
Deputy City Attorney
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 153-105-02

The land referred to is situated in the County of San Joaquin, City of Stockton, State of California, and is described as follows:

Parcel One:

Being a portion of Lot 4 in Block 18 of the Fair Oaks Tract, Eastern addition to the City of Stockton filed in Book of Maps and Plats, Book 1, Page 39, San Joaquin County Records, bounded and described as follows:

Commencing at the Southwest corner of said Lot 4 on the Copperopolis Road; thence bounded on the West by the Western boundary line of said Lot 4 to Lafayette Street; thence by a line bearing South along the South side of Lafayette Street, 25 feet; thence by a line bearing South to Copperopolis Road; thence by the North side of said being a line bearing about Northwest to the point of commencement.

Parcel Two:

Lot 5 and the East 1/2 of 4 in Block 18 as said Fair Oaks Tract, Eastern addition to the City of Stockton filed in Book of Maps and Plats, Book 1, Page 39, San Joaquin County Records.
Exhibit “B”

Description of Work
February 13, 2020

Mr. Avraham Halwani  
Post Office Box 214  
Belmont, CA 94002-0214

Re: Façade Construction Bid  
2153 E Main St., Stockton, CA

Dear Mr. Halwani,

I propose to furnish all labor and materials as required to complete the work as described in the drawings prepared by J.C. Wagner and Associates, dated 8/26/2019 and approved City of Stockton permit # 18-09291.

Additional Description of Work:

Demolition, hauling and debris removal.  
Complete exterior painting according to City approved façade plan.  
Aluminum Awnings per plan.  
Electrical wiring for lighting to include eight wall mounted light fixtures.  
Rood framing to include sloped framed crickets and 45 mil TPO roofing.  
Parapet cap to be colored 26 gage galvanized metal.  
Interior drywall and painting to be repaired as necessary for this work.  
All labor to be according to Davis-Bacon prevailing wage.

The above work to be completed in a substantial and workmanlike manner within 90 days from the notice to proceed for the sum of $120,000.00 payable as the job progresses for work completed and approved on the 15th and 30th of each month. Payments to be made within 5 working days from the approved invoice date. Economic Development payments will be approved and disbursed according to City procedures.

Respectfully Submitted,

Bob Leonard

Accepted:  
Date: 2-18-2020
Assumption Agreement with Lenders Consent to Transfer

Title of Document

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars ($75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars ($225.00).

☐ Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

☑ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently “in connection with” a transfer subject to the imposition of documentary transfer tax (DTT).

☐ Exempt from fee per GC 27388.1 (a) (2); recorded concurrently “in connection with” a transfer of real property that is a residential dwelling to an owner-occupier.

☐ Exempt from fee per GC 27388.1 (a) (1); fee cap of $225.00 reached.

☐ Exempt from the fee per GC 27388.1 (a) (1); not related to real property.

THIS COVER SHEET ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
($3.00 Additional Recording Fee Applies)
RECORDING AT THE REQUEST OF
Lawyers Title of Northern California

RECORDING REQUESTED BY:
Lawyers Title Company

Escrow Order No.: FLNP-0041700499

When Recorded Mail Document and Tax
Statement To:
CITY OF STOCKTON
45 NORTH EL DORADO STREET, 3RD FLOOR
STOCKTON, CA 95202

APN/Parcel ID(s): 149-170-01

Exempt from fee per GC 27388.1 (a) (2); recorded in connection with a transfer subject to the imposition of documentary transfer tax.

ASSUMPTION AGREEMENT WITH LENDER'S CONSENT TO TRANSFER

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)
ASSUMPTION AGREEMENT
WITH LENDER'S CONSENT TO TRANSFER

THIS ASSUMPTION AGREEMENT WITH LENDER'S CONSENT TO TRANSFER (this "Agreement") is made as of _______ 2018, by and among the City of Stockton, a municipal corporation ("Lender"), 42 N. Sutter, LLC, a Limited Liability Company, ("Borrower"), and Circa1850, LLC, a Limited Liability Company, ("Purchaser").

RECITALS

A. Lender is the owner and holder of a certain promissory note (the "Note") assumed with an Assumption Agreement by the Borrower, recorded November 3, 2015 under recording No. #2015-132257, secured by a deed of trust (the "Deed of Trust") dated May 1, 2013 executed by Borrower in the face amount of seventy five thousand eight hundred eighty Dollars ($75,880.00) which Deed of Trust was recorded May 20, 2013 under Recording No. #2013-066373 in the official records of San Joaquin County, Stockton, California on the following described real property:

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

LOTS 1 AND 3, IN BLOCK 5, EAST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, AS ADOPTED JULY 23, 1894 BY CITY COUNCIL OF CITY OF STOCKTON, SAN JOAQUIN COUNTY RECORDS.

B. Lender has been asked to consent to the transfer to Purchaser of the property (the "Property") encumbered by the Deed of Trust.

C. Purchaser is willing to assume the obligation of the maker under the Note and the grantor under the Deed of Trust.
D. Lender has made a thorough review of the proposed transfer and the Purchaser and Borrower has agreed to consent to the transfer, subject to the terms and conditions set forth below.

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the parties hereto hereby agree and consent to the following:

1. Lender consents to the transfer of the Property to Purchaser and to no other transfer.

2. The parties hereto agree that nothing in this Agreement shall affect the priority of the Deed of Trust over other liens, charges, encumbrances nor conveyances or shall release or change the liability of any party who may now or hereafter be liable, primarily or secondarily, under or on account of the Note.

3. Purchaser hereby assumes and agrees to perform timely all obligations of the Borrower under the Note and Deed of Trust.

4. The loan is evidenced solely by the following “Loan Documents:”
   a. façade Improvement Loan Program Agreement dated May 1, 2013.
   b. façade Improvement Loan Program Promissory Note, dated May 1, 2013.
   c. façade Improvement Loan Program Deed of Trust, dated May 1, 2013, and recorded on May 20, 2013, as Instrument No. 2013-066373.
   d. Assumption Agreement, dated October 23, 2015, and recorded on November 3, 2015, as Instrument No. #2015-132257.

5. Purchaser and Borrower warrant and represent that all financial statements and other written material submitted to Lender in connection with the proposed transfer of the Property continues to be and will be, as of the date of transfer of the Property, true and accurate in all respects. As of the date of this Agreement, neither Purchaser nor Borrower has, or knows of, any disputes with or claims against Lender or any breach or violation by Lender or Borrower of the terms and conditions of the loan described above, including but not limited to breach or violation of the terms and conditions of the Note or the Deed of Trust.

6. In the event of any litigation between any of the parties hereto with respect to the Note, the Deed of Trust or the loan evidenced thereby, including but not limited to any action to interpret or enforce the terms of this Agreement, all parties agree that the exclusive jurisdiction and venue shall be in the Superior Court of Stockton, San Joaquin County, California. Purchaser irrevocably consents to submit to the jurisdiction of such court. This Agreement shall be construed
under the laws of the State of California. Any default by Borrower or Purchaser under the provisions of this Agreement shall also constitute a default under the Deed of Trust.

LENDER: City of Stockton, a municipal corporation

By ____________________________

Its ____________________________

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

BORROWER: 42 N. Sutter, LLC, a Limited Liability Company

By ____________________________

Its Managing Member

PURCHASER: Circa1850, LLC, A Limited Liability Company

SEE COUNTERPART SIGNATURE

By ____________________________

ROBERT STEVEN LEE
Its ____________________________
under the laws of the State of California. Any default by Borrower or Purchaser under the provisions of this Agreement shall also constitute a default under the Deed of Trust.

LENDER:

City of Stockton, a municipal corporation

By

Its

SEE COUNTERPART SIGNATURE

APPROVED AS TO FORM:

John M. Luebberke
City Attorney

By

SEE COUNTERPART SIGNATURE

BORROWER:

42 N. Sutter, LLC, a Limited Liability Company

By

SEE COUNTERPART SIGNATURE

Its Managing Member

PURCHASER:

Circa 1850, LLC, A Limited Liability Company

By

ROBERT STEVEN LEE
Its managing partner

See attached certificate
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of [San Joaquin]

On Feb. 20, 2018 before me, [Karen A. Costa, Notary Public], (insert name and title of the officer)

personally appeared [Laurie Montes], who 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.

[Signature]
(Seal)
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  Los Angeles  
County of  

On March 6, 2018 before me, Narciso Meza Jr., Notary Public

personally appeared Robert Steven Lee

Name(s) of Signer(s)

who 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.

Signature Narciso Meza Jr.

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Assumption Agreement with Lender's Consent to Transfer  
Document Date: March 6, 2018
Number of Pages: 3  
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert Steven Lee

☐ Corporate Officer — Title(s):  
☐ Partner — Limited  ☐ General  
☐ Individual  ☐ Attorney in Fact  
☐ Trustee  ☐ Guardian or Conservator  
☐ Other:

Signer Is Representing:

Signer's Name:  
☐ Corporate Officer — Title(s):  
☐ Partner — Limited  ☐ General  
☐ Individual  ☐ Attorney in Fact  
☐ Trustee  ☐ Guardian or Conservator  
☐ Other:

Signer Is Representing:
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _California_  
County of _San Francisco_  

On _mar. 19, 2018_ before me, _Tina Lichtle_, Notary Public (here insert name and title of the officer), personally appeared Edward Schmidt, who 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.

(Signature)
FACADE IMPROVEMENT LOAN PROGRAM
PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (the "BORROWER") promises to pay to
the order of the City of Stockton (the "LENDER") or its successors, the principal sum of
twenty thousand and 00/100 ($20,000.00) with interest at the rate of ten percent (10%) in
annual installments from the 1st day of August and continuing every year until the
principal balance has been paid.

All principal and interest shall be payable at City of Stockton, or at such other place
as shall be designated by LENDER.

This Note evidences a loan by LENDER to BORROWER for the sole and exclusive
purpose of rehabilitating, preserving and/or enhancing commercial real estate located at
and commonly known as (the "PROJECT"):

PROJECT SITE ADDRESS
10 N. California Street
Stockton, CA 95202

This Note is secured by a Deed of Trust of even date herewith in favor of LENDER,
as beneficiary, on the above-referenced PROJECT.

The parties hereto have entered into a Facade Improvement Forgivable Loan
Agreement of even date herewith under the City of Stockton Commercial Rehabilitation
Loan Program (the "Agreement"). The Agreement contains various terms and conditions
upon which LENDER has conditioned forgiveness of the loan evidenced by this Note.

The term of this Note shall be until the balance due is paid in full, or a period ending
on the first day of the month first occurring five (5) years after the completion of the
PROJECT rehabilitation, preservation, or enhancement activities financed in whole or in
part by the loan evidenced by this Note. Unless prepaid, this Note shall be satisfied and be
released by LENDER on the first day of August, 2020. The anniversary of this Note shall
be the first day of August in each year following the completion of activities financed by the
Loan evidenced by the Note.

At each anniversary date on which LENDER determines that BORROWER has
satisfied the terms and conditions of the Agreement, LENDER shall reduce the balance due hereunder by twenty (20) percent of the original amount of the Note. LENDER shall waive and forgive any interest accrued under the terms and conditions of this Note since the previous anniversary date providing BORROWER is found to be eligible for said reduction. During the term of this Note, BORROWER shall make no payments of principal or interest.

In the event of any transfer, sale or assignment of the real property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWER. Any successor(s) to or assignee(s) of BORROWER shall execute and deliver to LENDER a Deed of Trust on the PROJECT to secure repayment of said Note.

In the event of any default by the undersigned, the unpaid principal amount of the Note, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.

If suit is instituted by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney’s fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER’S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:
LENDER: City of Stockton
Economic Development Department
City Hall, 3rd Floor
Stockton, CA 95202

BORROWER: Jacob L. Benguerel
10 N. California Street
Stockton, CA 95202

This Note shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

BORROWER reserves the right to prepay at any time all or any part of the remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of its date.

Dated: 7-9-15

BORROWER:

BY: [Signature]
Print Name: Jacob Benguerel
Title: Owner

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

DEPUTY CITY ATTORNEY
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) "Deed of Trust" means this document, which is dated August 1, 2015, together with all Riders to this document.

(B) "Borrower" is Jacob L. Benquerel. Borrower is the trustor under this Deed of Trust.

(C) "Lender" is City of Stockton, a municipal corporation. Lender's address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) "Trustee" is City of Stockton, a municipal corporation.

(E) "Note" means the promissory note(s) signed by Borrower and dated August 1, 2015. The Note(s) states that Borrower owes City twenty thousand and 00/100 Dollars ($20,000.00). Borrower has promised to pay this debt in full not later than August 1, 2020.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) “Miscellaneous Proceeds” means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) “RESPA” means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) “Successor in Interest of Borrower” means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 10 N. California Street, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender’s opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.
4. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect
such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an inspection specifying such reasonable cause.
6. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

7. **Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. **Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured
by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. “Opposing Party” means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender’s judgment, could result in forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to the dismissed with a ruling that, in Lender’s judgment, precludes forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender’s interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be require to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any
Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to
Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

14. Borrower's Copy. Borrower shall be given one copy of the Note and of this Deed of Trust.

15. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. Borrower's Right to Reinstatement After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and
valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Hazardous Substances. As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.
NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee
charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. **Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

BY: ____________________________

Print Name: Jacob Bergesel

Title: Owner

APPROVED AS TO FORM:

JOHN M. LUEBBERKE
CITY ATTORNEY

BY: ____________________________

DEPUTY CITY ATTORNEY
EXHIBIT “A”

LEGAL DESCRIPTION

APN: 149-170-16

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

The North 35 feet of Lot 2 in Block 6, “East of Center Street”, in the City of Stockton, according to the Official Map or Plat thereof.
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN

On July 9, 2015 before me, Audrey E. Ogden, Notary Public

(insert name and title of the officer)

personally appeared Jacob Benguerel, who 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.

Signature Audrey E. Ogden (Seal)
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($20,000.00)

This Agreement (the "Agreement") is made as of this first day of August, by and between the City of Stockton (the "CITY"), a municipal corporation, and Jacob L. Benguerel, ("the BORROWER").

RECATALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWER wishes to receive from CITY and CITY wishes to extend to BORROWER funds to support the rehabilitation of property located at 10 N. California Street, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWER shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWER.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of twenty thousand Dollars and 00/100 ($20,000.00) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1][a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District’s Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWER as trustor with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWER under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWER to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWER agrees to accept the assistance in the total amount not to exceed twenty thousand Dollars and 00/100 ($20,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWER for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWER fully complies with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWER, execute and deliver to BORROWER, a deed of reconveyance. BORROWER shall pay all fees associated with the recording of the deed of reconveyance.
2.8 **USE OF FUNDS.** Loan funds may be used only for the Eligible costs associated with the **LOAN** as well as any revisions to the **PROJECT** Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the **CITY**.

2.9 **BORROWER FUNDS.** BORROWER shall at or prior to the execution of this **AGREEMENT**, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWER's choice in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan; or deposit equity funds with **CITY** in the amount necessary to perform all he rehabilitation work not covered by the subject **CITY** loan.

2.10 **ARCHITECTURAL SERVICES REIMBURSEMENT.** BORROWER shall reimburse **CITY** for the cost of architectural fees paid by the **CITY** in the event of cancellation of the **LOAN**.

**ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF PROCEEDS.** Disbursement of all proceeds for the **PROJECT** shall be made by the **CITY** upon presentation of approved invoices. Once invoices for payment have been received, **CITY** shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the **CITY**. **CITY** loan funds will be disbursed only after all BORROWER funds have been disbursed for the **PROJECT**.

3.2 **TITLE.** BORROWER warrants that it will maintain good and marketable title to the **PROJECT**.

**ARTICLE 4. DEVELOPMENT OF PROPERTY**

4.1 **CONFIGURATION OF THE PROPERTY.** The BORROWER may, by contract, require the **CONTRACTOR** to rehabilitate the **PROPERTY** pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWER requirements. At a minimum, **CONTRACTOR** shall perform all rehabilitation by contract.

4.2 **COMMENCEMENT OF REHABILITATION.** The contract shall require that **CONTRACTOR** begin rehabilitation of the **PROPERTY** no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of **CONTRACTOR** to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. **CITY** may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to **CONTRACTOR**
to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Agreement.

4.6 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWER in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWER, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWER shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWER without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the **PROPERTY** or a stop notice affecting the **PROJECT** is served on **CITY** or other third party in connection with the **PROPERTY, CONTRACTOR** shall, within 20 days of 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 **CITY** a surety bond in sufficient form and amount, or provide **CITY** with other assurance satisfactory to **CITY** that the claim of lien or stop notice will be paid or discharged.

If **CONTRACTOR** fails to discharge bond or otherwise satisfy **CITY** with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, **CITY** may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at **BORROWER’S** expense. Alternatively, **CITY** may require **CONTRACTOR** to immediately deposit with **CITY** the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. **CITY** may use such deposit to satisfy any claim or lien that is adversely determined against **CONTRACTOR**.

4.11 **BARRIERS TO THE DISABLED.** The **PROJECT** shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** **BORROWER** shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the **PROPERTY** or the **PROJECT**, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by **CITY**, if any building or improvement on the **PROPERTY** is damaged or destroyed by an insurable cause, **BORROWER** shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, **BORROWER** shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the **PROJECT** or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the **PROJECT** must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages on BORROWER in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWER'S or any contractor or subcontractor of borrower or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWER shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER'S (after verification of the veracity of such knowledge to BORROWER reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWER shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

8.4 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER'S knew of same) of any Hazardous Materials occurring prior to or during BORROWER use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) Borrower's use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Agreement; and (5) BORROWER'S default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWER of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed
by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. **Representations and warranties.** A determination by CITY that any of BORROWER representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed or failed to disclose a material fact from CITY.

F. **Damage to PROPERTY.** Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWER does not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. **Bankruptcy, dissolution, and insolvency.** BORROWER or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. **Default in the note.** Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWER fails to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWER by CITY.

9.3 **CITY'S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. **Terminate this Agreement,** in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;
B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWER of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWER.

9.4 BORROWER REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 **TIME.** Time is of the essence in this Agreement.

10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of **CITY** or **BORROWER** required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of **BORROWER** and **CITY** for this **PROPERTY** under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. **CITY** neither undertakes nor assumes any responsibility or duty to **BORROWER** (except as provided for herein) or any third party with respect to the **PROPERTY**, the **PROPERTY**, or the Agreement. Except as **CITY** may specify in writing **BORROWER** shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by **CITY** of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by **CITY** to take action on any breach or default of **BORROWER** or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to **BORROWER** to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by **CITY** to any act or omission by **BORROWER** shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for **CITY'S** written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by **BORROWER** for the **PROPERTY**, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** **BORROWER** represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. **BORROWER** shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by **CITY** in writing.

10.10 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both **BORROWER** and **CITY**.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

By: [Signature]

Print Name: Jacob Begaypal

Title: Owner

**APPROVED AS TO FORM:**

John M. Luebberke
City Attorney

**APPROVED BY:**

[Signature]

Laurie Montes
Deputy City Manager

**ATTEST:**

CLERK OF THE CITY OF STOCKTON

By: [Signature]
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 149-170-16

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

The North 35 feet of Lot 2 in Block 6, "East of Center Street", in the City of Stockton, according to the Official Map or Plat thereof.
Exhibit “B”

Description of Work

(see attached)
Proposal

To: Jacob Beguerel, San Joaquin Family Law
From: Randolph Pierson, Stratus Construction Co.

Project: Façade Improvement for 10 N. California St. Stockton Ca 95202
Date: 5/18/2015

Listed below is the scope of work and a Proposal for a City building façade improvement for a building owned and occupied by Attorney Jacob Beguerel. All work to conform to Davis-Bacon and Local Prevailing wage rates.

Improvements would include:

1. Remove and replace all second story windows with retro fit Vinyl Dual Paine, Low E units. (Window sketch is enclosed). Left and right units are single hung. Center upper window is hopper style, opening outward. Windows shall have a 15% tint. $6,057.00

2. Build temporary pedestrian tunnel for pedestrian foot traffic safety along sidewalk at complete span of building. $3,400.00

3. Ariel equipment rental charges: $2,200.00
4. Install ornamental iron security gates with transom unit. Install locking hardware. Copper Creek, “Bulldog Avery”. Powder coat ornamental iron Satin black. Address numbers, 6” in height. Silver in color at center transom area. Approx. unit: 64”x144” Doors : 120’’.
(Example photo is enclosed) $3,000.00

5. Install new front door unit complete, hardwood construction. Install new locking hardware, Copper Creek, Key pad with dead bolt. Rough opening is approx. 64”x120” 42”x 96” door,
10”x96” solid sidelight units, no windows. Transom 64”x24”. Transom with window above
that opens for ventilation. Install 6” silver address numbers in transom area. Finish solid
detail panel above transom to match door detail. See attached door unit drawing. $7,600.00

6. Interior and exterior trim for door, sidelights, and transom: $700.00

7. Installation labor for above: $1,600.00

8. Paintwork: Prime and paint all new door and casework with Behr Firecracker Red, interior
and exterior. Paint all interior and exterior new window casing. Perform all painting as
needed to exterior building body as needed. $3,400.00

Attached are detail drawings for Door unit. Ornamental iron unit. Architectural plans
showing general scope of work

9. Remove existing tile at exterior entryway. Install travertine tiles, 14”x14”. $900.00

10. Remove and replace existing mail slot. $200.00

11. Remove existing tenant directory and replace with a hardwood plaque and framing for a
future directory. $200.00

12. Install all interior and exterior window trim as needed, Materials and labor: $800.00
Total Proposal amount for lines 1-12 above: $30,057.00

All work to be performed in a workman like manner in accordance to all local and state building codes. All labor to be paid at the current Davis Bacon/ of local prevailing wage scale. Certified payroll statements will be submitted to the Labor Compliance Officer, as well as all other documentation in the compliance package. City Permit fees and Historical Building Review fees to be paid directly by the building owner. Architect fees to be paid directly by the City Façade Loan Program.

Randolph Pierson, Stratus Construction Co.  

Date 6/18/2015

Jacob Benguerel, San Joaquin Family Law  

Date
ASSUMPTION AGREEMENT
WITH LENDER'S CONSENT TO TRANSFER

THIS ASSUMPTION AGREEMENT WITH LENDER'S CONSENT TO TRANSFER (this "Agreement") is made as of March 26, 2018, by and among the City of Stockton, a municipal corporation ("Lender"), Vladimir Kyle Kovalik and Karen Jeanne Quinn, ("Borrower"), and The Sperry, LLC, ("Purchaser").

RECITALS
A. Lender is the owner and holder of a certain promissory note (the "Note") secured by a deed of trust (the "Deed of Trust") dated December 9, 2015 executed by Borrower in the face amount of thirty thousand Dollars ($30,000.00) which Deed of Trust was recorded February 5, 2018 under Recording No. #2018-013390 in the official records of San Joaquin County, Stockton, California on the following described real property:

APN: 137-280-11

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

-PARCEL ONE:-

LOT 1 AND THE WEST ONE-HALF (W-1/2) OF LOT 3, BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11

-PARCEL TWO:-

A PORTION OF MADISON STREET WEST OF AND ADJOINING THE WEST LINE OF BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 2; THENCE SOUTH 11° 41' 54" EAST, 101.14 FEET ALONG SAID WEST LINE OF BLOCK 2 TO THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO DELTA
BLOOD BANK, A NON PROFIT CALIFORNIA CORPORATION RECORDDE DECEMBER 15, 1978 IN BOOK OF OFFICIAL RECORDS, VOL. 4487, PAGE 590, SAN JOAQUIN COUNTY RECORDS, THENE SOUTH 78° 22' 23" WEST 17.69 FEET ALONG THE NORTHELY LINE THEREOF PRODUCED WESTERLY; THENE (1) NORTH 11° 39' 58" WEST 83.51 FEET AND (2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 17.62 FEET, A CENTRAL ANGLE OF 90° 02' 09", AN ARC LENGTH OF 27.69 FEET, AND A CHORD BEARING NORTH 33° 21' 06" EAST 24.93 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERAL RIGHTS INCLUDING RIGHTS TO OIL, GAX AND OTHER HYDROCARBON SUBSTANCES, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED EXECUTED BY THE CITY OF STOCKTON, A MUNICIPAL CORPORATION, RECORDED JANUARY 31, 1983, AS DOCUMENT NO. 83006617, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11

B. Lender has been asked to consent to the transfer to Purchaser of the property (the "Property") encumbered by the Deed of Trust.

C. Purchaser is willing to assume the obligation of the maker under the Note and the grantor under the Deed of Trust.

D. Lender has made a thorough review of the proposed transfer and the Purchaser and has agreed to consent to the transfer, subject to the terms and conditions set forth below.

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the parties hereto hereby agree and consent to the following:

1. Lender consents to the transfer of the Property to Purchaser and to no other transfer.

2. The parties hereto agree that nothing in this Agreement shall affect the priority of the Deed of Trust over other liens, charges, encumbrances nor conveyances or shall release or change the liability of any party who may now or hereafter be liable, primarily or secondarily, under or on account of the Note.

3. Purchaser hereby assumes and agrees to perform timely all obligations of the Borrower under the Note and Deed of Trust.

4. The loan is evidenced solely by the following “Loan Documents:”
   a. Façade Improvement Loan Program Agreement dated December 9, 2015.
   b. Façade Improvement Loan Program Promissory Note, dated December 9, 2015.
   c. Façade Improvement Loan Program Deed of Trust, dated December 9, 2015.
5. Purchaser and Borrower warrant and represent that all financial statements and other written material submitted to Lender in connection with the proposed transfer of the Property continues to be and will be, as of the date of transfer of the Property, true and accurate in all respects. As of the date of this Agreement, neither Purchaser nor Borrower has, or knows of, any disputes with or claims against Lender or any breach or violation by Lender or Borrower of the terms and conditions of the loan described above, including but not limited to breach or violation of the terms and conditions of the Note or the Deed of Trust.

6. In the event of any litigation between any of the parties hereto with respect to the Note, the Deed of Trust or the loan evidenced thereby, including but not limited to any action to interpret or enforce the terms of this Agreement, all parties agree that the exclusive jurisdiction and venue shall be in the Superior Court of Stockton, San Joaquin County, California. Purchaser irrevocably consents to submit to the jurisdiction of such court. This Agreement shall be construed under the laws of the State of California. Any default by Borrower or Purchaser under the provisions of this Agreement shall also constitute a default under the Deed of Trust.

LENDER: City of Stockton, a municipal corporation

By ____________________________
Its Deputy City Manager

BORROWER:

By: VLADIMIR KYLE KOVALIK
And
By: KAREN JEANNE QUINN

PURCHASER:

The Sperry, LLC

By: ____________________________
EDUARD BURT

By: Edward L. Hirsheberg

ATTEST:

By: ____________________________

APPROVED AS TO FORM AND CONTENT

By: ____________________________
Assistant City Attorney
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On March 29, 2018 before me, Karen A. Costa, Notary Public
(insert name and title of the officer)

personally appeared Laurie Montes,
who 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.

Signature ___________________________ (Seal)

Karen A. Costa
Commission # 2130153
Notary Public - California
San Joaquin County
My Comm. Expires Nov 10, 2019
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On 3/19/2018 before ________________________, Marie A. Reyes - Notary Public me,

(insert name and title of the officer)

personally appeared Edward L. Hirschberg, who 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.

Signature ____________________________ (Seal)
and recorded on February 5, 2018, as Instrument No. 2018-013390.

5. Purchaser and Borrower warrant and represent that all financial statements and other written material submitted to Lender in connection with the proposed transfer of the Property continues to be and will be, as of the date of transfer of the Property, true and accurate in all respects. As of the date of this Agreement, neither Purchaser nor Borrower has, or knows of, any disputes with or claims against Lender or any breach or violation by Lender or Borrower of the terms and conditions of the loan described above, including but not limited to breach or violation of the terms and conditions of the Note or the Deed of Trust.

6. In the event of any litigation between any of the parties hereto with respect to the Note, the Deed of Trust or the loan evidenced thereby, including but not limited to any action to interpret or enforce the terms of this Agreement, all parties agree that the exclusive jurisdiction and venue shall be in the Superior Court of Stockton, San Joaquin County, California. Purchaser irrevocably consents to submit to the jurisdiction of such court. This Agreement shall be construed under the laws of the State of California. Any default by Borrower or Purchaser under the provisions of this Agreement shall also constitute a default under the Deed of Trust.

LENDER: City of Stockton, a municipal corporation

By [Signatures]

Its Deputy City Manager

BORROWER: [Signatures]

By: VLADIMIR KYLIE KOVALIK

Purchaser: [Signatures]

By: EDUARD BURT

And

By: [Signatures]

KAREN JEANNE QUINN

ATTEST: [Signatures]

Clerk of the City of Stockton

APPROVED AS TO FORM AND CONTENT

By: [Signatures]

Assistant City Attorney
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On 3-19-18 before
Mahala Burns, Notary Public,

(insert name and title of the officer)

personally appeared Vladimir Kvale Kovalik + Karen Jeane Quinn, who 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.

Signature

(Seal)
and recorded on February 5, 2018, as Instrument No. 2018-013390.

5. Purchaser and Borrower warrant and represent that all financial statements and other written material submitted to Lender in connection with the proposed transfer of the Property continues to be and will be, as of the date of transfer of the Property, true and accurate in all respects. As of the date of this Agreement, neither Purchaser nor Borrower has, or knows of, any disputes with or claims against Lender or any breach or violation by Lender or Borrower of the terms and conditions of the loan described above, including but not limited to breach or violation of the terms and conditions of the Note or the Deed of Trust.

6. In the event of any litigation between any of the parties hereto with respect to the Note, the Deed of Trust or the loan evidenced thereby, including but not limited to any action to interpret or enforce the terms of this Agreement, all parties agree that the exclusive jurisdiction and venue shall be in the Superior Court of Stockton, San Joaquin County, California. Purchaser irrevocably consents to submit to the jurisdiction of such court. This Agreement shall be construed under the laws of the State of California. Any default by Borrower or Purchaser under the provisions of this Agreement shall also constitute a default under the Deed of Trust.

LENDER: City of Stockton, a municipal corporation

By ________________________
Its Deputy City Manager

BORROWER:

By: ________________________
VLADIMIR KYLE KOVALIK

And

By: ________________________
KAREN JEANNE QUINN

PURCHASER:

The Sperry, LLC

By: ________________________
EDUARD BURT

ATTEST:

CLERK OF THE CITY OF STOCKTON

By ________________________

APPROVED AS TO FORM AND CONTENT

By ________________________
Assistant City Attorney
State of California
County of Alameda
On 3-03-2018 before Sara Rhodes Notary Public

personally appeared Edward Burt, Hafsa Burt, who 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.

Signature Sara Rhodes (Seal)
FAçADE IMPROVEMENT LOAN PROGRAM
PROMISSORY NOTE

CRF-164

FOR VALUE RECEIVED, the undersigned (the "BORROWERS") promise to pay to the order of the City of Stockton (the "LENDER") or its successors, the principal sum of thirty thousand dollars and 00/100 ($30,000) with interest at the rate of ten percent (10%) in annual installments from the 9th day of December 2015 and continuing every year until the principal balance has been paid.

All principal and interest shall be payable at City of Stockton, or at such other place as shall be designated by LENDER.

This Note evidences a loan by LENDER to BORROWERS for the sole and exclusive purpose of rehabilitating, preserving and/or enhancing commercial real estate located at and commonly known as (the "PROJECT"):

PROJECT SITE ADDRESS 146 W. Weber Avenue
Stockton, CA 95202

This Note is secured by a Deed of Trust of even date herewith in favor of LENDER, as beneficiary, on the above-referenced PROJECT.

The parties hereto have entered into a Facade Improvement Forgivable Loan Agreement of even date herewith under the City of Stockton Commercial Rehabilitation Loan Program (the "Agreement"). The Agreement contains various terms and conditions upon which LENDER has conditioned forgiveness of the loan evidenced by this Note.

The term of this Note shall be until the balance due is paid in full, or a period ending on the first day of the month first occurring five (5) years after the completion of the PROJECT rehabilitation, preservation, or enhancement activities financed in whole or in part by the loan evidenced by this Note. Unless prepaid, this Note shall be satisfied and be released by LENDER on the first day of March 2021. The anniversary of this Note shall be the first day of March in each year following the completion of activities financed by the Loan evidenced by the Note.
At each anniversary date on which LENDER determines that BORROWERS have satisfied the terms and conditions of the Agreement, LENDER shall reduce the balance due hereunder by twenty (20) percent of the original amount of the Note. LENDER shall waive and forgive any interest accrued under the terms and conditions of this Note since the previous anniversary date providing BORROWERS are found to be eligible for said reduction. During the term of this Note, BORROWERS shall make no payments of principal or interest.

In the event of any transfer, sale or assignment of the real property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWERS. Any successor(s) to or assignee(s) of BORROWERS shall execute and deliver to LENDER a Deed of Trust on the PROJECT to secure repayment of said Note.

In the event of any default by the undersigned, the unpaid principal amount of the Note, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.

If suit is instituted by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney’s fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER’S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:
LENDER:  City of Stockton
      Economic Development Department
      City Hall, 3rd Floor
      Stockton, CA  95202

BORROWERS:  1063 Ripple Avenue
         Pacific Grove, CA 93950

This Note shall be binding on the heirs, executors, administrators, successors and
assigns of the respective parties.

BORROWERS reserves the right to prepay at any time all or any part of the
remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the
terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as
of its date.

Dated:  December 9, 2015

By:  [Signature]
    Vladimir Kyle Kovall

Print Name:  VLADIMIR KYLE KOVALIK

and

By:  [Signature]
    Karen Jeanne Quinn

Print Name:  KAREN JEANNE QUINN

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY:  [Signature] -3-
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) "Deed of Trust" means this document, which is dated December 9, 2015, together with all Riders to this document.

(B) "BORROWERS" are Vladimir Kyle Kovalik and Karen Jeanne Quinn. BORROWERS are the trustors under this Deed of Trust.

(C) "Lender" is City of Stockton, a municipal corporation. Lender's address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) "Trustee" is City of Stockton, a municipal corporation.

(E) "Note" means the promissory note(s) signed by BORROWERS and dated November 20, 2015. The Note(s) state that BORROWERS owe City thirty thousand and 00/100 dollars ($30,000). BORROWERS have promised to pay this debt in full no later than March 1, 2021.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) “Miscellaneous Proceeds” means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) “RESPA” means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) “Successor in Interest of BORROWERS” means any party that has taken title to the Property, whether or not that party has assumed BORROWERS’ obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of BORROWERS’ covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, BORROWERS irrevocably grant and convey to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 146 West Weber Avenue, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

BORROWERS covenant that BORROWERS are lawfully seised of the estate hereby conveyed and have the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. BORROWERS warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. BORROWERS and Lender covenant and agree as follows:

1. Payment of Principal. BORROWERS shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which BORROWERS might have now or in the future against Lender shall relieve BORROWERS from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. BORROWERS shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

BORROWERS shall promptly discharge any lien which has priority over this Deed of Trust unless BORROWERS: (a) agree in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as BORROWERS is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give BORROWERS a notice identifying the lien. Within 10 days of the date on which that notice is given, BORROWERS shall satisfy the lien or take one or more of the actions set forth above in this Section 3.
Lender may require BORROWERS to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

4. Property Insurance. BORROWERS shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by BORROWERS subject to Lender's right to disapprove BORROWERS' choice, which right shall not be exercised unreasonably. Lender may require BORROWERS to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. BORROWERS shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by BORROWERS.

If BORROWERS fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and BORROWERS' expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect BORROWERS, BORROWERS' equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. BORROWERS acknowledge that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that BORROWERS could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of BORROWERS secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to BORROWERS requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and BORROWERS further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, BORROWERS shall promptly give to Lender all receipts of paid premiums and renewal notices. If BORROWERS obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and BORROWERS further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, BORROWERS shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by BORROWERS. Unless Lender and BORROWERS otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender,
shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay BORROWERS any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by BORROWERS shall not be paid out of the insurance proceeds and shall be the sole obligation of BORROWERS. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to BORROWERS. Such insurance proceeds shall be applied in the order provided for in Section 2.

If BORROWERS abandon the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If BORROWERS do not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, BORROWERS hereby assigns to Lender: (a) BORROWERS’ rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of BORROWERS’ rights (other than the right to any refund of unearned premiums paid by BORROWERS) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. BORROWERS shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. BORROWERS shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, BORROWERS shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, BORROWERS shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, BORROWERS is not relieved of BORROWERS’ obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give BORROWERS notice at the time of or prior to such an interior inspection specifying such reasonable cause.
6. BORROWERS' Loan Application. BORROWERS shall be in default if, during the Loan application process, BORROWERS or any persons or entities acting at the direction of BORROWERS or with BORROWERS' knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning BORROWERS’ occupancy of the property as BORROWERS’ place of business.

7. Protection of Lender’s Interest in the Property and Rights Under this Deed of Trust. If (a) BORROWERS fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) BORROWERS has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender’s actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys’ fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of BORROWERS secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to BORROWERS requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing
or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay BORROWERS any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to BORROWERS. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to BORROWERS.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless BORROWERS and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to BORROWERS.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless BORROWERS and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by BORROWERS, or if, after notice by Lender to BORROWERS that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, BORROWERS fail to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. “Opposing Party” means the third party that owe BORROWERS Miscellaneous Proceeds or the party against whom BORROWERS have a right of action in regard to Miscellaneous Proceeds.

BORROWERS shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender’s judgment, could result in forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. BORROWERS can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to the dismissed with a ruling that, in Lender’s judgment, precludes forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender’s interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.
9. **BORROWERS Not Released; Forbearance By Lender Not a Waiver.**

Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to BORROWERS or any Successor in Interest of BORROWERS shall not operate to release the liability of BORROWERS or any Successors in Interest of BORROWERS. Lender shall not be required to commence proceedings against any Successor in Interest of BORROWERS or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original BORROWERS or any Successors in Interest of BORROWERS. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender’s acceptance of payments from third persons, entities or Successors in Interest of BORROWERS or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. **Joint and Several Liability; Successors and Assigns Bound.**

BORROWERS covenants and agrees that BORROWERS’ obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of BORROWERS who assume BORROWERS’ obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of BORROWERS’ rights and benefits under this Deed of Trust. BORROWERS shall not be released from BORROWERS’ obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. **Loan Charges.**

Lender may charge BORROWERS fees for services performed in connection with BORROWERS’ default, for the purpose of protecting Lender’s interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys’ fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to BORROWERS shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from BORROWERS which exceeded permitted limits will be refunded to BORROWERS. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to BORROWERS. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). BORROWERS’ acceptance of any such refund made by direct payment to BORROWERS will constitute a waiver of any right of action BORROWERS might have arising out of such overcharge.

12. **Notices.**

All notices given by BORROWERS or Lender in connection with this Deed of Trust must be in writing. Any notice to BORROWERS in connection with this Deed of Trust shall be deemed to have been given to BORROWERS when mailed by first class mail or when actually delivered to BORROWERS’ notice address if sent by
other means. Notice to any one BORROWER shall constitute notice to all
BORROWERS unless Applicable Law expressly requires otherwise. The notice
address shall be the Property Address unless BORROWERS have designated a
substitute notice address by notice to Lender. BORROWERS shall promptly notify
Lender of BORROWERS' change of address. If Lender specifies a procedure for
reporting BORROWERS' change of address, then BORROWERS shall only report a
change of address through that specified procedure. There may be only once
designated notice address under this Deed of Trust at any one time. Any notice to
Lender shall be given by delivering it or by mailing it by first class mail to Lender's
address stated herein unless Lender has designated another address by notice to
BORROWERS. Any notice in connection with this Deed of Trust shall not be deemed to
have been given to Lender until actually received by Lender. If any notice required by
this Deed of Trust is also required under Applicable Law, the Applicable Law
requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust
shall be governed by federal law and the law of the jurisdiction in which the Property is
located. All rights and obligations contained in this Deed of Trust are subject to any
requirements and limitations of Applicable Law. Applicable Law might explicitly or
implicitly allow the parties to agree by contract or it might be silent, but such silence
shall not be construed as prohibition against agreement by contract. In the event that
any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law,
such conflict shall not affect other provisions of this Deed of Trust or the Note which can
be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and
include corresponding neuter words or words of the feminine gender; (b) words in the
singular shall mean and include the plural and vice versa; and (c) the word "may" gives
sole discretion without any obligation to take any action.

14. BORROWERS' Copy. BORROWERS shall be given one copy of the Note
and of this Deed of Trust.

15. Transfer of the Property or a Beneficial Interest in BORROWERS. As
used in this Section 15, "Interest in the Property" means any legal or beneficial interest
in the Property, including, but not limited to, those beneficial interests transferred in a
bond for deed, contract for deed, installment sales contract or escrow agreement, the
intent of which is the transfer of title by BORROWERS at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or
transferred (or if BORROWERS are not a natural person and a beneficial interest in
BORROWERS are sold or transferred) without Lender's prior written consent, Lender
may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give BORROWERS notice of
acceleration. The notice shall provide a period of not less than 30 days from the date
the notice is given in accordance with Section 12 within which BORROWERS must pay
all sums secured by this Deed of Trust. If BORROWERS fail to pay these sums prior to
the expiration of this period, Lender may invoke any remedies permitted by this Deed of
Trust without further notice or demand on BORROWERS.
16. BORROWERS' Right to Reinstate After Acceleration. If BORROWERS meet certain conditions, BORROWERS shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of BORROWERS' right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that BORROWERS: (a) pay Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and BORROWERS' obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that BORROWERS pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by BORROWERS, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Hazardous Substances. As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

BORROWERS shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. BORROWERS shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

BORROWERS shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which BORROWERS have actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release.
of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If BORROWERS learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, BORROWERS shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM CONVENTIONS. BORROWERS and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to BORROWERS prior to acceleration following BORROWERS’ breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to BORROWERS, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform BORROWERS of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of BORROWERS to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

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

Trustee shall deliver to the purchaser Trustee’s deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee’s deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee’s and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.
19. **Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. **Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, BORROWERS accepts and agrees to the terms and covenants contained in this Deed of Trust.

**PROPERTY OWNER(S):**

By: [Signature]
Vladimir Kyle Kovalik

Print Name: **VLADIMIR KYLE KOVALIK**

and

By: [Signature]
Karen Jeanne Quinn

Print Name: **KAREN JEANNE QUINN**

**WITNESS SIGNATURES OF KAREN JEANNE QUINN DECEMBER 10, 2015**

**APPROVED AS TO FORM:**
**JOHN M. LUEBBERKE**
**CITY ATTORNEY**

By: [Signature]

[Stamp: JULIAN A. T. CARPENDER, NOTARY PUBLIC, STATE OF COLORADO, NOTARY ID 19954014, MY COMMISSION EXPIRES OCTOBER 10, 2019]
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On December 9, 2015 before me, Audrey E. Ogden, Notary Public
(insert name and title of the officer)

personally appeared Vladimir Kyle Kovalik, who 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.

Signature Audrey Ogden (Seal)
19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, BORROWERS accepts and agrees to the terms and covenants contained in this Deed of Trust.

PROPERTY OWNER(S):

By: [Signature]
Vladimir Kyle Kovalik
Print Name: VLADIMIR KYLE KOVALIK

and

By: [Signature]
Karen Jeanne Quinn
Print Name: KAREN JEANNE QUINN

WITNESS SIGNATURE OF KAREN JEANNE QUINN DECEMBER 10, 2015

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY: [Signature]
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Francisco

On 2/3/2018 before me, B. Reissberg, notary public
(insert name and title of the officer)

personally appeared Karen Jeannie Quinn
who 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.

Signature B. Reissberg
(Seal)
EXHIBIT "A"
LEGAL DESCRIPTION

APN: 137-280-11

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

~PARCEL ONE:~~

LOT 1 AND THE WEST ONE-HALF (W-1/2) OF LOT 3, BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11

~PARCEL TWO:~~

A PORTION OF MADISON STREET WEST OF AND ADJOINING THE WEST LINE OF BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 2; THENCE SOUTH 11° 41' 54" EAST, 101.14 FEET ALONG SAID WEST LINE OF BLOCK 2 TO THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO DELTA BLOOD BANK, A NON PROFIT CALIFORNIA CORPORATION RECORDED DECEMBER 15, 1978 IN BOOK OF OFFICIAL RECORDS, VOL. 4487, PAGE 590, SAN JOAQUIN COUNTY RECORDS, THENCE SOUTH 78° 22' 23" WEST, 17.69 FEET ALONG THE NORTHERLY LINE THEREOF PRODUCED WESTERLY; THENCE (1) NORTH 11° 39' 58" WEST, 83.51 FEET AND (2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 17.62 FEET, A CENTRAL ANGLE OF 90° 02' 09", AN ARC LENGTH OF 27.69 FEET, AND A CHORD BEARING NORTH 33° 21' 06" EAST, 24.93 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERAL RIGHTS INCLUDING RIGHTS TO OIL, GAX AND OTHER HYDROCARBON SUBSTANCES, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED EXECUTED BY THE CITY OF STOCKTON, A MUNICIPAL CORPORATION, RECORDED JANUARY 31, 1983, AS DOCUMENT NO. 83006817, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11
AGREEMENT
COMMERCIAL REHABILITATION LOAN PROGRAM

FACADE IMPROVEMENT FORGIVABLE LOAN

($30,000.00)

This Agreement (the "Agreement") is made as of this 9th day of December 2015, by and between the City of Stockton (the "CITY"), a municipal corporation, and Vladimir Kyle Kovalik and Karen Jeanne Quinn, ("the BORROWERS").

RECITALS

A. CITY wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. BORROWERS wishes to receive from CITY and CITY wishes to extend to BORROWERS funds to support the rehabilitation of property located at 146 W. Weber Avenue, Stockton, CA hereinafter referred to as the "PROPERTY."

C. As a condition of receiving the funds, BORROWERS shall execute, among other things, this AGREEMENT, a promissory note, and a deed of trust, which deed of trust shall be recorded against the PROPERTY. These instruments are intended to secure CITY'S continuing interest in the condition of the PROPERTY, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, BORROWERS and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.
1.1 "AGREEMENT" means this agreement entered into between the CITY and BORROWERS.

1.2 "NOTE" (the NOTE) is that certain promissory note in the total principal amount of thirty thousand Dollars and 00/100 ($30,000.00) to be executed by BORROWERS in favor of the CITY, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof or restatements thereof. The terms of the NOTE are hereby incorporated into this Agreement by this reference.

1.3 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "COMMENCEMENT OF REHABILITATION" means the time CONTRACTOR begins physical rehabilitation work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "CONTRACTOR" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION: This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450-16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "DEED OF TRUST" is the deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for the assistance by BORROWERS as trustors with the CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "DOCUMENTS" are collectively this AGREEMENT, the DEED OF TRUST, and the NOTE as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 "PROPERTY" consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 "PROJECT" is the rehabilitation work as itemized in the attached Exhibit "B," which is incorporated into this Agreement by this reference.

ARTICLE 2. TERMS OF ASSISTANCE

2.1 ASSISTANCE. The CITY agrees to provide the funds to BORROWERS under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by BORROWERS to pay for eligible costs associated with the LOAN.

2.2 AMOUNT OF ASSISTANCE. On and subject to the terms and conditions of the Documents, CITY agrees to offer and BORROWERS agree to accept the assistance in the total amount not to exceed thirty thousand Dollars and 00/100 ($30,000.00) evidenced by the NOTE. Said NOTE shall be secured by the Deed of Trust recorded against the PROPERTY.

2.3 INTEREST RATE OF ASSISTANCE. The funds loaned to BORROWERS for the rehabilitation of the PROJECT shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 TERM. The term for the LOAN shall be a maximum of five (5) years, upon forgiveness of the loan; or payment in full.

2.5 FORGIVENESS OF LOAN. CITY shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing BORROWERS fully comply with all specific program terms and conditions as described in this Agreement. CITY shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 PREPAYMENT. Prepayment of any outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWERS.

2.7 RELEASE OF LIEN. CITY shall, upon loan forgiveness in entirety or receipt of payment in full from the BORROWERS, execute and deliver to BORROWERS, a deed of reconveyance. BORROWERS shall pay all fees associated with the recording of the deed of reconveyance.
2.8 USE OF FUNDS. Loan funds may be used only for the Eligible costs associated with the LOAN as well as any revisions to the PROJECT Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the CITY.

2.9 BORROWERS FUNDS. BORROWERS shall at or prior to the execution of this AGREEMENT, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of BORROWERS' choice in the amount necessary to perform all the rehabilitation work not covered by the subject CITY loan; or deposit equity funds with CITY in the amount necessary to perform all he rehabilitation work not covered by the subject CITY loan.

2.10 ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWERS shall reimburse CITY for the cost of architectural fees paid by the CITY in the event of cancellation of the LOAN.

ARTICLE 3. DISBURSEMENT

3.1 DISBURSEMENT OF PROCEEDS. Disbursement of all proceeds for the PROJECT shall be made by the CITY upon presentation of approved invoices. Once invoices for payment have been received, CITY shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the CITY. CITY loan funds will be disbursed only after all BORROWERS funds have been disbursed for the PROJECT.

3.2 TITLE. BORROWERS warrant that it will maintain good and marketable title to the PROJECT.

ARTICLE 4. DEVELOPMENT OF PROPERTY

4.1 CONFIGURATION OF THE PROPERTY. The BORROWERS may, by contract, require the CONTRACTOR to rehabilitate the PROPERTY pursuant to current building codes as they apply to a commercial structure by contract, as well as to BORROWERS requirements. At a minimum, CONTRACTOR shall perform all rehabilitation by contract.

4.2 COMMENCEMENT OF REHABILITATION. The contract shall require that CONTRACTOR begin rehabilitation of the PROPERTY no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to CONTRACTOR
to enable CONTRACTOR to complete the work shall not constitute a waiver of any other rights of CITY under the Agreement.

4.4 QUALITY OF WORK. CONTRACTOR shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the PROPERTY. CONTRACTOR shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 ADDITIONS OR CHANGES IN WORK. CITY shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWERS from any other obligations in the Agreement.

4.6 RECORDS. BORROWERS shall be accountable to CITY for all funds disbursed to CONTRACTOR pursuant to the Agreement and CITY agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the PROJECT.

CITY shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. CITY shall promptly supply any and all information and documentation which involves the PROJECT and cooperate with BORROWERS in the rehabilitation of the PROJECT.

4.7 INSPECTIONS. BORROWERS, by contract, shall permit and facilitate, and require its CONTRACTOR to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 REHABILITATION RESPONSIBILITIES. BORROWERS shall be solely responsible for all aspects of conduct in connection with the PROJECT, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWERS are properly discharging its obligations to CITY, and should not be relied upon by BORROWERS or by any third parties as a warranty or representation by CITY as to the quality of the rehabilitation of the PROJECT.

4.9 TRANSFER OF PROPERTY. The LOAN can be assumed or be subordinated, however, BORROWERS shall not make or create, and shall not, prior to the completion of the PROJECT and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the PROJECT, or the PROPERTY, or any part thereof, including the sale of any interests of BORROWERS without prior notice to CITY. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to CITY.
4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the PROPERTY or a stop notice affecting the PROJECT is served on CITY or other third party in connection with the PROPERTY, CONTRACTOR shall, within 20 days of 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 CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If CONTRACTOR fails to discharge bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWERS’ expense. Alternatively, CITY may require CONTRACTOR to immediately deposit with CITY the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against CONTRACTOR.

4.11 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** BORROWERS shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the PROPERTY or the PROJECT, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by CITY, if any building or improvement on the PROPERTY is damaged or destroyed by an insurable cause, BORROWERS shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWERS shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the PROJECT must be completed no
later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

ARTICLE 5. NONDISCRIMINATION.

5.1 NONDISCRIMINATION. BORROWERS shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWERS shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 6. EMPLOYMENT

6.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWERS and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the PROJECT.

6.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWERS or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars ($1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

BORROWERS shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWERS fail to monitor or enforce these requirements against any contractor or subcontractor, CITY may withhold payments to BORROWERS, may impose liquidated damages on BORROWERS in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.
ARTICLE 7. INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. BORROWERS shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the CITY. In addition, CITY shall ensure that the general contractor for the PROJECT maintains the insurance coverage specified by law.

7.2 INSURANCE ADVANCES. In the event BORROWERS fail to maintain the full insurance coverage required by this Agreement, CITY, after at least seven (7) business days prior written notice to BORROWERS, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWERS to CITY and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWERS for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

7.4 INDEMNITY. Except for the sole negligence of the CITY, the BORROWERS undertake and agree to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the BORROWERS' or any contractor or subcontractor of BORROWERS or on the PROPERTY or the PROJECT, whether or not contributed to by an act or omission of the CITY. BORROWERS shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWERS to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROPERTY or the PROPERTY. BORROWERS' duty to indemnify CITY shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the Agreement and the BORROWERS shall have the right to rebuild the affected PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by BORROWERS from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 8. HAZARDOUS MATERIALS

8.1 NOTIFICATION TO CITY. BORROWERS shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWERS' (after verification of the veracity of such knowledge to BORROWERS reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWERS of any occurrence or condition on the PROPERTY or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 USE AND OPERATION OF PROPERTY. Neither BORROWERS, nor any agent, employee, or contractor of BORROWERS, nor any authorized user of the PROPERTY shall use the PROPERTY or allow the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWERS shall comply and cause the PROJECT to comply with Hazardous Materials Laws.

8.3 REMEDIAL ACTIONS. If BORROWERS have actual knowledge of the presence of any Hazardous Materials on or under the PROPERTY, BORROWERS shall immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWERS' right of contest below.

8.4 RIGHT OF CONTEST. BORROWERS may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWERS in good faith, (b) BORROWERS promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWERS deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWERS under the conditions of this Section 8.4.

8.5 ENVIRONMENTAL INDEMNITY. BORROWERS shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement,
or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWERS' knew of same) of any Hazardous Materials occurring prior to or during BORROWERS use of the PROPERTY.

ARTICLE 9. DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) BORROWERS' failure to pay when due any sums payable under, the NOTE or any advances made by CITY under the Deed of Trust or this Agreement; (2) BORROWERS' use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) BORROWERS' failure to obtain and maintain the insurance coverage required under this Agreement; (4) BORROWERS' failure to make any other payment or assessment due under the Agreement; and (5) BORROWERS' default in any other financing of the PROJECT.

B. Rehabilitation. (1) CONTRACTOR'S substantial deviation in the work of rehabilitation specified in the Scope of Work, without CITY'S prior written consent; (2) CONTRACTOR'S use of defective or unauthorized materials or defective workmanship in rehabilitating the PROJECT; (3) CONTRACTOR'S failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the PROPERTY or service on CITY of any stop notice relating to the PROJECT and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) CONTRACTOR'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWERS' failure to substantially comply with any federal, state, or local laws or CITY policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by BORROWERS of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by BORROWERS of any material obligations on BORROWERS
imposed by any other agreements with respect to the financing, development, or operation of the PROPERTY or the PROPERTY, whether or not CITY is a party to such agreement.

E. Representations and warranties. A determination by CITY that any of BORROWERS' representations or warranties made in the Loan Documents, any statements made to CITY by BORROWERS, or any certificates, documents, or schedules supplied to CITY by BORROWERS were untrue in any material respect when made, or that BORROWERS concealed or failed to disclose a material fact from CITY.

F. Damage to PROPERTY. Material damage or destruction to the PROPERTY by fire or other casualty, if BORROWERS do not take steps to reconstruct the PROPERTY to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. BORROWERS or any instrument controlling BORROWERS' (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the NOTE shall be considered a default as to each obligation.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWERS of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the BORROWERS fail to take corrective action to cure the default within the time specified, the CITY will seek remedies to accelerate the Agreement as well as any monies advanced to BORROWERS by CITY.

9.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWERS and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse funds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Agreement or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the NOTE, as well as any other monies advanced to BORROWERS by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;
B. Bring an action in equitable relief: (1) seeking the specific performance by BORROWERS of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by BORROWERS.

9.4 BORROWERS REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Agreement, BORROWERS may:

A. Demand payment from CITY of any sums due BORROWERS;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 10. GENERAL PROVISIONS

10.1 GOVERNING LAW. The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 STATUTORY REFERENCES. All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.
10.3 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

10.4 TIME. Time is of the essence in this Agreement.

10.5 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWERS required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 RELATIONSHIP OF PARTIES. The relationship of BORROWERS and CITY for this PROPERTY under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWERS (except as provided for herein) or any third party with respect to the PROPERTY, the PROPERTY, or the Agreement. Except as CITY may specify in writing BORROWERS shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 WAIVER. Any waiver by CITY of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWERS or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to BORROWERS to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by CITY to any act or omission by BORROWERS shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

10.8 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by BORROWERS for the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 OTHER AGREEMENTS. BORROWERS represent that they have not entered into any agreements that are inconsistent with the terms of the Agreement. BORROWERS shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both BORROWERS and CITY.
10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

By: [Signature]
Vladimir Kyle Kovalik

Print Name: **VLADIMIR KYLE KOVALIK**

and

By: [Signature]
Karen Jeanne Quinn

Print Name: **KAREN JEANNE QUINN**

**APPROVED AS TO FORM:**

John M. Luebberke  
City Attorney

By: [Signature]

**APPROVED BY:**

Laurie Montes  
Deputy City Manager

**ATTEST:**

CLERK OF THE CITY OF STOCKTON

By: [Signature]
EXHIBIT “A”
LEGAL DESCRIPTION

APN: 137-280-11

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

~PARCEL ONE:~

LOT 1 AND THE WEST ONE-HALF (W-1/2) OF LOT 3, BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11

~PARCEL TWO:~

A PORTION OF MADISON STREET WEST OF AND ADJOINING THE WEST LINE OF BLOCK 2, WEST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID BLOCK 2; THENCE SOUTH 11° 41' 54" EAST, 101.14 FEET ALONG SAID WEST LINE OF BLOCK 2 TO THE NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO DELTA BLOOD BANK, A NON PROFIT CALIFORNIA CORPORATION RECORDED DECEMBER 15, 1978 IN BOOK OF OFFICIAL RECORDS, VOL. 4487, PAGE 590, SAN JOAQUIN COUNTY RECORDS, THENCE SOUTH 78° 22' 23" WEST, 17.69 FEET ALONG THE NORTHERLY LINE THEREOF PRODUCED WESTERLY; THENCE (1) NORTH 11° 39' 58" WEST, 83.51 FEET AND (2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 17.62 FEET, A CENTRAL ANGLE OF 90° 02' 09", AN ARC LENGTH OF 27.69 FEET, AND A CHORD BEARING NORTH 33° 21' 06" EAST, 24.93 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERAL RIGHTS INCLUDING RIGHTS TO OIL, GAX AND OTHER HYDROCARBON SUBSTANCES, BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID REAL PROPERTY WITHOUT THE RIGHT OF SURFACE ENTRY, AS RESERVED IN DEED EXECUTED BY THE CITY OF STOCKTON, A MUNICIPAL CORPORATION, RECORDED JANUARY 31, 1983, AS DOCUMENT NO. 83006617, SAN JOAQUIN COUNTY RECORDS.

PORTION OF APN: 137-280-11
Exhibit “B”
Description of Work

(see attached proposal #112015-01)
Proposal #112015-01

To: Mr. Kyle Kovalik and Mrs. Karen Quinn

From: Randolph Pierson, Stratus Construction Co.

Date: 11/20/2015

Property: Sperry Building, 146 West Weber St. Stockton, CA 95202

All operations listed below include materials and labor if not otherwise indicated.

All work to be performed in a workman like manner conforming to all local and state building codes. All wages to conform to both Davis Bacon, State and Federal Prevailing wages as outlined in Labor Code Section 1770.

1. Repair all obvious damage to brick, mortar and sand plaster trim as needed on north and west sides of building. $2,400.00

2. Trim back vegetation as needed. Pressure wash north and west sides of building complete. $800.00

3. Remove and replace solid wood door on west side. New door to have no window. Remove and reinstall all door hardware and door closer. $900.00
4. Repair all wood window, door casings and trim as needed on north and west sides. Prep, prime and paint all window, door casings and trim as described. Color to be determined. Prep, stain and varnish wood doors on north side, and new door on west side. $5,800.00

5. Prep, prime and paint all areas on north and west side of building as described in job walk with building owner. $13,800.00

   Remove and replace 6070 window unit complete on north side. Remove and replace a total of (6) windows on west side. Match glass to existing as close as possible. $6300.00

6. Total for lines 1-6 above: $30,000.00

Thank you,

Randolph Pierson

Stratus Construction Co.
THIRD AMENDMENT TO THE
STOCKTON SHELTER FOR THE HOMELESS
LOAN AGREEMENT

This Amendment ("THIRD AMENDMENT") is entered into by and between the City of Stockton, California, a municipal corporation ("CITY") and Stockton Shelter for the Homeless, a non-profit corporation ("CORPORATION").

RECITALS

WHEREAS, on January 11, 1993, the City Council, through the adoption of Council Resolution No. 93-0022, approved a contract between CITY and CORPORATION by which the CITY loaned the CORPORATION Two Hundred Twenty-two Thousand Dollars ($222,000) in Community Development Block Grant ("CDBG") funds for partial development of the Stockton Family Shelter ("CDBG CONTRACT"), as evidenced by a promissory note ("NOTE"); and

WHEREAS, on October 25, 1993, the City Council, through the adoption of Council Resolution No. 93-0656, approved an amendment to the loan terms of the CDBG CONTRACT ("FIRST AMENDMENT") for the purpose of lending the CORPORATION an additional One Hundred Fifty-five Thousand One Hundred Fifty Dollars ($155,150) for the completion of the development of the Stockton Family Shelter ("Shelter"); and

WHEREAS, on September 11, 1995, City Council, through the adoption of Council Resolution No. 95-0445, approved a second amendment to the loan terms of the CDBG CONTRACT ("SECOND AMENDMENT") for the purpose of lending the CORPORATION additional funds in an amount equal to loan funds the CORPORATION had repaid, Eight Thousand Seven Hundred Fifty-one and 60/100 Dollars ($8,751.60) in order to fund the construction of a firewall for the Stockton Family Shelter; and

WHEREAS, the CORPORATION has encountered significant unanticipated additional program costs and loss of revenue during the past several years; now; therefore,

To facilitate continued viability of the Stockton Family Shelter, which CITY continues to support as a valuable community resource for homeless citizens, CITY and CORPORATION agree that the terms of the CDBG CONTRACT and NOTE are hereby amended as follows:

AMENDMENT

1. AMENDMENT OF TERMS - The CDBG CONTRACT, Section 2(b) shall be amended by adding a new subsection "(v)"; the FIRST AMENDMENT, Section A.1(b) shall be amended by adding a new subsection "(5)"; and section 2 of the SECOND AMENDMENT shall be amended by adding an second paragraph. The language that
shall constitute the new section (v) in the CDBG CONTRACT, the new section (5) in the FIRST AMENDMENT, and the new paragraph in Section 2 of the SECOND AMENDMENT shall read as follows:

Beginning June 1, 2003, the existing principal balance of Three Hundred Seventy-seven Thousand One Hundred Fifty Dollars ($377,150) shall be forgiven annually, over a period of 23 years, at a rate of 1/23 of the beginning principal balance per year, as long as the project continues to provide emergency shelter services. Should the project cease to provide such services, the portion of the loan balance that has not been forgiven as of the date of such cessation shall be repaid in monthly installments at a rate to be determined by CITY, in its sole discretion. However, in no event, shall amount of the monthly installment exceed the amount to which City would have been entitled prior to June 1, 2003. Alternatively, City may, in its sole discretion, opt to forgive some portion or all of CORPORATION’s repayment obligation.

2. ADDITIONAL TERMS – The following additional terms shall be incorporated into the parties’ Agreement:

a. HUD REQUIREMENTS – CORPORATION shall remain responsible and accountable for the performance of the terms and conditions of the CDBG CONTRACT and AMENDMENTS, notwithstanding that CORPORATION may employ consultants to perform any of its activities. CORPORATION shall be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development (HUD).

b. ENTIRE AGREEMENT – The CDBG CONTRACT, as herein amended, represents the entire agreement between the CITY and CORPORATION and supersedes all prior agreements and understandings, whether written or oral, regarding the subject matter discussed herein. All other terms and conditions of the CDBG CONTRACT, FIRST AMENDMENT, and SECOND AMENDMENT, not expressly amended by the terms of this THIRD AMENDMENT shall remain in full force and effect, are incorporated herein by this reference, and may only be amended or modified by a writing signed by the authorized representatives of the CITY and CORPORATION.

c. SEVERABILITY – The invalidity of any section or provision of the CDBG CONTRACT, FIRST AMENDMENT, SECOND AMENDMENT, and this THIRD AMENDMENT AMENDMENT, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision of the terms agreed upon by CITY and CORPORATION through those documents.

d. PROMISSORY NOTE – CORPORATION shall execute a promissory note in conformity with the terms of this THIRD AMENDMENT and the prior documents incorporated herein by reference.
e. **AUTHORITY TO EXECUTE** – The undersigned represent and warrant that they are duly authorized by the parties to execute this THIRD AMENDMENT, and a copy of the CORPORATION’s resolution authorizing execution shall be attached prior to execution.

IN WITNESS WHEREOF, this THIRD AMENDMENT is executed and shall be effective as of the date first written above.

**ATTEST:**

CITY OF STOCKTON, a municipal corporation

By: MARK LEWIS
CITY MANAGER

“CITY”

**APPROVED AS TO FORM:**
OFFICE OF THE CITY ATTORNEY

By: [Signature]
Assistant/Deputy City Attorney

**APPROVED AS TO FORM:**
STOCKTON SHELTER FOR THE HOMELESS

By: [Signature]
Legal Counsel for Stockton Shelter for the Homeless

By: JOHN REYNOLDS
Executive Director

“CORPORATION”
THE CITY OF STOCKTON, LENDER

AND

PARK VILLAGE APARTMENTS,
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION,
BORROWER

LOAN AGREEMENT

Dated: June 18, 1996

($800,000 - CDBG Funds)
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LOAN AGREEMENT
($800,000 - CDBG Funds)

This Loan Agreement (the "Agreement") is made as of this 18th day of June 1996, by and between the City of Stockton, a municipal corporation (the "Lender"). and Park Village Apartments, a California nonprofit public benefit corporation (the "Borrower").

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The parties intend to refer to those definitions in conjunction with the usages as employed in these Recitals.

B. Lender wishes to promote the development of more affordable rental housing in neighborhoods in need of revitalization in the Stockton community and to provide a greater choice of housing opportunities for persons and families of low income and very low income.

C. The Lender has received CDBG funds from HUD pursuant to the Housing & Community Development Act of 1974, as amended, for the purpose of expanding the supply of decent, safe, sanitary and affordable housing for very-low and low income households.

D. Borrower has acquired the Property and has commenced rehabilitation of the improvements on the Property (the "Project").

E. The Lender has previously loaned Borrower $250,000 of CDBG funds for predevelopment costs and soft costs associated with the rehabilitation of the Project. Through this Agreement, the Lender will lend the Borrower an additional $550,000 of CDBG funds for rehabilitation costs for the Project.

F. The Lender has duly published prior notice of the date and time the Lender afforded citizens an opportunity to comment on the Loan.

G. The Lender has concluded an environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA") and applicable CDBG regulations and has determined that the Project is "categorically exempt" under both CEQA and NEPA and has determined that the Project will have no adverse effect pursuant to the applicable CDBG regulations.
H. The rehabilitation of the Project is not subject to the provisions of Article XXXIV of the California Constitution.

I. The Loan is made to finance predevelopment costs, soft costs and rehabilitation costs of the Project in order to help achieve financial feasibility for the Project and maximize the affordability of the rental housing.

J. As a condition of the Loan, Borrower shall execute, among other things, a promissory note, a deed of trust, and a regulatory agreement, which deed of trust and regulatory agreement shall be recorded against the Property. These instruments are intended to secure Lender's continuing interest in the affordability and habitability of the Project, as well as to secure performance of other covenants contained in these agreements.

K. The Project is subject to a Use Agreement and Housing Assistance Payments Contract with HUD.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the Loan, Borrower and Lender hereby agree as follows:

ARTICLE 1 DEFINITIONS

The following terms have the meanings and content set forth in this Article 1 wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "AGREEMENT" means this Loan Agreement entered into between Lender and Borrower.

1.2 "BORROWER" means Park Village Apartments, a California nonprofit public benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

1.3 "BUDGET" means that budget for the development of the Project attached as Exhibit B, which is hereby incorporated into this Agreement by this reference.

1.4 "CDBG" means the Community Development Block Grant program administered by HUD pursuant to the Housing & Community Development Act of 1974, as amended.
1.5 "CDBG ELIGIBLE COSTS" means those Project costs for which CDBG funds may be used as specified in 24 CFR Part 570 and in the Budget as specified in the attached Exhibit B and any revisions to the Budget that are approved in writing by the Lender.

1.6 "CFR" means Code of Federal Regulations.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "DEED OF TRUST" means that deed of trust, assignment of rents, and security agreement by Borrower as trustor with Lender as beneficiary, to be recorded against the Property as security for the Loan, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.9 "ESCRROW HOLDER" means the person or entity designated by the Borrower and approved by the Lender to hold all Loan Documents until receiving written instructions to record the appropriate Loan Documents from the Lender.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are now or hereafter defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "HUD DOCUMENTS" means the Use Agreement between Borrower and HUD dated as of October 28, 1993, the Agreement to enter into Housing Assistance Payments Contract between the Borrower and HUD dated as of October 28, 1993, any Housing Assistance Payments Contracts entered into between the Borrower and HUD relating to the Project and any other agreement between the Borrower and HUD relating to the Project.
1.13 "LENDER" means the City.

1.14 "LOAN" means the nonrecourse loan of CDBG funds in the original principal amount of Eight Hundred Thousand Dollars ($800,000) by the Lender to the Borrower for predevelopment, soft and rehabilitation costs for the Project.

1.15 "LOAN DOCUMENTS" means, collectively this Agreement, the Deed of Trust, the Note and the Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "NOTE" means that certain nonrecourse promissory note in the original principal amount of Eight Hundred Thousand Dollars ($800,000) to be executed by the Borrower in favor of the Lender, evidencing all or any part of the Loan, which is secured by the Deed of Trust, as well as any amendments thereto, modifications thereof, or restatement thereof. The terms of the Note are incorporated into this Agreement by this reference.

1.17 "OLD DEED OF TRUST" means the Deed of Trust executed by the Borrower and naming the Lender as the beneficiary, dated July 15, 1993, and recorded as document no. 93127683 on October 29, 1993, securing the Old Note and the Old Loan Agreement.

1.18 "OLD LOAN AGREEMENT" means the Loan Agreement between the Lender and the Borrower's predecessors-in-interest, Rural California Housing Corporation and Asian Pacific Self-Development and Residential Association, dated June 22, 1993, relating to the initial loan of $250,000 for the Project, as amended by the Amendment to Loan Agreement, Assumption, Assignment and Consent to Assignment between the Lender and the Borrower.

1.19 "OLD NOTE" means the promissory note dated October 4, 1993, executed by the Borrower in favor of the Lender evidencing the initial loan of $250,000.

1.20 "PLANS AND SPECIFICATIONS" means the plans and specifications for the Project previously approved by the Lender.

1.21 "PROJECT" means the rehabilitation of the improvements on the Property, which consist of 207 multifamily units, one single family unit, and related parking, landscaping and appurtenant improvements.

1.22 "PROPERTY" means the real property located in Stockton, California and more particularly described in the attached Exhibit A, which is incorporated into this Agreement by this reference.
1.23 "REGULATORY AGREEMENT" means the agreement to be executed by Borrower and Lender in a form satisfactory to Lender and recorded against the Property which regulates the use of the Project and restricts, among other things, the occupancy and rents for the residential units in the Project for thirty (30) years.

1.24 "UNDISBURSED LOAN PROCEEDS" means the $550,000 of additional Loan proceeds to be loaned to Borrower pursuant to this Agreement.

ARTICLE 2 TERMS OF LOAN

2.1 LOAN. The Lender agrees to provide the Loan under the terms and conditions of the Loan Documents. The proceeds of the Loan shall be used only as permitted under this Agreement.

2.2 AMOUNT OF LOAN. On and subject to the terms and conditions of the Loan Documents, Lender agrees to make and Borrower agrees to accept the Loan in a total amount not to exceed Eight Hundred Thousand Dollars ($800,000), evidenced by the Note. The Note shall be secured by the Deed of Trust to be recorded against the Property. The terms and conditions of the Loan are set forth in the Note and this Agreement.

2.3 REPAYMENT TERMS. The Loan shall be repaid at the times and in the manner set forth in Section 2 of the Note.

2.4 TERM OF LOAN. Unless sooner due pursuant to the Note, the outstanding principal balance of the Loan and all accrued interest thereon, if any, shall be due and payable to the extent provided in the Note on the earliest of (a) thirty (30) years from the date of the Note, (b) the date the Property is sold or refinanced or (c) the expiration of the cure period for any Event of Default by Borrower which has not been cured as provided for in the Loan Documents.

2.5 USE OF FUNDS. Loan proceeds may be used only for the CDBG Eligible Costs and in the amount specified in the Budget as well as any revisions to the Budget or any other CDBG Eligible Costs that are approved in writing by Lender.

2.6 PREPAYMENT OF LOAN. No prepayment penalty will be charged to Borrower for payment of all or any portion of the Loan amount prior to the end of the Loan term described herein. However, prepayment of the Loan shall not affect Borrower's obligations under the Regulatory Agreement, all of which shall
remain in full force and effect for the entire term of the Regulatory Agreement.

2.7 SUBORDINATION OF DEED OF TRUST AND REGULATORY AGREEMENT. The Lender agrees to subordinate the Deed of Trust and Regulatory Agreement to the liens of the deeds of trust and financing statements, if any, respectively, securing the permanent financing set forth in the attached Exhibit C.

2.8 CANCELLATION OF OLD LOAN AGREEMENT. By execution of this Agreement, the Lender and the Borrower cancel in its entirety the Old Loan Agreement.

ARTICLE 3  LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT OF UNDISBURSED FUNDS. Lender shall not be obligated to make any disbursements of Undisbursed Loan Proceeds until all of the following conditions precedent are satisfied:

A. There exists no Event of Default nor any act, failure, omission or condition that would constitute an Event of Default;

B. Borrower has delivered to Lender all documents, instruments, and policies required under the Loan Documents;

C. Borrower has complied with all reporting requirements set forth in this Agreement;

D. Borrower has obtained at its own expense an ALTA Loan Policy of title insurance naming Lender as the insured with liability not less than the principal amount of the total Loan, issued by an insurer satisfactory to Lender, excepting only such defects, liens, encumbrances, and exceptions as are approved by Lender in writing, and containing such endorsements as Lender may require;

E. Borrower has delivered the original Note, and has recorded the Deed of Trust and the Regulatory Agreement on the Property subject only to the encumbrances approved by the Lender in writing.

F. Borrower has submitted to Lender a copy of a recorded Notice of Completion for the Project;

G. Borrower has delivered to Lender all lien waivers and releases reasonably required by Lender, or the applicable statutory periods for filing mechanics or other similar liens have passed;
H. A permanent certificate of occupancy for all buildings in the Project has been issued; and

I. All conditions for disbursement of the permanent loan for the Project have been met.

3.2 DISBURSEMENT OF UNDISBURSED LOAN PROCEEDS. Disbursement of Undisbursed Loan Proceeds for the Project shall be made in one lump sum through the Escrow Holder after all conditions in Section 3.1 have been met. The Lender shall have no obligation to disburse any remaining Undisbursed Loan Proceeds if all Undisbursed Loan Proceeds have not been disbursed by August 31, 1996.

3.3 CANCELLATION OF OLD NOTE AND RECONVEYANCE OF OLD DEED OF TRUST. Upon delivery to the Lender of the original Note and upon recordation of the Deed of Trust and the Regulatory Agreement pursuant to Section 3.1 of this Agreement, the Lender shall cancel the Old Note and deliver the Old Note to the Borrower and shall reconvey the Old Deed of Trust.

ARTICLE 4 DEVELOPMENT OF PROJECT

4.1 CONFIGURATION OF THE PROJECT. Borrower certifies, warrants and represents to Lender that Borrower has developed and shall continue to develop, the Project in accordance with the Plans and Specifications as a residential rental project consisting of 207 multifamily units and 1 single family unit. Borrower covenants that it has developed, and shall continue to develop, the Project in substantial conformance with the Plans and Specifications and any modifications thereto approved by Lender.

4.2 FINANCING. Borrower shall promptly inform Lender of any changes in the amount, terms, and/or sources of financing or funding for the Project. All costs incurred in predevelopment, development and operation of the Project shall be the responsibility and obligation solely of Borrower.

4.3 CONTRACTS AND SUBCONTRACTS. Borrower represents, warrants and certifies to Lender that all construction work and professional services for the Project have been and shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California.

4.4 QUALITY OF WORK. Borrower certifies, warrants, and covenants that Borrower has constructed, and shall continue to construct, the Project in conformance with industry construction standards and shall employ building materials of a quality suitable for the requirements of the Project as approved by the
Lender in the Plans and Specifications. Borrower represents, certifies, warrants and covenants to Lender that Borrower has developed, and shall continue to develop, the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

4.5 COMPLIANCE WITH CDBG PROGRAM REQUIREMENTS. The Borrower covenants, warrants, certifies and agrees that Borrower has complied, and shall continue to comply, with all requirements imposed on projects assisted under the CDBG program, as contained in 42 U.S.C. Sections 5301, et seq., 24 CFR Part 570, and other implementing rules and regulations. Borrower acknowledges that it has received copies of these requirements and understands them. In the event of any conflict between this Agreement and the CDBG statutes and regulations, the CDBG statutes and regulations shall prevail.

4.6 ADDITIONS OR CHANGES IN WORK. Lender must be notified in a timely manner of any changes in the work required to be undertaken during rehabilitation of the Project, including any additions, changes, or deletions to the approved Plans and Specifications.

4.7 CONSTRUCTION RESPONSIBILITIES. Borrower shall be solely responsible for all aspects of Borrower's conduct in connection with the Project, 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 Lender with reference to the Project is solely for the purpose of determining whether Borrower is properly discharging its obligations to Lender, and should not be relied upon by Borrower or any third parties as a warranty or representation by Lender as to the quality of the design or construction of the Project.

4.8 MECHANICS LIENS AND STOP NOTICES. If any claim or lien is filed against the Property or a stop notice affecting the Loan is served on Lender or any other lender or other third party in connection with the Project, Borrower shall, within 20 days of 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 Lender a surety bond in sufficient form and amount, or provide Lender with other assurance satisfactory to Lender that the claim of lien or stop notice will be paid or discharged.

If Borrower fails to discharge any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, Lender may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at Borrower's expense. Alternatively, Lender may require
Borrower to immediately deposit with Lender the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lender may use such deposit to satisfy any claim or lien that is adversely determined against Borrower.

Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction on the Project for a continuous period of 30 days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the Property. Borrower authorizes Lender, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that Lender deems necessary or desirable to protect its interest in the Project and Property.

ARTICLE 5 PROJECT OPERATION

5.1 OPERATION OF PROJECT. Borrower and Borrower's agents shall lease, operate and manage the Project after completion in full conformance with the terms of the Regulatory Agreement.

5.2 RECORDS. Borrower shall be accountable to Lender for all funds disbursed to Borrower pursuant to the Loan Documents. Borrower agrees to maintain records that accurately and fully show the date, amount, purpose and payee of all expenditures made with Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from the Loan funds for not less than three years after completion of the Project as evidenced by recordation of the Deed of Trust. Records must be kept accurate and current. Lender shall notify Borrower of any records it deems insufficient. Borrower shall have 15 calendar days from the date of said notice to correct any deficiency in the records specified by Lender in said notice, or, if more than 15 days shall be reasonably necessary to correct the deficiency, Borrower shall begin to correct the deficiency within 15 days and correct the deficiency as soon as reasonably possible.

Borrower shall promptly comply with all requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. Borrower shall promptly supply, upon the request of Lender, any and all information and documentation which involves the Project and cooperate with Lender in the development of the Project.

5.3 AUDITS. Borrower shall submit to the Lender annual audited financial statements to the Lender by June 1st of each year. Borrower shall make available for examination at reasonable intervals and during normal business hours to Lender all books, accounts, reports, files, and other papers or property with respect to all matters covered by the Loan Documents, and shall permit Lender to audit, examine, and make excerpts or transcripts from such records. Lender may make audits of any
conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a discrepancy equal to or greater than three percent (3%) in the information reported by Borrower to Lender in which case Borrower shall bear the cost of such audit.

5.4 ENCUMBRANCE OF PROPERTY. Except as otherwise provided in this Agreement, prior to the repayment of the Loan, Borrower shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or allow any encumbrance or lien to be made on or attached to the Property, except with the prior written consent of Lender. Until full repayment of the Loan, Borrower shall notify Lender in writing in advance of any financing secured by any deed of trust, mortgage, or other similar lien instrument that it proposes to enter into with respect to the Project or Property, and of any encumbrance or lien that has been created on or attached to the Property whether by voluntary act of Borrower or otherwise.

5.5 TRANSFER OF PROPERTY. Borrower has not made or created, and shall not, prior to full repayment of the Loan, make or permit any sale, assignment, conveyance, lease (other than the rental of the individual residential units in the Project), or other transfer of this Agreement, the Project, or the Property, or any part thereof, including the sale or transfer of interests in the Borrower, without the prior written consent of Lender through the City Council. Lender shall give its consent to a sale, transfer, or conveyance provided that all the following conditions are met: (a) Borrower is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to assume all obligations of Borrower imposed by the Regulatory Agreement and the other Loan Documents; (c) the transferee demonstrates to Lender's sole satisfaction that it is capable of and intends to own and operate the Property in full compliance with the Regulatory Agreement and the other Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize Lender's security interest in the Property and is in full compliance with all standards, including eligibility requirements and other conditions imposed by any funding sources for the Project and the Loan.

5.6 FEES, TAXES, AND OTHER LEVIES. Borrower shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Project, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by Lender, Borrower deposits with Lender any funds or other forms of
assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful.

5.7 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, Borrower shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the Project. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Borrower shall make up the deficiency.

ARTICLE 6 NONDISCRIMINATION AND EQUAL OPPORTUNITY

6.1 NONDISCRIMINATION. Borrower shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. Borrower shall otherwise comply with all applicable local, state, and federal laws and regulations relating to nondiscrimination. All deeds, leases or contracts relating to the Property shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."
B. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

C. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

6.2 EQUAL EMPLOYMENT OPPORTUNITY. Borrower and any contractors, subcontractors, and professional service providers for the Project shall comply with all requirements concerning equal employment opportunity as set forth in Exhibit D, in the CDBG program rules and regulations and any other laws and regulations which apply to the Project, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the Project.

ARTICLE 7 INDEMNITY AND INSURANCE

7.1 INSURANCE COVERAGE. Borrower shall cause to have in full force and effect from the date of close of this Agreement
through the term of the Regulatory Agreement the insurance coverage specified in Exhibit E to this Agreement, which is hereby incorporated into this Agreement by this reference.

7.2 INSURANCE ADVANCES. In the event Borrower fails to maintain the full insurance coverage required by this Agreement, Lender, after at least seven (7) business days prior written notice to Borrower, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Lender, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of Borrower to Lender and shall be secured by the Deed of Trust.

7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. Lender, its officials, employees and agents shall not be personally liable to Borrower for any obligation created under the terms of the Loan Documents except in the case of actual fraud, willful misconduct or sole gross negligence by such person.

7.4 INDEMNITY. Except for the sole gross negligence, actual fraud or willful misconduct of the Lender, the Borrower undertakes and agrees to defend, indemnify, and hold harmless Lender from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever occurring on the Property or the Project or arising in any manner by reason of or incident to the performance of this Agreement on the part of the Borrower or any contractor or subcontractor of Borrower, whether or not contributed to by an act or omission of the Lender. Borrower shall pay immediately upon Lender's demand any amounts owing under this indemnity. The duty of Borrower to indemnify includes the duty to defend Lender or, at Lender's choosing, to pay Lender's costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Project or the Property. Borrower's duty to indemnify Lender shall survive the term of the Loan and the reconveyance of the Deed of Trust.

ARTICLE 8 HAZARDOUS MATERIALS

8.1 REPRESENTATIONS AND WARRANTIES. After reasonable investigation and inquiry, Borrower hereby represents and warrants to the best of its knowledge, as of the date of this Agreement and except as previously disclosed and acknowledged in writing to Lender or as disclosed by the reports based on
environmental audit(s) performed on the Property and submitted to Lender, that (a) the Property is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the Property is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the Property by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the Property (including in the soil, surface water, or groundwater under the Property) or any other occurrences or conditions on the Property or on any other real property that could cause the Property or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 NOTIFICATION TO LENDER. Borrower shall immediately notify Lender in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the Property requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by Borrower (after verification of the veracity of such knowledge to Borrower's reasonable satisfaction) that the Property does not comply with any Hazardous Materials Laws; (c) the receipt by Borrower of written notice of any claims relating to Hazardous Materials on or under the Property; and (d) the discovery by Borrower of any occurrence or condition on the Property or on any real property located within 2,000 feet of the Property that could cause the Property or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.3 USE AND OPERATION OF PROPERTY. Neither Borrower, nor any agent, employee, or contractor of Borrower, nor any authorized user of the Property shall use the Property or allow the Property to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. Borrower shall comply with and cause the Project to comply with all Hazardous Materials Laws.

8.4 REMEDIAL ACTIONS. If Borrower has actual knowledge of the presence of any Hazardous Materials on or under the Property, Borrower shall immediately take or cause its tenant(s) to immediately take, at no cost or expense to Lender, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any
Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to Borrower's right of contest set forth in Section 8.5.

8.5 RIGHT OF CONTEST. Borrower may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by Borrower in good faith, (b) Borrower promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by Lender, Borrower deposits with Lender any funds or other forms of assurance Lender in good faith from time to time determines appropriate to protect Lender from the consequences of the contest being unsuccessful and any remedial action then necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by Borrower under the conditions of this Section 8.5.

8.6 ENVIRONMENTAL INDEMNITY. Borrower shall defend, indemnify, and hold Lender free and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that Lender may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not Borrower knew of same) of any Hazardous Materials occurring prior to or during Borrower's use or occupancy of the Property. Borrower's duty to defend Lender shall survive the term of the Loan and the reconveyance of the Deed of Trust.

ARTICLE 9 DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement:

A. Monetary. (1) Borrower's failure to pay when due any sums payable under the Note or any advances made by Lender under the Deed of Trust or this Agreement; (2) Borrower's use of Loan funds for costs other than CDBG Eligible Costs for uses inconsistent with other terms and restrictions in the Loan Documents; (3) Borrower's failure to obtain and maintain the insurance coverage required under this Agreement; (4) Borrower's failure to make any other payment or assessment due under the Loan Documents;
B. **Construction.** (1) the filing of any claim of lien against the Property or service on Lender of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (2) Borrower's failure to substantially comply with any federal, state, or local laws or Lender policies governing construction, including but not limited to provisions of this Agreement pertaining to prevailing wages, affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. **Operation.** (1) discrimination by Borrower on the basis of characteristics prohibited by this Agreement or applicable law; (2) any transfer of the Property or Project or the imposition of any encumbrances or liens on the Property without Lender's prior written approval that are prohibited under this Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust; (3) any material adverse change in the condition of Borrower or the Project or permanent financing or funding for the Project that gives Lender reasonable cause to believe that the Project cannot be operated according to the terms of the Loan Documents or the Regulatory Agreement; (4) Borrower's failure to remedy any deficiencies in record keeping or failure to provide records to Lender upon Lender's request;

D. **General Performance of Loan Obligations.** Any substantial or continuous breach by Borrower of any material obligations of Borrower imposed in the Loan Documents;

E. **General Performance of Other Obligations.** Any substantial or continuous breach by Borrower of any material obligations of Borrower imposed by any other agreements with respect to the financing, development, or operation of the Project or the Property whether or not Lender is a party to such agreement, including without limitation any other loan document and any HUD Document;

F. **Representations and Warranties.** A determination by Lender that any of Borrower's representations or warranties made in the Loan Documents, any statements made to Lender by Borrower, or any certificates, documents, or schedules supplied to Lender by Borrower were untrue in any material respect when made, or that Borrower concealed or failed to disclose a material fact from Lender;

G. **Damage to Property.** Material damage or destruction to the Property by fire or other casualty, if
Borrower does not take steps to reconstruct the Property as required by the Loan Documents; and

H. Bankruptcy, Dissolution, and Insolvency.
Borrower's or any corporation controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any application for such action brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

9.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. For Events of Default, Lender shall give written notice to Borrower of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, and (b) a date, which shall not be less than ten (10) calendar days for monetary defaults described in Section 9.1A or thirty (30) calendar days for all other defaults described in Section 9.1 from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

9.3 LENDER'S REMEDIES. Upon the happening of an Event of Default by Borrower and a failure to cure said Event of Default within the time specified in the notice of Event of Default, Lender's obligation to disburse Loan proceeds shall terminate, and Lender may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination Lender may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the Note, as well as any other monies advanced to Borrower by Lender including administrative costs, shall immediately become due and payable at the option of Lender;

B. Bring an action in equitable relief (1) seeking the specific performance by Borrower of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding and all accrued interest under the Note, as well as any other monies advanced to Borrower by Lender;
D. Enter the Property and take any actions necessary in its judgment to protect its interest in the Property, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the Project, (2) entering into, modifying, or terminating any contractual arrangements (subject to Lender's right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that Lender deems necessary to comply with Hazardous Materials Laws or to render the Property suitable for occupancy;

E. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

F. Enter upon, take possession of, and manage the Property, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the Property or to pay off the Loan or any advances made under the Loan Documents, as provided for by the Deed of Trust;

G. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

I. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding Lender from proceeding with a non-judicial foreclosure under the power of sale contained in the Deed of Trust in the Event of Default by Borrower.

9.4 BORROWER'S REMEDIES. Upon the fault or failure of Lender to meet any of its obligations under the Loan Documents, Borrower may:

A. Demand payment from Lender of any sums due Borrower;

B. Bring an action in equitable relief seeking the specific performance by Lender of the terms and conditions of the Loan Documents; or

C. Pursue any other remedy allowed at law or in equity.
ARTICLE 10  GENERAL PROVISIONS

10.1 BORROWER'S WARRANTIES. Borrower represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable Borrower to fully comply with the terms of the Loan Documents, and to otherwise carry out the Project, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the Project and to execute the Loan Documents, and (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of Borrower.

10.2 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Agreement, Borrower shall maintain and submit records to Lender within ten (10) business days of Lender's request which clearly document Borrower's performance under each requirement of the Loan Documents.

10.3 CONFLICTS OF INTEREST. Borrower shall exercise due diligence to ensure that (1) the mayor, city manager, or any member of the city council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of the City of Stockton, or any immediate family member of such person, who, with respect to the Project, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain a personal or financial interest or benefit from this Project or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

10.4 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by Lender or Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

10.5 TERM OF THIS AGREEMENT. This Agreement shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

10.6 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.
10.7 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

10.8 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel) and costs in such action.

10.9 TIME. Time is of the essence in the Loan Documents.

10.10 CONSENTS AND APPROVALS. Any consent or approval of Lender or Borrower required under the Loan Documents shall not be unreasonably delayed or withheld, unless otherwise provided in this Agreement. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

10.11 LENDER ACTION. Except where any action (including without limitation, approvals, consents or authorizations) by the City Council are expressly required in this Agreement, all references in this Agreement to Lender action shall mean action by the City Manager or the City Manager's designee.

10.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between Borrower and Lender shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Borrower and Lender as follows:

LENDER:  City of Stockton
          425 North El Dorado St.
          Stockton, CA 95202
          Attn:  City Manager

          With a copy to:

          City of Stockton
          Housing and Redevelopment Department
          305 North El Dorado Street
          Suite 200
          Stockton, CA 95202
          Attn:  Director
BORROWER: Park Village Apartments
c/o Rural California Housing Corporation
2125 19th Street, Suite 101
Sacramento, CA 95818
Attn: Executive Director

With a copy to:

ASPARA
3830 North Alvarado
Suite C
Stockton, CA 95205

10.13 BINDING UPON SUCCESSORS. All provisions of the Loan
Documents shall be binding upon and inure to the benefit of the
heirs, administrators, executors, successors-in-interest,
transferees, and assigns of each of the parties; provided,
however, that this Section does not waive the prohibition on
assignment of this Agreement by Borrower without Lender's consent
by the City Council.

10.14 RELATIONSHIP OF PARTIES. The relationship of
Borrower and Lender for this Project under this Agreement is and
at all times shall remain solely that of a debtor and a creditor,
and shall not be construed as a joint venture, equity venture,
partnership, or any other relationship. Lender neither
undertakes nor assumes any responsibility or duty to Borrower
(except as provided for herein) or any third party with respect
to the Project, the Property, or the Loan. Except as Lender may
specify in writing, Borrower shall have no authority to act as an
agent of Lender or to bind Lender to any obligation.

10.15 ASSIGNMENT AND ASSUMPTION. Borrower shall not assign
any of its interests under this Agreement or the Loan Documents
to any other party, except as specifically permitted under the
terms of the Loan Documents, without the prior written consent of
Lender by the City Council. Any unauthorized assignment shall be
void.

10.16 WAIVER. Any waiver by Lender of any obligation in
the Loan Documents must be in writing. No waiver will be implied
from any delay or failure by Lender to take action on any breach
or default of Borrower or to pursue any remedy allowed under the
Loan Documents or applicable law. Any extension of time granted
to Borrower to perform any obligation under the Loan Documents
shall not operate as a waiver or release from any of its other
obligations under the Loan Documents. Consent by Lender to any
act or omission by Borrower shall not be construed to be a
consent to any other or subsequent act or omission or to waive
the requirement for Lender's written consent to future waivers.
10.17 INTEGRATION. This Agreement and the other Loan Documents, including exhibits, executed by Borrower for the Property, if any, contain the entire agreement of the parties and supersede any and all prior negotiations and the Old Loan Agreement.

10.18 OTHER AGREEMENTS. Borrower represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. Borrower shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by Lender in writing.

10.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both Borrower and Lender, as approved by the City Council or the City Manager, in his or her discretion, for minor modifications or amendments.

10.20 SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

BORROWER: Park Village Apartments, a California nonprofit public benefit corporation

By: Sovanna Ko, President

By: Stanley Keasling, Secretary

LENDER: City of Stockton, a municipal corporation

By: DWANE MILNES
City Manager

Attest: By: [Signature]
City Clerk

APPROVED AS TO FORM:

By: [Signature] Deputy
By: City Attorney
LOAN AGREEMENT

EXHIBIT A

PROPERTY DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED WITHIN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A Tract of land situated in Section 17 of C.M. WEBER GRANT, and being portions of Lots 12 and 13 of SPERRY TRACT, according to the Official Map thereof filed for record in Vol. 3 of Maps, page 51, San Joaquin County Records, more particularly described as follows:

BEGINNING at the intersection of the New Northerly line of Fulton Street (formerly Calaveras Avenue) with the Westerly right of way line of the Western Pacific Railroad as described in the Deed to the City of Stockton, recorded in Book 3015 of Official Records, page 618, San Joaquin County Records; thence along said New Northerly line of Fulton Street South 74°18'00" West 430.83 feet; thence along a curve concave to the North having a radius of 20.00 feet, a central angle of 88°42'00", a distance along the arc of 30.96 feet to the Easterly line of Alvarado Avenue, as said Street is describe in Book "A" of Deeds, Vol. 369, page 256, San Joaquin County Records; thence along said Easterly line of Alvarado Avenue North 17°00'00" West 650.45 feet to the Northwesterly corner of that certain Parcel of Land Deeded to Flores, et ux, and described in Book 2325 of Official Records, page 27, San Joaquin County Records; thence along the Northerly line of said Flores Parcel, North 78°00'30" East 150.54 feet; thence North 74°12'00" East parallel with the Southerly line of said Lot 12 Sperry Tract, 103.00 feet; thence North 17°00'00" West parallel with said Easterly line of Alvarado Avenue 103.50 feet; thence North 74°12'00" East parallel with the Southerly line of said Lot 12, Sperry Tract, 212.36 feet to said Westerly right of way line of Western Pacific Railroad; thence South 15°48'00" East along said line 764.12 feet to the point of beginning.
## SOURCES AND USES: PERMANENT FINANCING

**PARK VILLAGE APARTMENTS**

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<td>Rollover City of Stockton***</td>
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**Double-Entendre Note:**

**Notes:**

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****Original Uses of first $250,000 Loan were the following:

- Architect: $28,748
- RCHC Admin: $98,500
- Resident Initiati: $74,000
- Consultant: $58,752

**Total:** $250,000
LOAN AGREEMENT

EXHIBIT C

OTHER ENCUMBRANCES

1. Permanent loan(s) from the Bank of America Community Development Bank for not more than a total of $6,680,000

2. HUD Documents

3. Exceptions 1, 2, 3, 4, 5, 6, 9, 16 and 17 set forth in the Preliminary Report prepared by Old Republic Title Company dated as of April 25, 1996.
LOAN AGREEMENT
EXHIBIT "D"

NONDISCRIMINATION REQUIREMENTS
AND GENERAL CONDITIONS

I. NONDISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. The Borrower shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, the City and the Agency. In performing this Loan Agreement, the Borrower shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. The Borrower shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy attached as Exhibit D to this Loan Agreement. Any subcontract entered into by the Borrower relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

II. Equal Opportunity

A. Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Part 60, the Borrower, for itself and its successors and assigns, agrees that:

1. The Borrower shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune
deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. The Borrower will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Borrower shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Borrower shall, in all solicitations or advertisements for employees placed by or on behalf of the Borrower, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

3. The Borrower shall send a notice to each labor union or representative of workers with which the Borrower has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of the Borrower's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Borrower shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Borrower shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to the Borrower's books, records and accounts by the City, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Borrower's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan
Agreement may be canceled, terminated, or suspended in whole or in part and the Borrower may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

7. The Borrower shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. The Borrower will take such action with respect to any construction contract, subcontract, or purchase order as the City, the Agency or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read "During the performance of this Contract, the Borrower agrees as follows:" and the term "Borrower" shall be changed to "Contractor."

B. Except as provided in California Government Code Section 12940, et seq., the Borrower shall not engage in the following prohibited employment practices:

Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

III. Employment Opportunities for Business and Lower-Income Persons

A. The work to be performed under this Loan Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements
for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The Borrower shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. The Borrower shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. The Borrower shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the Borrower and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

IV. Local, State and Federal Laws

A. The Borrower shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor standards. The Borrower shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary
steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. The Borrower shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


3. Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 1.


10. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


V. City and Other Governmental Agency Permits

A. Before commencement of any work on the Project, the Borrower shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the City or any other governmental agency. The Borrower shall pay such fees as may be required in connection therewith.

B. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

VI. Environmental Impact Report

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the City shall review such report or document. The Borrower shall provide all information, assistance, and cooperation necessary to prepare such report of document. The Borrower warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the City's environmental findings are based. The Borrower agrees not to undertake any activity having a potential adverse environmental effect until such time as the City has advised the Borrower that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part therefor, nor shall the Borrower or any person claiming under or through, 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, licenses or vendees of the Project.
VIII. Form of Nondiscrimination and Nonsegregation Clauses

The Borrower and the Partnership shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

B. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

C. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual
preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

IX. **Maintenance of Records, Right to Inspect and Copy**

A. The Borrower agrees to keep and maintain books, accounts, reports, files, records (including records pertaining to race, color, creed, sex and national origin of tenants and applicants), and other documents relating to the receipt and disbursement of all HOME Funds and CDBG funds under this Loan Agreement. Borrower shall maintain copies of such books and records in a location that is within seventy-five miles of the Property.

B. At all reasonable times and following reasonable notice to the Borrower, any duly authorized representative of the City, or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit, and examine all such books, records, accounts, reports, files, and other documents of the Borrower until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The Borrower shall furnish such statements, records, reports, including litigation reports, data and other information as the City may from time to time reasonably request.

D. The Borrower shall retain non-discrimination records on tenants and applicants for tenancy for at least twenty five (25) months following the date the record was made. All other records that are required to be retained under this Section shall be retained for a period of three (3) years or until such time as audit findings have been resolved, whichever is later.
EXHIBIT "E"

INSURANCE REQUIREMENTS

As a precondition to making the Loan, Borrower shall obtain the following insurance coverage, and shall maintain such coverage in full force and effect during construction of the Project: comprehensive general liability insurance policy affording coverage for bodily injury, and property damage in the combined single limit of Three Million Dollars ($3,000,000). Before Loan disbursal and issuance of a notice to proceed, Borrower shall deliver to Lender certificate(s) of insurance, or a binder followed within 30 days by a certificate of insurance, evidencing the required coverage.

1. General Conditions

During the term of this Agreement and without limiting the Borrower's indemnification of the City, the Borrower shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the Borrower but not less than the amounts and types listed below covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The City, their boards, officers, agents and employees shall be included as additional insureds by separate endorsement in all liability insurance policies except: Workers' Compensation/Employer's Liability and second-party Legal Liability coverages (such as Fire Legal) and Owners and Contractors Protective Liability, in which latter case the City shall be the named insured. The City shall be named loss payee as its interest may appear in all required property, fidelity or surety coverages.

b. Insurance Requirements

All insurance required hereunder shall conform to City requirements established by charter, ordinance or policy and shall be filed with the City Finance Department for review.

During the period of construction, Borrower must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the
value of labor and materials and naming the City as loss payee as its interest may appear.

After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender’s loss payable endorsement listing the City and Borrower as the loss payees as their interests may appear. This policy must remain in effect throughout the term of the Loan.

c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by City and shall not call on the City’s insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A.M. best rating of at least A:VII and approved by the City.

e. **30-Day Notice**

With respect to the interests of City such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the City by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to and approved by the City Attorney and the City Finance Department prior to commencement of any work or tenancy under this Agreement.

g. **Acceptable Evidence**

The appropriate City special endorsement forms are the preferred form of evidence of insurance. Alternatively, Borrower may submit two (2) certified copies of the full policy or other evidence acceptable to the City Attorney containing language which complies with subparagraphs (a) through (f) above. With respect to liability insurance, either a signed copy of the policy declaration page or a letter from Borrower’s insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the city and Agency as specified in subparagraph "e" of this section will satisfy this requirement.
h. **Severability of Interest**

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

i. **Renewal**

Once the insurance has been approved by the City, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (h) above, must be submitted.

j. **Proceeds**

All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the construction lender(s) and the City, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the construction lenders, second to repay the Loan, and third to repay the Acquisition Loan to Borrower from the City. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, the Borrower shall have the right to rebuild the Project, and to use manner that provides adequate security to the City for repayment of the Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the Loan.

2. **Worker's Compensation**

By signing this Agreement, the Borrower hereby certifies that it is aware of the provisions of Section 3700, *et seq.*, of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the
Borrower to comply with such provisions before commencing the performance of the work of this Agreement.

3. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the Borrower not related to this Agreement, the Borrower shall give the City prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Borrower's best judgment may diminish the protection such insurance affords City. Further, Borrower shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The City may specify a minimum acceptable aggregate for each line of coverage required.

4. **Modification of Coverage**

Upon advice from the City Finance Department, the City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Borrower forty-five (45) days advance written notice of such change. If such change should result in substantial additional cost to Borrower, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.

5. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the City. Non-availability or non-affordability must be documented by a letter from Borrower's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, Borrower's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the City may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Borrower to the City upon demand or it may offset the cost of the premiums against any monies due to the Borrower from the City.
6. **Underlying Insurance**

Borrower shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower's and City's interests and for ensuring that such persons comply with any applicable insurance statutes. Borrower is encouraged to seek professional advice in this regard.
REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this 15th day of October, 1997, by and among the City of Stockton, a municipal corporation (the "CITY"), St. Mary's Interfaith Dining Room, a California Non-Profit Corporation (the "OWNER").

RECITALS

A. The CITY has received Community Block Grant Program Funds (the "CDBG Funds") from the United States Department of Housing and Urban Development ("HUD")

B. The CITY has entered into a Loan Agreement (the "Loan Agreement") with OWNER under which the CITY will loan $839,704.11 of CDBG Funds (the "CDBG Loan") for the expansion of the existing facilities operated by the OWNER in the City of Stockton (the "PROJECT").

C. In consideration of receipt of the CDBG Loan, the OWNER has further agreed to observe all the terms and conditions set forth below.

D. In order to ensure that the PROJECT will be used and operated in accordance with these conditions and restrictions, the CITY and OWNER wish to enter into this Agreement.

THEREFORE, the CITY and OWNER hereby agree as follows.
ARTICLE 1. DEFINITIONS

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

1.1 "AGREEMENT" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

1.2 "BORROWER" is St. Mary’s Interfaith Dining Room, a California Non-profit Corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "CERTIFICATE OF OCCUPANCY DATE" means the date of issuance by the CITY of the initial Certificate of Occupancy for the Project.


1.5 "CDBG LOAN" is the loan of funds in the principal amount of EIGHT HUNDRED THIRTY NINE THOUSAND SEVEN HUNDRED FOUR DOLLARS AND ELEVEN CENTS ($ 839,704.11) by the CITY to the BORROWER pursuant to the Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of EIGHT HUNDRED THIRTY NINE THOUSAND SEVEN HUNDRED FOUR DOLLARS AND ELEVEN CENTS ($ 839,704.11) executed by BORROWER in favor of the CITY, evidencing all or any part of the CDBG LOAN, which is secured by the DEED OF TRUST, as well as any amendments thereto, modifications thereof, or restatements thereof. The terms of the CDBG NOTE are hereby incorporated into this AGREEMENT by this reference.

1.7 "CERTIFICATE OF PROJECT COMPLETION" means that certificate issued to BORROWER by CITY evidencing completion of the PROJECT pursuant to the terms of this LOAN AGREEMENT.

1.8 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.9 "CLOSING DATE" shall mean the date of recordation of this Agreement.

1.10 "COMMENCEMENT OF CONSTRUCTION" means the time OWNER or BORROWER’S construction contractor begin substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.
1.11 "DEED OF TRUST" is that deed of trust, assignment of rents, and security agreement placed on the PROPERTY as security for repayment of the CDBG LOAN by BORROWER as trustor with CITY as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.12 "ELIGIBLE CDBG COSTS" means those PROJECT costs related to the expansion of facilities for which CDBG LOAN proceeds may be used as specified in 24 CFR Part 570.201 (c) and in the BUDGET as specified in Exhibit B, attached and incorporated into the LOAN AGREEMENT and any revisions to the BUDGET that are approved in writing by CITY.

1.13 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all Loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.14 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in a manner and in amounts that are consistent with normal practice and legal standards.

1.15 "HUD" means the United States Department of Housing and Urban Development.

1.16 "LOAN AGREEMENT" means the Loan Agreement entered into between CITY and BORROWER.

1.17 "LOAN DOCUMENTS" are collectively the LOAN AGREEMENT, the Deed of Trust, the CDBG Note, and the Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.18 "OWNER" shall mean St. Mary's Dining Room, a California Non-profit Corporation, and any of its affiliates, successors, or assigns.

1.19 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.
1.20 "PROJECT" shall mean the expansion of the existing facilities as described in the LOAN AGREEMENT.

1.21 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit A, which is incorporated into this Agreement by this reference, including the PROJECT.

1.22 "REGULATORY AGREEMENT" means this agreement.

ARTICLE 2. OPERATION AND MAINTENANCE OF THE PROJECT

2.1 Compliance with Loan Documents. OWNER shall comply with all the terms and provisions of the Loan Documents, each of which is incorporated by this reference.

2.2 Taxes and Assessments. OWNER shall pay all real and personal PROPERTY taxes, assessments and charges and all franchise, income, employment, 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; provided, however, that OWNER shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event OWNER exercises its right to contest any tax, assessment, or charge against it, OWNER, 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.

2.3 Nondiscrimination. The PROJECT shall be available for use on a continuous basis to members of the general public who are poor and homeless. OWNER shall not give preference to any particular class or group of persons in providing services. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation or preference, age, marital status, national origin, ancestry, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-related conditions (ARC), or any other arbitrary basis in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any portion of the PROJECT. Neither the OWNER nor any person claiming under or through the OWNER, shall 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 of any portion of the PROJECT or in connection with the employment of persons for the operation and management of any portion of the PROJECT. All deeds, leases or contracts made or entered into by OWNER as to the PROJECT or the PROPERTY or portion thereof, shall contain covenants concerning discrimination as prescribed by the LOAN AGREEMENT.
The OWNER shall include a statement in all advertisements, notices and signs for the availability of services to the effect that OWNER is an Equal Housing Opportunity Provider.

Nothing in this Section 2.3 is intended to require OWNER to change the character, design, use or operation of the Development from, or to require OWNER to obtain licenses or permits other than those required. The PROPERTY and PROJECT to be used as a facility restricted to providing temporary food, clothing, medical, educational and social services for the poor and homeless citizens of San Joaquin County, consistent with those requirements imposed by other public agencies which may provide funding for this PROJECT, for the inclusive use by low-income persons, for the useful life of the PROJECT. In the event PROPERTY is sold, leased, transferred or assigned, OWNER shall insure that the successors and assigns shall maintain the restrictions on use for the remaining life of the PROJECT or, at a minimum, thirty (30) years, whichever is greater.

ARTICLE 3. PROPERTY MANAGEMENT

3.1 Maintenance and Security. OWNER shall at its own expense maintain the PROPERTY in good condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions for the benefit of occupants and users. OWNER shall not commit or permit any waste on or to the PROPERTY, and shall prevent and/or rectify any physical deterioration of the PROPERTY. OWNER shall provide adequate ongoing security equipment and services for the PROJECT. OWNER shall maintain the PROPERTY in conformance with all applicable state, federal, and local laws, ordinances, codes, and regulations and the Final Management Plan, but OWNER’S maintenance obligations shall not be limited only to the standards contained in these laws.

In the event that OWNER fails to maintain the PROPERTY in accordance with these standards and after at least thirty (30) calendar days prior notice to OWNER, the CITY, or their contractors or agents may, but shall be under no obligation to, enter upon the PROPERTY, make such repairs or replacements as are reasonably deemed necessary in the CITY’S discretion, and provide for payment thereof. Any amount advanced by the CITY to make such repairs, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the CDBG NOTE, depending on the source of funds used by the CITY, (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of OWNER to the CITY, and shall be secured by any DEED OF TRUST, if not previously reconveyed.

3.2 Insurance Coverage. OWNER shall cause to have in full force and effect during the term of this Regulatory Agreement insurance coverage as required under Exhibit "C" of the LOAN AGREEMENT.
3.3 **Property Damage or Destruction: Condemnation.** If any building or improvements erected by OWNER on the PROPERTY shall be damaged or destroyed by an insurable cause, OWNER shall, at its own cost and expense, diligently repair or restore the PROPERTY and the PROJECT consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall be commenced within 90 days after the damage or loss occurs and shall be completed within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, OWNER shall make up the deficiency.

In the event of any fire or other casualty to any real PROPERTY securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such PROPERTY or any part thereof, such event shall not constitute a default under the LOAN AGREEMENT and the OWNER shall have the right to rebuild the affected PROJECT and PROPERTY, and to use all available insurance or condemnation proceeds to that end, provided that (a) the available proceeds, together with any funds supplied by OWNER from other sources, are sufficient to rebuild the affected PROPERTY in a manner that provides adequate security to the CITY for repayment of the Loan and (b) no material default then exists under any Loan Documents other than defaults which are a result of condemnation.

3.4 **Hazardous Materials.** During the term of the Regulatory Agreement, OWNER shall comply with all of the obligations contained in the LOAN AGREEMENT and Deed of Trust with respect to Hazardous Materials as defined in the LOAN AGREEMENT and Deed of Trust.

**ARTICLE 4. MISCELLANEOUS**

4.1 **Term.** The provisions of this Agreement shall apply to the PROPERTY for the entire Term even if the entire CDBG LOAN and is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of OWNER, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, with or without the approval of the CITY, except as expressly released by the CITY. The CITY makes the CDBG Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

4.2 **Subordination.** This Regulatory Agreement shall be subordinated in priority only to the liens and encumbrances approved by the CITY in the LOAN AGREEMENT or otherwise in writing by the CITY.

4.3 **Transfer and Encumbrance of Property.** Subject to the LOAN AGREEMENT, during the term of this Regulatory Agreement, OWNER shall not make or permit any sale, assignment, conveyance, lease (other than the rental of Units to eligible tenant occupants), or transfer of the PROPERTY or any part thereof, without the prior
written consent of the CITY. The CITY shall give their consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) OWNER is in compliance with this Regulatory Agreement and the other Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of this Regulatory Agreement or the other Loan Documents; (b) the transferee agrees to assume all obligations of OWNER imposed by the Regulatory Agreement and the other Loan Documents; (c) the transferee demonstrates to the CITY’s satisfaction that it is capable of owning and operating the PROPERTY in full compliance with this Regulatory Agreement and the other Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize the CITY’s security interests in the PROPERTY and is in full compliance with all standards, including eligibility requirements and other conditions imposed by any funding sources for the Project and any loan.

During the term of this Regulatory Agreement, OWNER shall not engage in any financing or other transaction creating any mortgage or other encumbrance or lien upon the PROPERTY, without the prior written consent of the CITY. The CITY may consent to such financing if and to the extent necessary to maintain or improve the condition of the PROPERTY.

4.4 Non-Liability of Officials, Employees and Agents. The CITY shall not be liable to OWNER for damages for any obligation created under the terms of this Regulatory Agreement except in the case of actual fraud or willful misconduct.

4.5 Indemnity. Notwithstanding the insurance coverage required herein, OWNER shall indemnify and hold the CITY free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which the CITY may incur as a direct or indirect consequence of (1) OWNER's failure to perform any obligations as and when required by this Regulatory Agreement; (2) any failure of any of OWNER's representations or warranties to be true and complete; or (3) any act or omission by OWNER or any contractor, subcontractor, management agent, or supplier with respect to the development, construction and operation of the Project or the PROPERTY, except where such losses are caused by the sole negligence or willful misconduct of the CITY. OWNER shall pay immediately upon the CITY’s demand any amounts owing under this indemnity. The duty of the OWNER to indemnify includes the duty to defend the CITY in any court action, administrative action, or other proceeding brought by any third party arising from the development of or operation on the PROPERTY. OWNER's duty to indemnify the CITY shall survive the term of this Regulatory Agreement.

4.6 Covenants to Run With the Land. The CITY and OWNER hereby declare their express intent that the covenants and restrictions set forth in this agreement shall run with the land, and shall bind all successors in title to the PROPERTY, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall
expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the PROPERTY or any portion thereof 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 a conveyed portion of the PROPERTY from the requirements of this Agreement.

4.7 Enforcement by the City. The occurrence of any of the events contained in Article 10 of the Loan Agreement shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default."

4.8 Attorneys' Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

4.9 Recording and Filing. The CITY and OWNER shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of San Joaquin.

4.10 Governing Law. This Agreement shall be governed by the laws of the State of California, except those provisions preempted by federal law.

4.11 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the official records of the County of San Joaquin, California.

4.12 Notice. All notices given or certificates delivered under this Agreement shall be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

4.13 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

4.14 Regulatory Agreement Controls. The Loan Documents and this Regulatory Agreement are intended to be read and construed as a whole. In the event that any provisions of this Regulatory Agreement and any other Loan Document conflict, the terms of the Regulatory Agreement shall control.
4.15 **Relationship of Parties.** The relationship of OWNER and the CITY for this Project during the term of this Regulatory Agreement shall not be construed as a joint venture, equity venture, or partnership. The CITY neither undertakes nor assumes any responsibility or duty to OWNER or any third party with respect to the operation of the PROPERTY or the actions of OWNER. OWNER shall have no authority to act as an agent of the CITY or to bind the CITY to any obligation.

4.16 **Waiver.** Any waiver by the CITY of any obligation in this Regulatory Agreement must be in writing. No waiver will be implied from any delay or failure by the CITY to take action on any breach or default of OWNER or to pursue any remedy allowed under this Regulatory Agreement or applicable law. Any extension of time granted to OWNER to perform any obligation under this Regulatory Agreement shall not operate as a waiver or release from any of its obligations under this Regulatory Agreement. Consent by the CITY to any act or omission by OWNER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the CITY's written consent to future waivers.
4.17 **Other Agreements.** OWNER represents that it has not entered into any agreements that would restrict or compromise its ability to comply with the terms of this Regulatory Agreement. OWNER shall not enter into any agreements that are inconsistent with the terms of this Regulatory Agreement without an express waiver by the CITY in writing. OWNER shall give written notice to CITY, requesting CITY'S consent prior to entering into any such agreement.

IN WITNESS WHEREOF, the CITY and OWNER have executed this Agreement by duly authorized representatives, all on the date first written above.

ST. MARY’S INTERFAITH DINING ROOM, A CALIFORNIA NON-PROFIT CORPORATION (“OWNER”)

By: __________________________

By: __________________________

OWNER’S Counsel

BY:

APPROVED AS TO FORM:

DIRECTOR

CITY OF STOCKTON, a municipal corporation (“CITY”)

By: __________________________

By: __________________________

GARY A. PODESTO, MAYOR

APPROVED AS TO FORM:

R. THOMAS HARRIS

CITY ATTORNEY

ATTEST:

KATHERINE GONG MEISSNER

CITY CLERK OF THE CITY OF STOCKTON
STATE OF CALIFORNIA                          )
COUNTY OF SAN JOAQUIN                      )ss

On SEPTEMBER 26, 1997, before me, DAVID R. PYLE, NOTARY PUBLIC, personally appeared DAVID P. BREWER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________
DAVID R. PYLE

STATE OF CALIFORNIA                          )
COUNTY OF ___________________________        )ss

On ______, 1997, before me, ________________, personally appeared ____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________
State of CALIFORNIA

County of SAN JOAQUIN

On October 15, 1997, before me, PAULA CAZALE

personally appeared GARY A. PODESTO ————

☑️ personally known to me – OR – ☐ proven 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.

My Commission expires April 17, 1998

Signature of Notary Public

____________________________

Optional

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Regulatory Agreement & Declaration of Restrictive Covenants

Document Date: October 15, 1997

Number of Pages: 11

Signer(s) Other Than Named Above: David P. Brewer

Capacity(ies) Claimed by Signer(s)

Signer’s Name: GARY A. PODESTO

☐ Individual
☐ Corporate Officer
☐ Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☑️ Other: Mayor of the City of Stockton

Signer Is Representing:

CITY OF STOCKTON, a municipal corporation

Signer’s Name:

☐ Individual
☐ Corporate Officer
☐ Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer Is Representing:

____________________________
EXHIBIT “A”

That certain Real Property situated in the State of California, County of San Joaquin, City of Stockton, described as follows:

A portion of that certain parcel of land described in Deed to the State of California, recorded December 4, 1967 in Book of Official records, volume 3170, page 497, San Joaquin County Records, said portion lying Southerly of the following described line:

Beginning at a point on the Easterly line of Lincoln Street (80.8 feet in width) distant along said Easterly line North 11° 40' 59" West 351.03 feet from the intersection of said Easterly line with the Northerly line of Church Street (60.6 feet in width);

1. Thence North 82° 58' 32" West 178.28 feet:

2. Thence along a tangent curve concave to the Northeast having a radius of 280 feet through an angle of 26° 24' 42", an arc distance of 129.07 feet to a point that lies 62.00 feet right of and radially opposite engineer's station 10 plus 66.11 of the State of California Department of Public Works Ramp “G” center line for State Highway 10-SJ-5P.M. 24.8;

3. Thence from a tangent that bears South 52° 30' 48" West along a curve concave to the Southeast having a radius of 588 feet through an angle of 20° 22' 17", an arc distance of 209.06 feet to a point that lies 62 feet right of an radially opposite engineer’s station 8 plus 35 of said Ramp “G” center line.
LOAN AGREEMENT

($146,685--CDBG Funds)

This Loan Agreement (the "Loan Agreement") is made as of __________, 2000, by and between the City of Stockton, a municipal Corporation (the "CITY"), and Alcohol & Drug Awareness Program DBA New Directions, A California Non-Profit Organization (the "BORROWER").

RECITALS

A. CITY is concerned with providing drug treatment, education and counseling needs to poor and disadvantaged persons in accordance with their needs.

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block (CDBG) loan in the amount of $146,685 to pay for operational expenses of drug treatment, education and counseling services (the SERVICES) for low and moderate-income persons at their facilities located at 1981 E. Cherokee Road, Stockton, California (the "PROPERTY").

C. CITY believes that the provision of SERVICES, and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said SERVICES has been undertaken and is being assisted.

D. The CITY has conducted an environmental review of the PROJECT pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to CEQA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, deed of trust, a promissory note. These instruments are intended to secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG Loan, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.13 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG Loan in the principal amount not to exceed $146,685.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note (the "CDBG Note") evidencing the terms of payment as stated herein and a deed of trust with power of sale (the "Deed of Trust") on the PROPERTY in favor of CITY as Beneficiary which shall be senior to any and all other liens on the PROPERTY except as provided in Section 4.1.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Deed of Trust and Note, the term of the loan shall be for a period of twenty (20) years and zero (0%) percent interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used for the Eligible Costs of the SERVICES as shown as Exhibit "B".

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $146,685 according to the following terms:

a. A forgivable loan in the amount of $146,685;

b. Interest rate shall be at a rate of 0%;

c. The term of the LOAN shall be for a maximum of twenty (20) years, subject to the provisions of Section 2.3 of this AGREEMENT;

d. BORROWER shall execute a Promissory Note in favor of CITY to secure repayment of the loan funds pursuant to this AGREEMENT; and

e. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to provide the SERVICES in San Joaquin County. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and
9.22 AUTHORITY TO EXECUTE. The undersigned represent and are each authorized by the parties to execute this Loan Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement. date first above written.

APPROVED AS TO FORM: BORROWER: Alcohol & Drug Aware Program DBA New Directions, a California nonprofit organization

By: ____________________________
BORROWER's Counsel

By: ____________________________
Its: Executive Director

APPROVED AS TO FORM: CITY: City of Stockton, a municipal corporation

Richard K. Denhalter
City Attorney

By: ____________________________
Assistant City Attorney

By: ____________________________
Dwane Mihnes, City Manager

ATTEST: ____________________________
Katherine Goring Meissner
City Clerk of the City of Stockton
LOAN AGREEMENT
($61,256---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of AUG 23 2005, by and between the City of Stockton, a municipal Corporation ("CITY"), and County of San Joaquin acting through its Human Services Agency for its Commodity Program ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the San Joaquin County Human Services Agency's Commodity Program in their distribution of food to low-income individuals and families residing in Stockton;

B. BORROWER is a public organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $61,256 to pay for the replacement of a cooler/freezer unit at the Commodity Program Warehouse located at 2736 Teepee Drive, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to replace the existing cooler/freezer, which is ineffecient and does not provide sufficient storage for perishable food items, and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to NEPA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a regulatory agreement and a promissory note. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is County of San Joaquin acting through its Human Services Agency for its Commodity Program, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $61,256 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $61,256 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.
1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this Loan Agreement and the CDBG Note, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the replacement of cooler/freezer unit at the Commodity Program Warehouse located at 2736 Teepee Drive of BORROWER.

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

1.19 "REGULATORY AGREEMENT" means the agreement executed by BORROWER and CITY in a form satisfactory to CITY prior to or contemporaneously with the Loan which regulates the use of the PROJECT and stipulates, among other things, that PROJECT funds are to be used for the replacement of the cooler/freezer unit of BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $61,256 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the cooler/freezer unit purchased with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."
2.5 **LOAN PROVISIONS.** CITY agrees to provide BORROWER with the total of $61,256 according to the following terms:

A. A forgivable loan in the amount of $61,256;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 **REPAYMENT TERMS.** CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in San Joaquin County; and (2) provide food to low- and very low-income people in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $6,125.60 shall be due annually each anniversary date thereafter until fully paid.

2.7 **NON-RECOUSE OBLIGATION.** The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.

**ARTICLE 3. LOAN DISBURSEMENT**

3.1 **CONDITIONS PRECEDENT TO DISBURSEMENT.** CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;
B. The undisbursed Loan proceeds, together with other financing for 
PROJECT for which BORROWER has received funds or firm commitments for funds, are not 
less than the amount which CITY determines is necessary to pay for development of the 
PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY 
determines that said funds are not sufficient for said purposes, BORROWER may satisfy this 
condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this 
Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory 
to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent 
required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for 
the PROJECT shall be made directly from the CITY. The request for disbursement shall be 
made to CITY at least fifteen business days prior to the date disbursement is needed by 
BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be 
$61,256, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan 
amount specified in this Loan Agreement. Any costs above $61,256 necessary for the 
completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4 – PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the 
amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional 
services for the PROJECT shall be performed by persons or entities licensed or otherwise 
authorized to perform the applicable construction work or service in the State of California and 
CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor 
Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be 
paid, such rates of wages for construction work done in connection with the PROJECT. 
BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, 
BORROWER shall submit to CITY, for its review and approval, the final plans and 
specifications for development of the PROJECT (the “Plans and Specifications”). 
BORROWER shall develop the PROJECT in full conformance with the Plans and 
Specifications and any modifications thereto approved by CITY.
ARTICLE 5 — DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications to repair and partially replace the stand alone cooler/freezer unit.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or
equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded
Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”
5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any non-compliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or
assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;
C. **Operation.** (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. **General Performance of Loan Obligations.** Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. **General Performance of Other Obligations.** Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. **Representations and Warranties.** A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. **Damage to PROPERTY.** Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. **Bankruptcy, Dissolution, and Insolvency.** BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) Insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. **Cross Default Provision.** Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. **Lead-Based Paint.** In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

**10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.
10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;
B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.
11.5 **POLITICAL ACTIVITY.** None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 **TERMS OF THIS AGREEMENT.** The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

**COPY TO:**
Housing Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director

**BORROWER:**
San Joaquin County Human Services Agency
Commodity Program
102 S. San Joaquin Street
Stockton, CA 95201
11.13 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 **ASSIGNMENT AND ASSUMPTION.** BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 **WAIVER.** Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 **INTEGRATION.** This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 **OTHER AGREEMENTS.** BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 **ACTION BY THE CITY.** Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from
advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 NO THIRD-PARTY BENEFICIARIES. All of the provisions of the Loan Documents are intended to bind and benefit only the CITY and the BORROWER, and their respective permitted successors and assigns. It is not intended that any provisions of this Loan Agreement benefit, and shall not be construed that any provisions of this Loan Agreement benefit nor shall said agreement be enforceable by any tenant, prospective tenant, creditor, contractor, or other third party.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

ATTEST: LOIS M. SAHYOUN
Clerk of the Board of Supervisors
of the County of San Joaquin
State of California

COUNTY OF SAN JOAQUIN, a political subdivision of the State of California

By: Caroline guevara
Deputy Clerk

BY: STEVEN GUTIERREZ, Chairman
BOARD OF SUPERVISORS

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By: GILBERTO GUTIERREZ
Deputy County Counsel
ATTEST:

KATHERINE CONG MEISSNER
City Clerk

MARK E. LEWIS, Esq.
City Manager

City of Stockton, a municipal corporation

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

JOHN LUEBBEKE
Assistant/Deputy City Attorney
EXHIBIT "A"

Legal Description

Lots 2, 3, 4, 29, and 31 of Tract No. 1348, Cherokee Industrial Park, filed for recrd in Vol. 24 of Maps, Page 7, San Joaquin County Records.

APN 092-210-02, 03, 04, 29, and 31
CDBG LOAN AGREEMENT

THE CITY OF STOCKTON

AND

SERVICE FIRST OF NORTHERN CALIFORNIA

Warm Water Therapy Pool Facility
102 West Bianchi Road
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CDBG LOAN AGREEMENT
(102 West Bianchi Road)

This CDBG Loan Agreement (the "Agreement") is entered into as of October 3, 2006, by and between the CITY OF STOCKTON, a municipal corporation (the "City"), and SERVICE FIRST OF NORTHERN CALIFORNIA, a California non-profit public benefit corporation (the "Borrower"), with reference to the following facts:

A. City has received Community Development Block Grant ("CDBG") funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Housing and Community Development Act of 1974, as amended. Such funds (the "CDBG Funds") must be used by City in accordance with 24 C.F.R. 570, et seq.

B. Borrower desires to acquire certain real property located at 102 West Bianchi Road in the City of Stockton, more particularly described in Exhibit "A" (the "Property"). Borrower intends to repair or rehabilitate the Property and will, among other things, use the Property to provide warm-water therapeutic services for disabled persons.

C. City is aware of the strong need for the continuation of the warm-water therapeutic services formerly provided by Easter Seals Society on the property. City believes the Development and the fulfillment of the terms of this Agreement are in the best interest of Stockton's disabled community, and is in accordance with the public purpose provisions of the applicable Federal laws and requirements under which the Development is being assisted.

D. Borrower has applied to City for a CDBG loan in the amount of Nine Hundred Seventeen Thousand Dollars ($917,000) (the "Loan") to pay for a portion of acquisition, repair of the Property, and a portion of the first-year operational costs of the warm-water therapeutic programs and services. The Loan will be evidenced by a promissory note executed by Borrower in favor of City and secured by a deed of trust on the Property. In connection with the Loan, City and Borrower shall enter into a regulatory agreement restricting the use of the Property, which shall be recorded against the Property.

E. Borrower's use of CDBG Funds is considered eligible activity under 24 C.F.R. 570.201(c) and 24 C.F.R. 570.201(e), and meets a national objective under 24 C.F.R. 570.208(a)(2).

F. The City has conducted an environmental assessment of the Development pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the Development will have no adverse effects pursuant to CEQA/NEPA and CDBG regulations.

NOW, THEREFORE, IN CONSIDERATION of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:
ARTICLE 1  DEFINITIONS AND EXHIBITS

1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agreement" shall mean this CDBG Loan Agreement.

(b) "Approved Budget" shall mean the budget including sources and uses of funds, as approved by City, for acquisition of the Property, the Repair Work, and Operation Costs and attached hereto and incorporated herein as Exhibit B, but which may be amended with the approval of City's City Manager as set forth in this Agreement.

(c) "Approved Financing" shall mean the financing of the acquisition of the Property and completion of the Repair Work subject to City's approval in a financing plan.

(d) "Borrower" shall mean Service First of Northern California, a California non-profit corporation.

(e) "C.F.R." means Code of Federal Regulations.

(f) "CDBG Funds" shall mean the Nine Hundred Seventeen Thousand Dollars ($917,000) City received pursuant to the Housing and Community Development Act of 1974, as amended, and will loan to Borrower to help finance those eligible costs contained in the Approved Budget.

(g) "CDBG Loan" is the loan of CDBG Funds by City to Borrower.

(h) "City" means the City of Stockton, a municipal corporation.

(i) "Deed of Trust" shall mean the deed of trust that will encumber the Property to secure repayment of the Loan. The form of the Deed of Trust shall be provided by City.

(j) "Default" shall have the meaning set forth in Section 6.1 below.

(k) "Development" shall mean acquisition of the Property, Repair Work, and Operation Costs.

(l) "Eligible Costs" shall mean those Development costs described in Exhibit B for which CDBG Funds may be used as specified in 24 CFR 570, et seq.

(m) "Hazardous Materials" shall have the meaning set forth in Section 4.7 below.

(n) "Loan" is the CDBG Loan.

(o) "Loan Documents" shall mean this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(p) "Median Income" shall mean the median gross yearly income, adjusted
for household size in the County of San Joaquin, State of California, as published from
time to time by HUD.

(q) "Note" shall mean the promissory note that will evidence Borrower's
obligation to repay the Loan. The form of the Note shall be provided by City.

(r) "Operation Cost" shall mean administrative expenses incurred for the
development of warm water therapeutic programs and services, for disabled persons
during the first year of Borrower's ownership of the Property, subject to eligibility rights
under 24 C.F.R. section 20, et seq.

(s) "Parties" shall mean City and Borrower.

(t) "Property" shall mean the real property located in the City of Stockton,
County of San Joaquin, California, more particularly described in the attached Exhibit A.

(u) "Regulatory Agreement" shall mean the Regulatory Agreement and
Declaration of Restrictive Covenants between City and Borrower associated with the Loan.

(v) "Repair Work" shall mean the work detailed in the approved Scope of
Work.

(w) "Scope of Work" shall mean the repairs to the Property listed in the
scope of Work approved by the City pursuant to Section 3.1 below.

(x) "Term" shall mean the term of the Loan, commencing on the date of
this Agreement and expiring fifteen (15) years after the date of the Note.

1.2 Exhibits. The following exhibits are attached to this Agreement and
incorporated into this agreement by this reference:

   Exhibit A: Legal Description of the Property

   Exhibit B: Approved Budget

ARTICLE 2   LOAN PROVISIONS

2.1 Loan. City shall loan to Borrower the Loan up to the principal amount of Nine
Hundred Seventeen Thousand Dollars ($917,000) for the purposes set forth in Section 2.5
of this Agreement.

2.2 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by
the Note, by executing the Deed of Trust, and recording it as a lien against the Property.

(b) City agrees to subordinate the Deed of Trust and Regulatory
Agreement to the liens of the deeds of trust securing any conventional bank acquisition
financing subject to approval by City of a financing plan (the "Approved Financing").
2.3 **Interest.**

(a) Subject to the provisions of Section 2.3(b) below, the outstanding principal balance of the Loan shall not accrue any interest.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of five percent (5%), compounded annually, or the highest rate permitted by law.

2.4 **Repayment Schedule.** The Loan shall be repaid as follows:

(a) **Deferral Payments.** Payments on the Loan shall be deferred unless payment is required in the event of Default.

(b) **Principal Balance Reduction.** Subject to Borrower's compliance with the terms and conditions of the Loan Documents, and notwithstanding events of Default, City shall annually forgive the principal balance in equal amounts of Ninety One Thousand Seven Hundred Dollars ($91,700) beginning on the sixth (6th) anniversary of the commencement of the Term and continuing until the entire principal balance is forgiven.

2.5 **Use of Loan Funds.**

(a) Borrower shall use the Loan funds to pay those Eligible Costs of acquiring the Property, Repair Work, and Operation Costs consistent with the approved budget described in Exhibit B. Borrower shall not use the Loan funds for any other purpose without the prior written consent of City.

(b) **CDBG Funds provided herein shall be used in such a manner that not less than fifty one percent (51%) of the persons benefiting from the CDBG Funds be low and moderate income persons whose total household income does not exceed eighty percent (80%) of Median Income.

(i) **Borrower shall determine and certify the income eligibility of each client prior to services being provided. Such certification procedures shall be in a manner consistent with City and Federal requirements for determining income-eligibility under 24 C.F.R. Part 570, et seq.** Borrower shall thereafter re-certify each client’s income on an annual basis, and shall submit certification records for each such client to City according to the provisions in Section 2.5(b) above.
2.6 **Approved Budget; Revisions to Budget.** As of the date of this Agreement, City has approved the Approved Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Budget to City for approval by the Director of Housing within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Budget. Written consent of City shall be required to amend the Approved Budget. Notwithstanding the above, Borrower shall not amend the Approved Budget with respect to the cost of acquisition of the Property after Borrower has closed on the escrow to acquire the Property.

2.7 **Conditions Precedent to Disbursement.**

(a) **Disbursement of CDBG Funds for Acquisition.** City shall not be obligated to make any disbursements of CDBG Funds for acquisition of the Property, or take any other action under the Loan Documents unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;

(ii) City has received evidence reasonably satisfactory to City that Borrower exists in good standing at the time of the proposed disbursement, and that Borrower has delivered certified resolutions duly authorizing Borrower’s entry into and performance under the Loan Documents;

(iii) Borrower has executed and delivered to City all documents, instruments, and policies required under the Loan Documents;

(iv) A title insurer reasonably acceptable to City is unconditionally and irrevocably committed to issuing an ALTA Lender’s Policy of insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to City, and containing such endorsements as City may reasonably require;

(v) The Deed of Trust and the Regulatory Agreement have been provided to the escrow agent and the escrow agent has been instructed to record them against the Property in the Office of the Recorder of the County of San Joaquin when the deed is recorded at the close of escrow;

(vi) Borrower has furnished City with evidence of the insurance coverage meeting the requirements of Section 4.14 below;

(vii) City has received satisfactory evidence of compliance with the National Environmental Protection Act ("NEPA") and the California Environmental Quality Act ("CEQA");

(viii) The undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the Development, are not less than the amount that City determines on the basis of the

5
Approved Budget is necessary to pay for the Development, and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

(ix) City has received a written draw request from Borrower, including certification that the conditions set forth in Section 2.7(a)(i) and (ii) continue to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Budget, the amount of funds needed, and, where applicable, a copy of the preliminary closing statement bill or invoice covering a cost incurred or to be incurred.

(b) Disbursement of CDBG Funds for Repair Work. City shall not be obligated to make any disbursements of the CDBG Funds for Repair Work unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) The conditions in Section 2.7(a)(i)-(ix) have been and continue to be met;

(ii) Borrower has furnished City with satisfactory evidence that Borrower has made good faith efforts to obtain competitive bids for all repairs;

(iii) Borrower and Borrower's contractors and subcontractors have attended a pre-construction meeting, conducted by City, prior to the commencement of repairs;

(iv) The City has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.7(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred and satisfactory evidence of compliance with prevailing wage requirements contained in Section 3.4(d) below. Borrower shall apply the disbursement for the purpose(s) requested. The City shall exercise best efforts to disburse funds within thirty (30) days of receipt of the draw request and satisfaction of applicable disbursement preconditions. Draw requests can be submitted no more than once a week; and

(v) Borrower shall expend all CDBG Funds budgeted for Repair Work within eighteen (18) months from the date of this Agreement.

(c) Disbursement of CDBG Funds for Operation Costs. City shall not be obligated to make any disbursements of the CDBG Funds for Operation Costs unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) The conditions in Section 2.7(a) and 2.7(b) have been and continue to be met;

(ii) City has been furnished with, and has approved Borrower's anticipated Operation Costs. Borrower shall apply the disbursement for the purpose(s) requested. City shall exercise best efforts to disburse funds within thirty (30) days of receipt of the draw request and satisfaction of applicable disbursement preconditions. Draw
requests can be submitted no more than once a month;

(iii) Borrower shall expend all CDBG Funds budgeted for Operation Costs within eighteen (18) months from the date of this Agreement.

2.8 Reports and Accounting.

(a) Audited Financial Statement. Borrower shall provide City by each May 1st following each Fiscal Year, an annual audited financial statement for the entire organization, including all of Borrower’s programs and services, prepared by a certified public accountant approved by City.

(b) Books and Records. Borrower shall keep and maintain on the Property, or elsewhere with City’s written consent, full, complete and appropriate books, records, and accounts which shall be open to and available for inspection by City, its auditors or other authorized representatives at reasonable intervals during normal business hours. City will endeavor to provide notice a reasonable period of time prior to inspection, but may not be able to provide prior notice in all cases. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by City at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve records for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) City Monitoring. Within three (3) years after the receipt of any financial statement pursuant to subsection (a) above, City or any designated agent or employee of City at any time shall be entitled to audit all books, records, and accounts pertaining thereto. Such audit shall be conducted upon two weeks notice, during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of a monitoring, City shall deliver a copy of the results of such monitoring to Borrower.

2.9 Non-Recourse. Except as provided below, Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of Borrower under the Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the property described in the 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 Note of all the rights and remedies of City thereunder, or (b) be deemed in any way to impair the right of City to assert the unpaid principal amount of the Note as demand for money within the meaning and intentment 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 Note and the performance of Borrower’s obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify City under Sections 3.4, 4.8, and 7.4 of this Agreement, or liability for: (a) fraud or willful misrepresentation, (b) the failure to pay taxes,
assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges), (c) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust, and (d) 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 Property.

ARTICLE 3 REPAIR WORK

3.1 Scope of Repair Work. Within ten (10) days following close of escrow, Borrower shall submit for City approval a detailed breakdown of the Repair Work the Borrower will undertake and complete in accordance with the Approved Budget, and the Borrowers proposed schedule for completion of that work ("Scope of Work"). Upon receipt by the City of the Scope of Work, the City shall promptly review it and shall approve or disapprove it within seven (7) days of its submission if it conforms to the provisions of this Agreement. If the City disapproves the Scope of Work as submitted, the City and Borrower shall negotiate in good faith regarding the contents of the Scope of Work.

3.2 Commencement of Repair Work. Borrower shall cause the commencement of the Repair Work immediately after approval of the Scope of Work.

3.3 Completion of Repair Work. Borrower shall diligently prosecute the Repair Work to completion, and shall cause the completion of the Repair Work no later than 180 days after approval of the Scope of Work.

3.4 Repair Work Pursuant to Scope of Work and Laws; Prevailing Wages.

(a) Borrower shall complete the Repair of Work in conformance with any plans and specifications approved by City. Borrower shall notify City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Scope of Work approved by City. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions to the Repair Work may be performed: (1) any change in the work the cost of which exceeds Five Thousand Dollars ($5,000), or (2) any set of changes in the Scope of Work the cost of which cumulatively exceeds Ten Thousand Dollars ($10,000), or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the Scope of Work approved by City. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond. City shall utilize best efforts to approve or disapprove change orders within five (5) working days of receipt of a request for approval.

(b) Borrower shall cause the Repair Work to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter, (2) the
prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations. (3) the HUD quality standards set out in 24 C.F.R. 5.701 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. 39, and (4) 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 Repair Work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to City for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) The Repair Work shall be performed in compliance with the prevailing wage requirements of the federal Davis-Bacon Act. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to City) 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 Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the Repair Work or any other construction work undertaken or in connection with the Property.

(d) The Borrower shall, and shall cause its contractor and subcontractors, to pay prevailing wages for the Repair Work as those wages are determined pursuant to Labor Code Sections 1720, et seq., to employ apprentices as required by Labor Code Sections 1777.5, et seq., and the implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720, et seq., 1777.5, et seq., and implementing regulations of the Department of Industrial Relations. Borrower shall, and shall cause its 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 apprentices have been employed as required by Labor Code Sections 1777.5, et seq. Copies of the currently applicable current per diem prevailing wages are available from the California Department of Industrial Relations website, www.dir.ca.gov. During the Repair Work, Borrower shall, or shall cause the contractor to, post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) 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 Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5, et seq., and implementing regulation or comply with the other applicable provisions of Labor Code Sections, 1720, et seq., 1777.5, et seq., and implementing regulations of the Department of Industrial Relations in connection the Repair Work or any other work undertaken or in connection with the Property.

3.5 Equal Opportunity. During the performance of the Repair Work, there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the Repair Work.
3.6 Progress Reports. Until such time as Borrower has completed the Repair Work, Borrower shall provide City with monthly progress reports regarding the status of the work, and certification that the actual costs to date conform to the Approved Budget and Scope of Work, as each may be amended from time to time as provided herein.

3.7 Construction Responsibilities.

(a) It shall be the responsibility of Borrower to coordinate and schedule the Repair Work so that commencement and completion of that work will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower’s conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of Repair 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 City with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to City, and should not be relied upon by Borrower or by any third parties as a warranty or representation by City as to the quality of the design or construction of the Repair Work.

3.8 Mechanics Liens, Stop Notices, and Notices of Completion.

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on City or any other lender or other third party in connection with the Repair Work, then Borrower shall, within twenty (20) 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 City a surety bond in sufficient form and amount, or provide City with other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

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

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of the Repair of Work 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. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that City deems necessary or desirable to protect its interest in the Development and Property.

3.9 Inspections. Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Property by City and
by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

ARTICLE 4  LOAN REQUIREMENTS

4.1  Applicability. Borrower shall comply with this Article 4 throughout the Term.

4.2  Information. Borrower shall provide in a timely manner any information reasonably requested by the City in connection with the Development.

4.3  Marketing Plan.

(a) Prior to the first distribution of Loan funds for Operation Costs, Borrower shall submit to City for approval its plan for marketing the warm-water therapy pool to eligible disabled persons.

(b) Upon receipt of the Marketing Plan, City shall promptly review the Marketing Plan and shall approve or disapprove it within seven (7) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within thirty (30) days.

4.4  Records.

(a) Borrower shall maintain records including, but not limited to, the ethnic background, economic status and head of household status of all recipients of services. Borrower shall report this information to City within thirty (30) days after the end of each calendar quarter, in sufficient detail for City to comply with Federal regulations and to complete its annual “Consolidated Annual Performance and Evaluation Report.”

(b) Borrower 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 City to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

(c) City shall notify Borrower of any records it deems insufficient. Borrower shall have twenty-one (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by City in such notice, or if a period longer than twenty-one (21) calendar days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within twenty-one (21) calendar days and correct the deficiency as soon as reasonably possible.

4.5  CDBG Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the Loan funds as set forth in 24 C.F.R. 570, et seq., including but not limited to the requirements of the Regulatory Agreement. In the event of any conflict
between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations shall govern.

(b) The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(i) Environmental and Historic Preservation. Section 104(f) of the Housing and Community Residence Act of 1974 and 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 43214361), and the additional laws and authorities listed at 24 C.F.R. 58.5.


(v) Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and similar state laws.

(vi) Handicap Discrimination. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in federally assisted programs, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131, et seq.), and federal regulations issued pursuant thereto.

(vii) Civil Rights, Housing & Community Development, and Age Discrimination Acts. Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 11063, as amended by Executive Order 12259, and Executive Order 11246, as amended by Executive Orders 11375, 12086, 11478, 12107, and 13279.


(ix) Uniform Administrative Requirements. The requirements of 24 C.F.R. 570.502(b) regarding cost and auditing procedures.

(x) Training Opportunities. The requirements of Section 3 of the
Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

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

(xii) **Labor Standards.** To the extent applicable, the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3142, et seq.); the Copeland "Anti-Kickback" Act (47 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act—CWHSSA (40 U.S.C. 327-333) which requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, parts 1.3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.


(xiv) **Faith-Based Activities.** The requirements governing the use of funds by religious or faith-based organizations found at 24 C.F.R. Part 570.200(j) which requires that the Loan funds not be used for religious activities.

(xiv) **HUD Regulations.** Any other HUD regulations present or as may be amended, added, or waived in the fixture pertaining to the Loan fluids, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

4.6 **Anti-Lobbying Certification.** The Borrower certifies, to the best of his or her knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be, paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or
modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and no more than One Hundred Thousand Dollars ($100,000) for such failure.

4.7 Hazardous Materials.

(a) Borrower 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. Borrower 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 used in construction of projects like the Development or kept and used in and about property of this type.

(b) Borrower shall immediately advise City in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, (“Hazardous Materials Law”), (2) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are hereinafter referred to as “Hazardous Materials Claims”), and (3) Borrower’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.
(c) 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. Borrower shall indemnify and hold harmless City and its board members, 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: (1) all foreseeable consequential damages, (2) 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 (3) all reasonable costs and expenses incurred by City in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without City's prior written consent, which shall not be unreasonably withheld, Borrower 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 the City's reasonable judgment, impair the value of City's security hereunder; provided, however, that City'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 City's consent before taking such action, provided that in such event Borrower shall notify City as soon as practicable of any action so taken. City agrees not to withhold its consent, where such consent is required hereunder, if either: (1) a particular remedial action is ordered by a court of competent jurisdiction, (2) Borrower will or may be subjected to administrative, civil or criminal sanctions or penalties if it fails to take a required action, (3) Borrower establishes to the reasonable satisfaction of City that there is no reasonable alternative to such remedial action which would result in less impairment of City's security hereunder; or (4) the action has been agreed to by City.

(e) Borrower hereby acknowledges and agrees that: (1) this Section is intended as City's written request for information (and Borrower's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (2) 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.

(f) 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 City's or the trustee's rights and remedies under the Deed of Trust, City 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: (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining City’s right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower 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 Borrower 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 City 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 lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to City upon its demand made at any time following the conclusion of such action.

4.8 Maintenance and Damage.

(a) During the course of both development and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to City, City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in City’s reasonable judgment, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by City with such changes as have been approved by City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter, or such longer periods for the commencement and completion as may be extended by City in its reasonable discretion. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

4.9 Fees and Taxes. Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by City, Borrower deposits with City any funds or other forms of assurance that City in good
faith from time to time determines appropriate to protect City from the consequences of the contest being unsuccessful.

4.10 Notice of Litigation. Borrower shall promptly notify City in writing of any litigation materially affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

4.11 Operation of the Property.

(a) As soon as practical after the close of escrow, Borrower shall provide warm-water therapeutic programs and services to disabled persons and others consistent with: (1) HUD's requirements for use of the CDBG Loan Funds, and (2) the Regulatory Agreement.

(b) In the event warm-water therapeutic programs and services to disabled persons become obsolete based upon standards prevailing in the medical industry due to new technology and/or medical advances and attendance declines to the point at which it is not economically feasible to continue to provide such programs and services, Borrower shall be relieved of its obligation to provide said programs and services. In the event there is a dispute between the parties as to whether warm-water therapeutic programs and services to disabled persons have become obsolete, that dispute shall be resolved by binding arbitration, with a single arbitrator to be chosen by mutual agreement of the parties. In the event the parties cannot reach agreement on the selection of the arbitrator, the arbitrator shall be selected by a Judge of the San Joaquin County Superior Court. The costs of the arbitration shall be shared equally between the parties and each party shall bear their own attorneys' fees.

4.12 Nondiscrimination. The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower 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. The foregoing covenant shall run with the land.

4.13 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of: (1) any rights and/or duties under this Agreement, and/or (2) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title.

(b) No Transfer shall be permitted without the prior written consent of
City, which shall not be unreasonable withheld. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

4.14 Insurance Requirements. The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(a) Worker’s Compensation insurance to the extent required by law, including Employer’s Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Pool Program, Products and Completed Operations.

(c) 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 coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Borrower does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to City, naming City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than Seven Hundred Thousand Dollars ($700,000) naming City a Loss Payee, as its interests may appear.

(f) Borrower shall cause any general contractor or agent working on the Development under direct contract with Borrower, and any subcontractors to such general contractors or agents, to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors and agents shall be One Million Dollars ($1,000,000), and shall require that such insurance shall meet all of the requirements of subsections (g), (h) and (i) below, including, without limitation, the requirement of subsection (i). Subcontractors working on the Development under indirect contract with Borrower shall be required to maintain the insurance described in subsections (a), (b), and (c) 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 City, their officers, agents, employees and members of the City Council.

(g) The required insurance shall be provided under an occurrence form, and Borrower shall maintain such coverage continuously so long as the Note is outstanding. 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.

(h) Comprehensive General Liability, Comprehensive Automobile Liability
and Property insurance policies shall be endorsed to name as an additional insured City
and its officers, agents, employees and members of the City Council.

(i) All policies and bonds shall contain: (1) the agreement of the insurer to
give City at least thirty (30) days’ notice prior to cancellation (including, without limitation,
for non-payment of premium) or any material change in said policies, (2) an agreement that
such policies are primary and non-contributing with any insurance that may be carried by
City, (3) a provision that no act or omission of Borrower shall affect or limit the obligation of
the insurance carrier to pay the amount of any covered loss sustained, and (4) a waiver by
the insurer of all rights of subrogation against City and its authorized parties in connection
with any loss or damage thereby insured against.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

5.1 Representation and Warranties. Borrower hereby represents and warrants
to City as follows:

(a) Organization. Borrower is duly organized, validly existing and in
good standing under the laws of the State of California as a 501(c)(3) non-profit
organization and has the power and authority to own its property and carry on its business
as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to
execute and deliver this Agreement and to make and accept the borrowings contemplated
hereunder, to execute and deliver to City the Loan Documents and all other documents or
instruments executed and delivered, or 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, the
Loan Documents 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
Borrower, and all actions required under Borrower’s organizational documents and
applicable governing law for the authorization, execution, delivery and performance of this
Agreement, the Loan Documents and all other documents or instruments executed and
delivered, or to be executed and delivered, pursuant to this Agreement, have been duly
taken (to the extent such actions are required as of the date of execution and delivery of
the above-named documents).

(d) Valid Binding Agreements. This Agreement, the Loan Documents 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 Borrower
enforceable against it in accordance with their respective terms, subject to the laws affecting creditors rights and principles of equity.

(e) **No Breach of Law or Agreement.** Neither the execution nor delivery of this Agreement, the Loan Documents 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 Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) **Compliance With Laws; Consents and Approvals.** The work associated with the Development 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.** Borrower 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 Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to City pursuant hereto.

(h) **Title to Land.** At the time of recordation of Deed of Trust, Borrower will have good and marketable fee 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 City and described in Section 1.1(c) of this Agreement, liens for current real property taxes and assessments not yet due and payable, and liens in favor of City or approved in writing by City.

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

**ARTICLE 6 DEFAULT AND REMEDIES**

6.1 **Events of Default.** Each of the following shall constitute a "Default" by Borrower under this Agreement:

(a) **Failure to Construct.** Subject to Section 7.14, failure of Borrower to commence and complete the Repair Work within the times set forth in Article 3 above.
(b) **Failure to Make Payment.** Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from City that such payment is due pursuant to the Loan Documents.

(c) **Breach of Loan Documents.** Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from City to Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(d) **Default Under Other Loans.** Failure to make any payment or perform any of Borrower’s covenants, agreements, or obligations under the documents evidencing and securing the Approved Financing following expiration of all applicable notice and cure periods.

(e) **Insolvency.** A court having jurisdiction shall have made or entered any decree or order: (1) adjudging Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower 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 Borrower in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days; or Borrower 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. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by City, the indebtedness evidenced by the Note.

(f) **Assignment; Attachment.** Borrower 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 sixty (60) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by City, the indebtedness evidenced by the Note.

(g) **Suspension; Termination.** Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) **Liens on Property and the Development.** There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part
thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of forty-five (45) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the City.

(i) **Condemnation.** The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except for a condemnation by the City.

(j) **Unauthorized Transfer.** Any Transfer other than as permitted by Section 4.13.

(k) **Representation or Warranty Incorrect.** Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to City in connection with any of the Loan Documents, proven to have been incorrect in any material and adverse respect when made.

(l) **Non Profit Status.** Borrow shall have failed to maintain itself as a non-profit, public benefit corporation.

Remainder of page intentionally left blank.
6.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of City or automatically where so specified, relieve City of any obligation to make or continue the Loan and shall give City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

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

(b) Specific Performance. City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower’s Expense. City shall have the right (but not the obligation) to cure any monetary default by Borrower under a Loan other than the Loan. Borrower agrees to reimburse City for any funds advanced by City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

6.3 Right of Contest. Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to City or the rights of City hereunder.

6.4 Remedies Cumulative. Subject to the nonrecourse provisions contained in Section 2.9 above, no right, power, or remedy given to City by the terms of this Agreement or the Loan Documents 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 to City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.
ARTICLE 7 GENERAL PROVISIONS

7.1 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the purchase of the Property, and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

7.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the Repair Work, or the operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the purchase of the Property, the Repair Work, or the operation of the Development.

7.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

7.4 Indemnification. Borrower shall indemnify, defend and hold City, its councilmembers, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys’ fees) which arise out of or in connection with the purchase of the Property, the Repair Work, or the marketing and operation of the Development, except to the extent such claim arises from the negligent or willful misconduct of City, its councilmembers, officers, employees, agents, successors and assigns. The provisions of this Section 7.4 shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

7.5 Non-Liability of City, Officials, Employees and Agents. No member of the City Council, official, employee or agent of City shall be personally liable to Borrower in the event of any default or breach by City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

7.6 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

7.7 Discretion Retained By City. City’s execution of this Agreement in no
way limits the discretion of City in the permit and approval process in connection with development of the Development.

7.8  Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of City, or any person related within the third (3rd) degree of such person.

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

City:  City of Stockton  
        425 North El Dorado Street  
        Stockton, CA 95202  
        Attn: City Manager

Borrower:  Service First of Northern California  
           7802 Murray Drive, Suite 100  
           Stockton, CA 95210  
           Attn: 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. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides its address.

7.10  Applicable Law. This Agreement shall be governed by California law.

7.11  Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs,
executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property for the entire Term, and the benefit hereof shall inure to the benefit of City and its successors and assigns.

7.12 **Attorneys’ Fees.** If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys’ fees and costs of suit from the other Party.

7.13 **Severability.** If any term 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.

7.14 **Force Majeure.** In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower’s inability to finance the construction of the Development) 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 commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of ninety (90) days.

7.15 **City Approval.** Whenever this Agreement calls for City approval, consent, subordination, or waiver, the written approval, consent, subordination, or waiver of the City Manager shall constitute the approval, consent, subordination, or waiver of the City, without further authorization required from City Council. City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager is also hereby authorized to approve, on behalf of the City, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement.

7.16 **Waivers.** Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by City to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City’s written consent to future waivers.

7.17 **Title of Parts and Sections.** Any titles of the sections or subsections of
this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

7.18 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

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

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

ATTEST:  CITY OF STOCKTON, a municipal corporation ("City")

By: Bonnie Baigep  By: J. Gordon Palmer, Jr.
KATHERINE GONG MEI     CITY MANAGER
CITY CLERK

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
CITY ATTORNEY

By: John Luebberke
ASSISTANT CITY ATTORNEY

APPROVED AS TO FORM:

BORROWER'S ATTORNEY

By: Vernell Hill, Jr.
SERVICE FIRST OF NORTHERN CALIFORNIA, a California non-profit corporation ("Borrower")

VERNEL HILL, JR.
PRESIDENT/CEO
CDBG LOAN AGREEMENT

THE CITY OF STOCKTON

AND

SERVICE FIRST OF NORTHERN CALIFORNIA

Warm Water Therapy Pool Facility
102 West Bianchi Road
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CDBG LOAN AGREEMENT
(102 West Bianchi Road)

This CDBG Loan Agreement (the "Agreement") is entered into as of December 3, 2006, by and between the CITY OF STOCKTON, a municipal corporation (the "City"), and SERVICE FIRST OF NORTHERN CALIFORNIA, a California non-profit public benefit corporation (the "Borrower"), with reference to the following facts:

A. City has received Community Development Block Grant ("CDBG") funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the Housing and Community Development Act of 1974, as amended. Such funds (the "CDBG Funds") must be used by City in accordance with 24 C.F.R. 570, et seq.

B. Borrower desires to acquire certain real property located at 102 West Bianchi Road in the City of Stockton, more particularly described in Exhibit "A" (the "Property"). Borrower intends to repair or rehabilitate the Property and will, among other things, use the Property to provide warm-water therapeutic services for disabled persons.

C. City is aware of the strong need for the continuation of the warm-water therapeutic services formerly provided by Easter Seals Society on the property. City believes the Development and the fulfillment of the terms of this Agreement are in the best interest of Stockton's disabled community, and is in accordance with the public purpose provisions of the applicable Federal laws and requirements under which the Development is being assisted.

D. Borrower has applied to City for a CDBG loan in the amount of Nine Hundred Seventeen Thousand Dollars ($917,000) (the "Loan") to pay for a portion of acquisition, repair of the Property, and a portion of the first-year operational costs of the warm-water therapeutic programs and services. The Loan will be evidenced by a promissory note executed by Borrower in favor of City and secured by a deed of trust on the Property. In connection with the Loan, City and Borrower shall enter into a regulatory agreement restricting the use of the Property, which shall be recorded against the Property.

E. Borrower's use of CDBG Funds is considered eligible activity under 24 C.F.R. 570.201(c) and 24 C.F.R. 570.201(e), and meets a national objective under 24 C.F.R. 570.208(a)(2).

F. The City has conducted an environmental assessment of the Development pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the Development will have no adverse effects pursuant to CEQA/NEPA and CDBG regulations.

NOW, THEREFORE, IN CONSIDERATION of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:
ARTICLE 1  DEFINITIONS AND EXHIBITS

1.1   Definitions. The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided:

(a) "Agreement" shall mean this CDBG Loan Agreement.

(b) "Approved Budget" shall mean the budget including sources and uses of funds, as approved by City, for acquisition of the Property, the Repair Work, and Operation Costs and attached hereto and incorporated herein as Exhibit B, but which may be amended with the approval of City's City Manager as set forth in this Agreement.

(c) "Approved Financing" shall mean the financing of the acquisition of the Property and completion of the Repair Work subject to City's approval in a financing plan.

(d) "Borrower" shall mean Service First of Northern California, a California non-profit corporation.

(e) "C.F.R." means Code of Federal Regulations.

(f) "CDBG Funds" shall mean the Nine Hundred Seventeen Thousand Dollars ($917,000) City received pursuant to the Housing and Community Development Act of 1974, as amended, and will loan to Borrower to help finance those eligible costs contained in the Approved Budget.

(g) "CDBG Loan" is the loan of CDBG Funds by City to Borrower.

(h) "City" means the City of Stockton, a municipal corporation.

(i) "Deed of Trust" shall mean the deed of trust that will encumber the Property to secure repayment of the Loan. The form of the Deed of Trust shall be provided by City.

(j) "Default" shall have the meaning set forth in Section 6.1 below.

(k) "Development" shall mean acquisition of the Property, Repair Work, and Operation Costs.

(l) "Eligible Costs" shall "mean those Development costs described in Exhibit B for which CDBG Funds may be used as specified in 24 CFR 570, et seq.

(m) "Hazardous Materials" shall have the meaning set forth in Section 4.7 below.

(n) "Loan" is the CDBG Loan.

(o) "Loan Documents" shall mean this Agreement, the Note, the Regulatory Agreement, and the Deed of Trust.

(p) "Median Income" shall mean the median gross yearly income, adjusted
for household size in the County of San Joaquin, State of California, as published from
time to time by HUD.

(q) "Note" shall mean the promissory note that will evidence Borrower's
obligation to repay the Loan. The form of the Note shall be provided by City.

(r) "Operation Cost" shall mean administrative expenses incurred for the
development of warm water therapeutic programs and services, for disabled persons
during the first year of Borrower's ownership of the Property, subject to eligibility rights
under 24 C.F.R. section 20, et seq.

(s) "Parties" shall mean City and Borrower.

(t) "Property" shall mean the real property located in the City of Stockton,
County of San Joaquin, California, more particularly described in the attached Exhibit A.

(u) "Regulatory Agreement" shall mean the Regulatory Agreement and
Declaration of Restrictive Covenants between City and Borrower associated with the Loan.

(v) "Repair Work" shall mean the work detailed in the approved Scope of
Work.

(w) "Scope of Work" shall mean the repairs to the Property listed in the
scope of Work approved by the City pursuant to Section 3.1 below.

(x) "Term" shall mean the term of the Loan, commencing on the date of
this Agreement and expiring fifteen (15) years after the date of the Note.

1.2 Exhibits. The following exhibits are attached to this Agreement and
incorporated into this agreement by this reference:

   Exhibit A:   Legal Description of the Property

   Exhibit B:   Approved Budget

ARTICLE 2   LOAN PROVISIONS

2.1 Loan. City shall loan to Borrower the Loan up to the principal amount of Nine
Hundred Seventeen Thousand Dollars ($917,000) for the purposes set forth in Section 2.5
of this Agreement.

2.2 Security.

(a) Borrower shall secure its obligation to repay the Loan, as evidenced by
the Note, by executing the Deed of Trust, and recording it as a lien against the Property.

(b) City agrees to subordinate the Deed of Trust and Regulatory
Agreement to the liens of the deeds of trust securing any conventional bank acquisition
financing subject to approval by City of a financing plan (the “Approved Financing”).
2.3 **Interest.**

(a) Subject to the provisions of Section 2.3(b) below, the outstanding principal balance of the Loan shall not accrue any interest.

(b) In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of five percent (5%), compounded annually, or the highest rate permitted by law.

2.4 **Repayment Schedule.** The Loan shall be repaid as follows:

(a) **Deferral Payments.** Payments on the Loan shall be deferred unless payment is required in the event of Default.

(b) **Principal Balance Reduction.** Subject to Borrower's compliance with the terms and conditions of the Loan Documents, and notwithstanding events of Default, City shall annually forgive the principal balance in equal amounts of Ninety One Thousand Seven Hundred Dollars ($91,700) beginning on the sixth (6th) anniversary of the commencement of the Term and continuing until the entire principal balance is forgiven.

2.5 **Use of Loan Funds.**

(a) Borrower shall use the Loan funds to pay those Eligible Costs of acquiring the Property, Repair Work, and Operation Costs consistent with the approved budget described in Exhibit B. Borrower shall not use the Loan funds for any other purpose without the prior written consent of City.

(b) CDBG Funds provided herein shall be used in such a manner that not less than fifty one percent (51%) of the persons benefiting from the CDBG Funds be low and moderate income persons whose total household income does not exceed eighty percent (80%) of Median Income.

(i) Borrower shall determine and certify the income eligibility of each client prior to services being provided. Such certification procedures shall be in a manner consistent with City and Federal requirements for determining income-eligibility under 24 C.F.R. Part 570, *et seq.* Borrower shall thereafter re-certify each client's income on an annual basis, and shall submit certification records for each such client to City according to the provisions in Section 2.5(b) above.
2.6 Approved Budget: Revisions to Budget. As of the date of this Agreement, City has approved the Approved Budget set forth in Exhibit B. Borrower shall submit any required amendments to the Approved Budget to City for approval by the Director of Housing within five (5) days of the date Borrower receives information indicating that actual costs of the Development vary or will vary from the costs shown on the Approved Budget. Written consent of City shall be required to amend the Approved Budget. Notwithstanding the above, Borrower shall not amend the Approved Budget with respect to the cost of acquisition of the Property after Borrower has closed on the escrow to acquire the Property.

2.7 Conditions Precedent to Disbursement.

(a) Disbursement of CDBG Funds for Acquisition. City shall not be obligated to make any disbursements of CDBG Funds for acquisition of the Property, or take any other action under the Loan Documents unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;

(ii) City has received evidence reasonably satisfactory to City that Borrower exists in good standing at the time of the proposed disbursement, and that Borrower has delivered certified resolutions duly authorizing Borrower's entry into and performance under the Loan Documents;

(iii) Borrower has executed and delivered to City all documents, instruments, and policies required under the Loan Documents;

(iv) A title insurer reasonably acceptable to City is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such exceptions and exclusions as may be reasonably acceptable to City, and containing such endorsements as City may reasonably require;

(v) The Deed of Trust and the Regulatory Agreement have been provided to the escrow agent and the escrow agent has been instructed to record them against the Property in the Office of the Recorder of the County of San Joaquin when the deed is recorded at the close of escrow;

(vi) Borrower has furnished City with evidence of the insurance coverage meeting the requirements of Section 4.14 below;

(vii) City has received satisfactory evidence of compliance with the National Environmental Protection Act ("NEPA") and the California Environmental Quality Act ("CEQA");

(viii) The undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that Borrower has obtained in connection with the Development, are not less than the amount that City determines on the basis of the
Approved Budget is necessary to pay for the Development, and to satisfy all of the covenants contained in this Agreement and the Regulatory Agreement;

(ix) City has received a written draw request from Borrower, including certification that the conditions set forth in Section 2.7(a)(i) and (ii) continue to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Budget, the amount of funds needed, and, where applicable, a copy of the preliminary closing statement bill or invoice covering a cost incurred or to be incurred.

(b) **Disbursement of CDBG Funds for Repair Work.** City shall not be obligated to make any disbursements of the CDBG Funds for Repair Work unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) The conditions in Section 2.7(a)(i)-(ix) have been and continue to be met;

(ii) Borrower has furnished City with satisfactory evidence that Borrower has made good faith efforts to obtain competitive bids for all repairs;

(iii) Borrower and Borrower’s contractors and subcontractors have attended a pre-construction meeting, conducted by City, prior to the commencement of repairs;

(iv) The City has received a written draw request from the Borrower, including certification that the condition set forth in Section 2.7(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Budget, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred and satisfactory evidence of compliance with prevailing wage requirements contained in Section 3.4(d) below. Borrower shall apply the disbursement for the purpose(s) requested. The City shall exercise best efforts to disburse funds within thirty (30) days of receipt of the draw request and satisfaction of applicable disbursement preconditions. Draw requests can be submitted no more than once a week; and

(v) Borrower shall expend all CDBG Funds budgeted for Repair Work within eighteen (18) months from the date of this Agreement.

(c) **Disbursement of CDBG Funds for Operation Costs.** City shall not be obligated to make any disbursements of the CDBG Funds for Operation Costs unless and until the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(i) The conditions in Section 2.7(a) and 2.7(b) have been and continue to be met;

(ii) City has been furnished with, and has approved Borrower’s anticipated Operation Costs. Borrower shall apply the disbursement for the purpose(s) requested. City shall exercise best efforts to disburse funds within thirty (30) days of receipt of the draw request and satisfaction of applicable disbursement preconditions. Draw
requests can be submitted no more than once a month;

(iii) Borrower shall expend all CDBG Funds budgeted for Operation Costs within eighteen (18) months from the date of this Agreement.

2.8 Reports and Accounting.

(a) Audited Financial Statement. Borrower shall provide City by each May 1st following each Fiscal Year, an annual audited financial statement for the entire organization, including all of Borrower’s programs and services, prepared by a certified public accountant approved by City.

(b) Books and Records. Borrower shall keep and maintain on the Property, or elsewhere with City’s written consent, full, complete and appropriate books, records, and accounts which shall be open to and available for inspection by City, its auditors or other authorized representatives at reasonable intervals during normal business hours. City will endeavor to provide notice a reasonable period of time prior to inspection, but may not be able to provide prior notice in all cases. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by City at the place that the books, records and accounts of Borrower are kept. Borrower shall preserve records for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) City Monitoring. Within three (3) years after the receipt of any financial statement pursuant to subsection (a) above, City or any designated agent or employee of City at any time shall be entitled to audit all books, records, and accounts pertaining thereto. Such audit shall be conducted upon two weeks notice, during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of a monitoring, City shall deliver a copy of the results of such monitoring to Borrower.

2.9 Non-Recourse. Except as provided below, Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of Borrower under the Deed of Trust. The sole recourse of the City with respect to the principal of, or interest on, the Note and defaults by Borrower in the performance of its covenants under the Deed of Trust shall be to the property described in the 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 Note of all the rights and remedies of City thereunder, or (b) be deemed in any way to impair the right of City to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment 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 Note and the performance of Borrower’s obligations under the Deed of Trust, except as hereafter set forth; nothing contained herein is intended to relieve Borrower of its obligation to indemnify City under Sections 3.4, 4.8, and 7.4 of this Agreement, or liability for: (a) fraud or willful misrepresentation, (b) the failure to pay taxes,
assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges), (c) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust, and (d) 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 Property.

ARTICLE 3 REPAIR WORK

3.1 Scope of Repair Work. Within ten (10) days following close of escrow, Borrower shall submit for City approval a detailed breakdown of the Repair Work the Borrower will undertake and complete in accordance with the Approved Budget, and the Borrowers proposed schedule for completion of that work ("Scope of Work"). Upon receipt by the City of the Scope of Work, the City shall promptly review it and shall approve or disapprove it within seven (7) days of its submission if it conforms to the provisions of this Agreement. If the City disapproves the Scope of Work as submitted, the City and Borrower shall negotiate in good faith regarding the contents of the Scope of Work.

3.2 Commencement of Repair Work. Borrower shall cause the commencement of the Repair Work immediately after approval of the Scope of Work.

3.3 Completion of Repair Work. Borrower shall diligently prosecute the Repair Work to completion, and shall cause the completion of the Repair Work no later than 180 days after approval of the Scope of Work.

3.4 Repair Work Pursuant to Scope of Work and Laws; Prevailing Wages.

(a) Borrower shall complete the Repair of Work in conformance with any plans and specifications approved by City. Borrower shall notify City in a timely manner of any changes in the work required to be performed under this Agreement, including any additions, changes, or deletions to the Scope of Work approved by City. A written change order authorized by the City must be obtained before any of the following changes, additions, or deletions to the Repair Work may be performed: (1) any change in the work the cost of which exceeds Five Thousand Dollars ($5,000), or (2) any set of changes in the Scope of Work the cost of which cumulatively exceeds Ten Thousand Dollars ($10,000), or (3) any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the Development as provided for in the Scope of Work approved by City. Consent to any additions, changes, or deletions to the work shall not relieve or release Borrower from any other obligations under this Agreement, or relieve or release Borrower or its surety from any surety bond. City shall utilize best efforts to approve or disapprove change orders within five (5) working days of receipt of a request for approval.

(b) Borrower shall cause the Repair Work to be performed in compliance with: (1) all applicable laws, ordinances, rules and regulations of federal, state, City or municipal governments or agencies now in force or that may be enacted hereafter, (2) the
prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations, (3) the HUD quality standards set out in 24 C.F.R. 5.701 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. 39, and (4) 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 Repair Work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Borrower shall be responsible to City for the procurement and maintenance thereof, as may be required of Borrower and all entities engaged in work on the Development.

(c) The Repair Work shall be performed in compliance with the prevailing wage requirements of the federal Davis-Bacon Act. The Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to City) 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 Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the Repair Work or any other construction work undertaken or in connection with the Property.

(d) The Borrower shall, and shall cause its contractor and subcontractors, to pay prevailing wages for the Repair Work as those wages are determined pursuant to Labor Code Sections 1720, et seq., to employ apprentices as required by Labor Code Sections 1777.5, et seq., and the implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720, et seq., 1777.5, et seq., and implementing regulations of the Department of Industrial Relations. Borrower shall, and shall cause its 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 apprentices have been employed as required by Labor Code Sections 1777.5, et seq. Copies of the currently applicable current per diem prevailing wages are available from the California Department of Industrial Relations website, www.dir.ca.gov. During the Repair Work, Borrower shall, or shall cause the contractor to, post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) 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 Borrower, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5, et seq., and implementing regulation or comply with the other applicable provisions of Labor Code Sections, 1720, et seq., 1777.5, et seq., and implementing regulations of the Department of Industrial Relations in connection the Repair Work or any other work undertaken or in connection with the Property.

3.5 Equal Opportunity. During the performance of the Repair Work, there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person engaged in the Repair Work.
3.6 **Progress Reports.** Until such time as Borrower has completed the Repair Work, Borrower shall provide City with monthly progress reports regarding the status of the work, and certification that the actual costs to date conform to the Approved Budget and Scope of Work, as each may be amended from time to time as provided herein.

3.7 **Construction Responsibilities.**

(a) It shall be the responsibility of Borrower to coordinate and schedule the Repair Work so that commencement and completion of that work will take place in accordance with this Agreement.

(b) Borrower shall be solely responsible for all aspects of Borrower’s conduct in connection with the Development, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of Repair 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 City with reference to the Development is solely for the purpose of determining whether Borrower is properly discharging its obligations to City, and should not be relied upon by Borrower or by any third parties as a warranty or representation by City as to the quality of the design or construction of the Repair Work.

3.8 **Mechanics Liens, Stop Notices, and Notices of Completion.**

(a) If any claim of lien is filed against the Property or a stop notice affecting the Loan is served on City or any other lender or other third party in connection with the Repair Work, then Borrower shall, within twenty (20) 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 City a surety bond in sufficient form and amount, or provide City with other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

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

(c) Borrower shall file a valid notice of cessation or notice of completion upon cessation of the Repair of Work 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. Borrower authorizes the City, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that City deems necessary or desirable to protect its interest in the Development and Property.

3.9 **Inspections.** Borrower shall permit and facilitate, and shall require its contractors to permit and facilitate, observation and inspection at the Property by City and
by public authorities during reasonable business hours for the purposes of determining compliance with this Agreement.

ARTICLE 4  LOAN REQUIREMENTS

4.1  Applicability. Borrower shall comply with this Article 4 throughout the Term.

4.2  Information. Borrower shall provide in a timely manner any information reasonably requested by the City in connection with the Development.

4.3  Marketing Plan.

(a) Prior to the first distribution of Loan funds for Operation Costs, Borrower shall submit to City for approval its plan for marketing the warm-water therapy pool to eligible disabled persons.

(b) Upon receipt of the Marketing Plan, City shall promptly review the Marketing Plan and shall approve or disapprove it within seven (7) days after submission. If the Marketing Plan is not approved, Borrower shall submit a revised Marketing Plan within thirty (30) days.

4.4  Records.

(a) Borrower shall maintain records including, but not limited to, the ethnic background, economic status and head of household status of all recipients of services. Borrower shall report this information to City within thirty (30) days after the end of each calendar quarter, in sufficient detail for City to comply with Federal regulations and to complete its annual “Consolidated Annual Performance and Evaluation Report.”

(b) Borrower 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 City to inspect and copy records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current.

(c) City shall notify Borrower of any records it deems insufficient. Borrower shall have twenty-one (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by City in such notice, or if a period longer than twenty-one (21) calendar days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within twenty-one (21) calendar days and correct the deficiency as soon as reasonably possible.

4.5  CDBG Requirements.

(a) Borrower shall comply with all applicable laws and regulations governing the use of the Loan funds as set forth in 24 C.F.R. 570, et seq., including but not limited to the requirements of the Regulatory Agreement. In the event of any conflict
between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations shall govern.

(b) The laws and regulations governing the use of the Loan funds include (but are not limited to) the following:

(i) **Environmental and Historic Preservation.** Section 104(f) of the Housing and Community Residence Act of 1974 and 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 43214361), and the additional laws and authorities listed at 24 C.F.R. 58.5.


(iv) **Lead-Based Paint.** The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821, et seq.), and implementing regulations at 24 C.F.R. Part 35.

(v) **Relocation.** The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and similar state laws.

(vi) **Handicap Discrimination.** The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in federally assisted programs, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131, et seq.), and federal regulations issued pursuant thereto.

(vii) **Civil Rights, Housing & Community Development, and Age Discrimination Acts.** Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 11063, as amended by Executive Order 12259, and Executive Order 11246, as amended by Executive Orders 11375, 12086, 11478, 12107, and 13279.

(viii) **Clean Air and Water Acts.** The Clean Air Act, as amended, 42 U.S.C. 1859, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15, as amended from time to time.

(ix) **Uniform Administrative Requirements.** The requirements of 24 C.F.R. 570.502(b) regarding cost and auditing procedures.

(x) **Training Opportunities.** The requirements of Section 3 of the
Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. Borrower agrees to include the following language in all subcontracts executed under this Agreement:

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

(xii) Labor Standards. To the extent applicable, the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. 3142, et seq.); the Copeland "Anti-Kickback" Act (47 U.S.C. 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. 327-333) which requires that workers receive "overtime" compensation at a rate of one and one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, parts 1.3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.


(xiv) Faith-Based Activities. The requirements governing the use of funds by religious or faith-based organizations found at 24 C.F.R. Part 570.200(j) which requires that the Loan funds not be used for religious activities.

(xiv) HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the fixture pertaining to the Loan fluids, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

4.6 Anti-Lobbying Certification. The Borrower certifies, to the best of his or her knowledge or belief, that:

(a) No Federal appropriated funds have been paid or will be, paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or
modification of any Federal contract, grant, loan, or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars ($10,000) and no more than One Hundred Thousand Dollars ($100,000) for such failure.

4.7 Hazardous Materials.

(a) Borrower 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. Borrower 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 used in construction of projects like the Development or kept and used in and about property of this type.

(b) Borrower shall immediately advise City in writing if at any time it receives written notice of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Borrower or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, (“Hazardous Materials Law”), (2) all claims made or threatened by any third party against Borrower or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (1) and (2) above are hereinafter referred to as “Hazardous Materials Claims”), and (3) Borrower’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.
(c) 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. Borrower shall indemnify and hold harmless City and its board members, 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: (1) all foreseeable consequential damages, (2) 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 (3) all reasonable costs and expenses incurred by City in connection with clauses (1) and (2), including but not limited to reasonable attorneys' fees. This obligation to indemnify shall survive termination of this Agreement.

(d) Without City's prior written consent, which shall not be unreasonably withheld, Borrower 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 the City's reasonable judgment, impair the value of City's security hereunder; provided, however, that City'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 City's consent before taking such action, provided that in such event Borrower shall notify City as soon as practicable of any action so taken. City agrees not to withhold its consent, where such consent is required hereunder, if either: (1) a particular remedial action is ordered by a court of competent jurisdiction, (2) Borrower will or may be subjected to administrative, civil or criminal sanctions or penalties if it fails to take a required action, (3) Borrower establishes to the reasonable satisfaction of City that there is no reasonable alternative to such remedial action which would result in less impairment of City's security hereunder; or (4) the action has been agreed to by City.

(e) Borrower hereby acknowledges and agrees that: (1) this Section is intended as City’s written request for information (and Borrower’s response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (2) 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.

(f) 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 City’s or the trustee’s rights and remedies under the Deed of Trust, City 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: (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law. For purposes of determining City’s right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Borrower 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 Borrower 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 City 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 lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to City upon its demand made at any time following the conclusion of such action.

4.8 Maintenance and Damage.

(a) During the course of both development and operation of the Development, Borrower shall maintain the Development and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if Borrower has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to City, City shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property.

(b) Subject to the requirements of senior lenders, and if economically feasible in City’s reasonable judgment, if any improvement now or in the future on the Property is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by City with such changes as have been approved by City. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter, or such longer periods for the commencement and completion as may be extended by City in its reasonable discretion. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration.

4.9 Fees and Taxes. Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Development to the extent owned by Borrower, and shall pay such charges prior to delinquency. However, Borrower shall not be required to pay and discharge any such charge so long as: (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by City, Borrower deposits with City any funds or other forms of assurance that City in good
faith from time to time determines appropriate to protect City from the consequences of the contest being unsuccessful.

4.10 Notice of Litigation. Borrower shall promptly notify City in writing of any litigation materially affecting Borrower or the Property and of any claims or disputes that involve a material risk of such litigation.

4.11 Operation of the Property.

(a) As soon as practical after the close of escrow, Borrower shall provide warm-water therapeutic programs and services to disabled persons and others consistent with: (1) HUD's requirements for use of the CDBG Loan Funds, and (2) the Regulatory Agreement.

(b) In the event warm-water therapeutic programs and services to disabled persons become obsolete based upon standards prevailing in the medical industry due to new technology and/or medical advances and attendance declines to the point at which it is not economically feasible to continue to provide such programs and services, Borrower shall be relieved of its obligation to provide said programs and services. In the event there is a dispute between the parties as to whether warm-water therapeutic programs and services to disabled persons have become obsolete, that dispute shall be resolved by binding arbitration, with a single arbitrator to be chosen by mutual agreement of the parties. In the event the parties cannot reach agreement on the selection of the arbitrator, the arbitrator shall be selected by a Judge of the San Joaquin County Superior Court. The costs of the arbitration shall be shared equally between the parties and each party shall bear their own attorneys' fees.

4.12 Nondiscrimination. The Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, familial status, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Borrower or any person claiming under or through the Borrower 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. The foregoing covenant shall run with the land.

4.13 Transfer.

(a) For purposes of this Agreement, "Transfer" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of: (1) any rights and/or duties under this Agreement, and/or (2) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Borrower retains title.

(b) No Transfer shall be permitted without the prior written consent of
City, which shall not be unreasonable withheld. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

4.14 Insurance Requirements. The Borrower shall maintain the following insurance coverage throughout the Term of the Loan:

(a) Worker's Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Pool Program, Products and Completed Operations.

(c) 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 coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Borrower does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Property insurance covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to City, naming City as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in an amount not less than Seven Hundred Thousand Dollars ($700,000) naming City a Loss Payee, as its interests may appear.

(f) Borrower shall cause any general contractor or agent working on the Development under direct contract with Borrower, and any subcontractors to such general contractors or agents, to maintain insurance of the types and in at least the minimum amounts described in subsections (a), (b), and (c) above, except that the limit of liability for comprehensive general liability insurance for subcontractors and agents shall be One Million Dollars ($1,000,000); and shall require that such insurance shall meet all of the requirements of subsections (g), (h) and (i) below, including, without limitation, the requirement of subsection (i). Subcontractors working on the Development under indirect contract with Borrower shall be required to maintain the insurance described in subsections (a), (b), and (c) above. Liability and Comprehensive Automobile Liability insurance to be maintained by such contractors and agents pursuant to this subsection shall name City as additional insured's City, their officers, agents, employees and members of the City Council.

(g) The required insurance shall be provided under an occurrence form, and Borrower shall maintain such coverage continuously so long as the Note is outstanding. 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.

(h) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured City and its officers, agents, employees and members of the City Council.

(i) All policies and bonds shall contain: (1) the agreement of the insurer to give City at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies, (2) an agreement that such policies are primary and non-contributing with any insurance that may be carried by City, (3) a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any covered loss sustained, and (4) a waiver by the insurer of all rights of subrogation against City and its authorized parties in connection with any loss or damage thereby insured against.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BORROWER

5.1 Representation and Warranties. Borrower hereby represents and warrants to City as follows:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California as a 501(c)(3) non-profit organization and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver to City the Loan Documents and all other documents or instruments executed and delivered, or 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, the Loan Documents 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 Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement, the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(d) Valid Binding Agreements. This Agreement, the Loan Documents 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 Borrower
enforceable against it in accordance with their respective terms, subject to the laws affecting creditors rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement, the Loan Documents 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 Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The work associated with the Development 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. Borrower 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 Borrower, threatened against or affecting Borrower or the Development, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower’s ability to repay the Loan or impair the security to be given to City pursuant hereto.

(h) Title to Land. At the time of recordation of Deed of Trust, Borrower will have good and marketable fee 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 City and described in Section 1.1(c) of this Agreement, liens for current real property taxes and assessments not yet due and payable, and liens in favor of City or approved in writing by City.

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

ARTICLE 6 DEFAULT AND REMEDIES

6.1 Events of Default. Each of the following shall constitute a “Default” by Borrower under this Agreement:

(a) Failure to Construct. Subject to Section 7.14, failure of Borrower to commence and complete the Repair Work within the times set forth in Article 3 above.
(b) **Failure to Make Payment.** Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from City that such payment is due pursuant to the Loan Documents.

(c) **Breach of Loan Documents.** Failure by Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from City to Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other section of this Article 6, the specific provisions shall control.

(d) **Default Under Other Loans.** Failure to make any payment or perform any of Borrower's covenants, agreements, or obligations under the documents evidencing and securing the Approved Financing following expiration of all applicable notice and cure periods.

(e) **Insolvency.** A court having jurisdiction shall have made or entered any decree or order: (1) adjudging Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower 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 Borrower in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days; or Borrower 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. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by City, the indebtedness evidenced by the Note.

(f) **Assignment; Attachment.** Borrower 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 sixty (60) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by City, the indebtedness evidenced by the Note.

(g) **Suspension; Termination.** Borrower shall have voluntarily suspended its business or, if Borrower is a partnership, the partnership shall have been dissolved or terminated, other than a technical termination of the partnership for tax purposes.

(h) **Liens on Property and the Development.** There shall be filed any claim of lien (other than liens approved in writing by the City) against the Development or any part
thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of forty-five (45) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the City.

(i)  **Condemnation.** The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except for a condemnation by the City.

(j)  **Unauthorized Transfer.** Any Transfer other than as permitted by Section 4.13.

(k)  **Representation or Warranty Incorrect.** Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to City in connection with any of the Loan Documents, proven to have been incorrect in any material and adverse respect when made.

(l)  **Non Profit Status.** Borrow shall have failed to maintain itself as a non-profit, public benefit corporation.

*Remainder of page intentionally left blank.*
6.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of City or automatically where so specified, relieve City of any obligation to make or continue the Loan and shall give City the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

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

(b) **Specific Performance.** City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things which may be unlawful or in violation of the provisions of the Loan Documents.

(c) **Right to Cure at Borrower's Expense.** City shall have the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Borrower agrees to reimburse City for any funds advanced by City to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

6.3 **Right of Contest.** Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to City or the rights of City hereunder.

6.4 **Remedies Cumulative.** Subject to the nonrecourse provisions contained in Section 2.9 above, no right, power, or remedy given to City by the terms of this Agreement or the Loan Documents 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 to City by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by City of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.
ARTICLE 7 GENERAL PROVISIONS

7.1 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Borrower or its agents, employees or contractors, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the purchase of the Property, and operation of the Development, Borrower shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. Borrower shall be solely responsible for its own acts and those of its agents and employees.

7.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against City by any person that Borrower may have employed or with whom Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Property, the Repair Work, or the operation of the Development, and Borrower shall include similar requirements in any contracts entered into for the purchase of the Property, the Repair Work, or the operation of the Development.

7.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

7.4 Indemnification. Borrower shall indemnify, defend and hold City, its councilmembers, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys’ fees) which arise out of or in connection with the purchase of the Property, the Repair Work, or the marketing and operation of the Development, except to the extent such claim arises from the negligent or willful misconduct of City, its councilmembers, officers, employees, agents, successors and assigns. The provisions of this Section 7.4 shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

7.5 Non-Liability of City, Officials, Employees and Agents. No member of the City Council, official, employee or agent of City shall be personally liable to Borrower in the event of any default or breach by City or for any amount which may become due to Borrower or its successor or on any obligation under the terms of this Agreement.

7.6 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

7.7 Discretion Retained By City. City’s execution of this Agreement in no
way limits the discretion of City in the permit and approval process in connection with development of the Development.

7.8 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in Section 7.8(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section 7.8(a) is followed.

(b) The conflict of interest provisions of Section 7.8(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of City, or any person related within the third (3rd) degree of such person.

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

City: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

Borrower: Service First of Northern California
7602 Murray Drive, Suite 100
Stockton, CA 95210
Attn: 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. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable). Copies of notice, sent to Borrower shall also be sent to any limited partner of Borrower who requests such notice in writing and provides its address.

7.10 Applicable Law. This Agreement shall be governed by California law.

7.11 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs,
executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property for the entire Term, and the benefit hereof shall inure to the benefit of City and its successors and assigns.

7.12 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

7.13 Severability. If any term 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.

7.14 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Borrower or Borrower's inability to finance the construction of the Development) 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 commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the City be required to agree to cumulative delays in excess of ninety (90) days.

7.15 City Approval. Whenever this Agreement calls for City approval, consent, subordination, or waiver, the written approval, consent, subordination, or waiver of the City Manager shall constitute the approval, consent, subordination, or waiver of the City, without further authorization required from City Council. City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The City Manager is also hereby authorized to approve, on behalf of the City, requests by Borrower for reasonable extensions of time deadlines set forth in this Agreement.

7.16 Waivers. Any waiver by City of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by City to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by City to any act or omission by Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for City's written consent to future waivers.

7.17 Title of Parts and Sections. Any titles of the sections or subsections of
this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement’s provisions.

7.18 **Entire Understanding of the Parties.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

7.19 **Multiple Originals: Counterpart.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

ATTEST: 

CITY OF STOCKTON, a municipal corporation ("City")

By: [Signature]

KATHERINE GONG MEISS
CITY CLERK

APPROVED AS TO FORM:

RICHARD E. NOSKY, JR.
CITY ATTORNEY

By: [Signature]

JOHN LUEBBERKE
ASSISTANT CITY ATTORNEY

APPROVED AS TO FORM:

BORROWER’S ATTORNEY

By: [Signature]

SERVICE FIRST OF NORTHERN CALIFORNIA, a California non-profit corporation ("Borrower")

By: [Signature]

VERNELL HILL, JR.
PRESIDENT/CEO
EXHIBIT A

LEGAL DESCRIPTION

The lane referred to herein is situated lying and being in Section 17, C.M. Weber Grant, City of Stockton, County of San Joaquin, State of California, described as follows:

Beginning at the most Easterly corner of Weberstown, Unit No. 1, as said corner is shown upon the Official Map or plat thereof filed for record July 12, 1955 in Volume 14 of Maps and Plats, at page 65, San Joaquin County Records, said corner being on the Southerly line of Bianchi Road; thence, along said Southerly line, the following four (4) courses:

1) North 20° 01’ 00” East 15.81 feet;

2) On a curve to the right, having a radius of 958 fee (long chord bears North 33° 42’ 57.50” East 453.76 feet) an arc distance of 458.11 feet;

3) South 42° 33’ 02” East 2.97 feet;

4) On a curve to the right, having a radius of 1,145 feet (long chord bears North 57° 00’ 38” East 218.98 feet) an arc distance of 219.32 feet;

Thence South 42° 04’ 00” East 80.76 feet to the North line of the diverting canal right of way; thence South 47° 56’ 00” West, along said North line 670 feet to the herein before mentioned Point of Beginning.

APN: 102-310-04
EXHIBIT B

APPROVED BUDGET
WARM WATER THERAPY FACILITY
102 WEST BIANCHI ROAD

<table>
<thead>
<tr>
<th>Total Budget</th>
<th>City Funds</th>
<th>Bank Funds</th>
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<tr>
<td><strong>ACQUISITION</strong></td>
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<tr>
<td>Purchase Price</td>
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<tr>
<th><strong>BUILDING REPAIRS</strong></th>
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<td>Pool Resurfacing</td>
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<tr>
<td>Electrical Repairs</td>
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<td>Landscape Improvements</td>
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<td>Total Building Repair Budget</td>
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<th><strong>PROGRAM DEVELOPMENT</strong></th>
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<td>Staff Costs</td>
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<tr>
<td>Total Prog. Develop. Budget</td>
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</table>

**TOTAL BUDGET** | $1,812,000 | $917,000 | $895,000 |
THE CITY OF STOCKTON

AND

ALCOHOL AND DRUG AWARENESS PROGRAM,
A NON-PROFIT BENEFIT CORPORATION

DOING BUSINESS AS NEW DIRECTIONS,
A NON-PROFIT ORGANIZATION,

BORROWER

LOAN AGREEMENT

DATED: November 15, 2006

($120,000 OF CDBG FUNDS)
LOAN AGREEMENT
($120,000--CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of November 15, 2006, by and between the City of Stockton, a municipal corporation ("CITY"), and Alcohol and Drug Awareness Program, a non-profit benefit corporation, dba New Directions, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Alcohol and Drug Awareness Program in their effort to provide substance abuse treatment and education to low-income residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $120,000 to pay for the renovation of a building which will provide housing for an additional twenty-five low-income persons and allow them to receive substance abuse treatment at the BORROWER'S facility located at 1981 Cherokee Road, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the renovation project which will allow additional low-income individuals to receive substance abuse treatment and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to NEPA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is Alcohol and Drug Awareness Program, a non-profit benefit corporation, dba New Directions, a nonprofit organization, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $120,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $120,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCRROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.
1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the renovation the renovation of a building which will provide housing for an additional twenty-five low-income persons and allow them to receive substance abuse treatment at the BORROWER'S facility located at 1981 Cherokee Road, Stockton, California.

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $120,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $120,000 according to the following terms:

A. A forgivable loan in the amount of $120,000;

B. Interest rate shall be at a rate of 0%;
C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide substance abuse treatment to low- and very low-income people in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $12,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECIPOSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.

ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;
E. CITY has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $120,000, as shown in the Budget. CITY'S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $120,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4 – PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5 – DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:
A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to
correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third
party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to
the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate
such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.
8.4 **INDEMNITY.** Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY's demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY's choosing, to pay CITY's reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 **USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

**ARTICLE 9. HAZARDOUS MATERIALS**

9.1 **REPRESENTATIONS AND WARRANTIES.** BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 **NOTIFICATION TO CITY.** BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any
occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other
terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy,
dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the
PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.
11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return
receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attn: City Manager

COPY TO: Housing Department  
425 North El Dorado Street, 3rd Floor  
Stockton, CA 95202  
Attn: Director

BORROWER: Alcohol and Drug Awareness Program  
P.O. Box 5070  
Stockton, CA 95205  
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.
11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 NO THIRD-PARTY BENEFICIARIES. All of the provisions of the Loan Documents are intended to bind and benefit only the CITY and the BORROWER, and their respective permitted successors and assigns. It is not intended that any provisions of this Loan Agreement benefit, and shall not be construed that any provisions of this Loan Agreement benefit nor shall said agreement be enforceable by any tenant, prospective tenant, creditor, contractor, or other third party.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

APPROVED AS TO FORM:

By: _____________________________
    Borrower's Counsel

Approving Officer

Alcohol and Drug Awareness Program, a nonprofit benefit corporation

By: _____________________________
    Dale L. Benner
    Printed Name
    Executive Director
    Title

ATTEST:

City of Stockton, a municipal corporation

By: _____________________________
    J. Gordon Palmer, Jr.
    City Manager

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____________________________
    Assistant Deputy City Attorney
EXHIBIT "A"

Legal Description
LEGAL DESCRIPTION

All that certain real property situate in the County of San Joaquin, State of California, described as follows:

Parcel One:

Beginning at a stake in South line of Stewart Street, 129.33 feet distant West from intersection of West line of Sargent Lane with the South line of Stewart Street, filed June 6, 1935 in Surveys, Vol. 4, Page 97; thence South 21° 20' 30" East 422.12 feet to a stake in North line of Cherokee Lane; thence South 30° 23' 30" West along said North line of Cherokee Lane, 145.95 feet to a stake in said North line of Cherokee Lane; thence North 22° 29' West 86.55 feet to a stake; thence South 67° 31' West 150 feet to a stake in the East line of a 10 foot alley; thence North 22° 29' West along East line of said alley, 455.89 feet to the South line of Stewart Street; thence North 74° 14' East along said line of Stewart Street, 276.54 feet to the point of beginning.


Also Except Therefrom that portion described as follows:

Beginning at the Northeast corner of the parcel of land conveyed to Josephine I. Stemler, by Deed recorded June 16, 1944 in Book of Official Records, Vol. 887, Page 1, San Joaquin County Records; thence South 22° 29' East along the Easterly line of said Stemler property and its Southerly extension, 115 feet to a point; thence North 74° 14' East parallel with the Southerly line of Stewart Street to the Westerly line of the parcel of land conveyed to Edwin G. Anderson, et ux, by Deed recorded September 6, 1950 in Book of Official Records, Vol. 1291, Page 316; thence North 21° 20' 30" West along the Westerly line of said Anderson land and its Northerly extension, 115 feet more or less, to the South line of Stewart Street; thence South 74° 14' West along the South line of Stewart Street, 190.89 feet, more or less to the point of beginning.

Also Except Therefrom that portion described as follows:

Beginning at a stake in South line of Stewart Street, 129.33 feet distant West from intersection of West line of Sargent Lane with the South line of Stewart Street, filed June 6, 1935 in
Surveys, Vol. 4, Page 97; thence South 74° 14’ West along the South line of Stewart Street, 180.88 feet to a stake; thence South 22° 29’ East 96.71 feet; thence North 67° 31’ East 39.40 feet; thence South 22° 29’ East 22.93 feet to the true point of beginning; thence North 74° 14’ East 61.03 feet; thence South 21° 20’ 30” East 5.85 feet; thence South 67° 31’ West 60.41 feet; thence North 22° 29’ West 17.00 feet to the true point of beginning.

Parcel Two:

Beginning at a stake in the North line of Cherokee Lane, 310.65 feet distant South 30° 23’ 30” West from the intersection of West line of Sargent Lane with the North line of Cherokee Lane; thence South 30° 23’ 30” West along said North line of Cherokee Lane, 188.00 feet to the East line of a 10 foot alley; thence North 22° 29’ West along the East line of said alley, 200 feet to a stake; thence North 67° 31’ East 150 feet to a stake; thence South 22° 29’ East 86.55 feet to place of beginning.

Parcel Three:

Beginning at a stake in the South line of Stewart Street, 129.33 feet distant West from the intersection of West line of Sargent Lane with the South line of Stewart Street, filed June 6, 1935 in Surveys Vol. 4, Page 97; thence South 74° 14’ West along the South line of Stewart Street, 180.88 feet to a stake; thence South 22° 39’ East 96.71 feet to the true point of beginning; thence North 67° 31’ East 39.40 feet; thence South 22° 29’ East 22.93 feet; thence South 74° 14’ West 39.67 feet; thence North 22° 29’ West 18.29 feet to the true point of beginning.
**EXHIBIT “B”**

**Project Budget**

*Alcohol and Drug Awareness Program*
*2006-07 City of Stockton CDBG Project*

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**TOTAL**                     | $120,000.00 | $73,500.00 | $59,200.00 | $252,700.00 |
EXHIBIT "C"

INSURANCE REQUIREMENTS

Before Loan disbursal and issuance of a notice to proceed, Borrower shall deliver to Lender certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during construction of the Project.

1. Minimum Limits of Insurance

General Liability Limits: $1,000,000 General Aggregate and $1,000,000 per occurrence for bodily injury, personal injury, and property damage.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer’s Liability Limits: $1,000,000 each Accident

2. General Conditions

During the term of this Agreement and without limiting the Borrower’s indemnification of the City, the Borrower shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the Borrower but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The City, their boards, officers, agents and employees shall be included as additional insured’s by separate endorsement in all liability insurance policies except: Workers’ Compensation/ Employer’s Liability and second-party Legal Liability coverages (such as Fire Legal) and Owners and Contractors Protective Liability, in which latter case the City shall be the named insured. The City shall be named loss payee as its interest may appear in all required property, fidelity or surety coverages.

b. Insurance Requirements

All insurance required hereunder shall conform to City requirements established by charter, ordinance or policy and shall be filed with the City Administrative Services Department for review.
During the period of construction, Borrower must obtain or cause to be obtained a builder's risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the City as loss payee as its interest may appear.

After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender's loss payable endorsement listing the City and Borrower as the loss payees as their interests may appear. This policy must remain in effect throughout the term of the Loan.

c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by City and shall not call on the City's insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the City.

e. **30-Day Notice**

With respect to the interests of City such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the City by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to and approved by the City Attorney and the City Administrative Services Department prior to commencement of any work or tenancy under this Agreement.

g. **Acceptable Evidence**

The appropriate City special endorsement forms are the preferred forms of evidence of insurance. Alternatively, Borrower may submit two (2) certified copies of the full policy or other evidence acceptable to the City Attorney containing language that complies with subparagraphs (a) through (f) above. With respect to liability insurance, either a signed copy of the policy declaration page or a letter from Borrower's insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the City as specified in subparagraph "e" of this section will satisfy this requirement.
h. **Severability of Interest**

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

i. **Renewal**

Once the insurance has been approved by the City, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (h) above, must be submitted.

j. **Proceeds**

All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the construction lender(s) and the City, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the construction lenders, second to repay the Loan, and third to repay the Loan to Borrower from the City. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, the Borrower shall have the right to rebuild the Project, and to use manner that provides adequate security to the City for repayment of the Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the Loan.

3. **Worker's Compensation**

By signing this Agreement, the Borrower hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the Borrower to comply with such provisions before commencing the performance of the work of this Agreement.
4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the Borrower not related to this Agreement, the Borrower shall give the City prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Borrower’s best judgment may diminish the protection such insurance affords City. Further, Borrower shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The City may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Administrative Services Division, the City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Borrower forty-five (45) days advance written notice of such change. If such change should result in substantial additional cost to Borrower, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the City. Non-availability or non-affordability must be documented by a letter from Borrower’s insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, Borrower’s failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the City may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the City’s interests and pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Borrower to the City upon demand or it may offset the cost of the premiums against any monies due to the Borrower from the City.

7. **Underlying Insurance**

Borrower shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower’s and City's interests and for ensuring that such persons comply with any applicable insurance statutes. Borrower is encouraged to seek professional advice in this regard.
EXHIBIT “D”

HUD REQUIREMENTS ASSOCIATED WITH THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

I. RECORDKEEPING

A. RECIPENT shall establish and maintain sufficient records in their original form to enable HUD to determine whether RECIPENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the RECIPENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the RECIPENT until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The RECIPENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The RECIPENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.
2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the RECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;

   (iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

   (iv) A description of actions to be taken by RECIPIENT and business to ensure that low/mod income persons receive first consideration for these jobs.
(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person’s family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;

(ii) Certification that the activity was designed to address the urgent need;

(iii) Information on the timing of the development of the serious condition; and

(iv) Evidence confirming that other financial resources to alleviate the need were not available.
3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to RECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that RECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the RECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either: the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

   Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and RECIPIENT’S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

   a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:

   a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

   b. Data on employment in each of the RECIPIENT’s operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission’s EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.
8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises ad defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of RECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the RECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the RECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

II. REPORTS

A. RECIPIENT shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on RECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.
4. RECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If RECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to RECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), RECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by RECIPIENT is to be returned to CITY or retained by RECIPIENT. Where program income is to be retained by RECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When RECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, RECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.

A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and RECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

RECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.
VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. RECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report of document. RECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY's environmental findings are based. RECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised RECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, RECIPIENT shall make available for examination all of its records.

B. RECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of RECIPIENT's fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. RECIPIENT's expending funds of $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133.

2. RECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of RECIPIENT's fiscal year, shall submit a copy of the report to CITY.

C. In the event RECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;
3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for RECIPIENT's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily

2. Withholding or disallowing overhead costs

3. Suspending Federal awards until the audit is conducted; or

4. Terminating the Federal award

VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;

2. date of acquisition;

3. the acquisition cost or assigned value to the program; and,

4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT
Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to RECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

RECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the RECIPIENT’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:
   1. The dangers of drug abuse in the workplace;
   2. The RECIPIENT’s policy of maintaining a drug-free workplace;
   3. Any available drug counseling, rehabilitation, and employee assistance programs; and
   4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:
   1. Abide by the terms of the statement; and
   2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A, B, C, D, E, and F.

XI. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. RECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, RECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person’s race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by RECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Part 60, the RECIPIENT, for itself and its successors and assigns, agrees that:
A. RECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. RECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. RECIPIENT shall send a notice to each labor union or representative of workers with which RECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of RECIPIENT's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. RECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. RECIPIENT shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to RECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of RECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement
may be canceled, terminated, or suspended in whole or in part and RECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. RECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. RECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read “During the performance of this Contract, RECIPIENT agrees as follows:” and the term “RECIPIENT” shall be changed to “Contractor.”

H. Except as provided in California Government Code Section 12940, et seq., RECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The work to be performed under this Loan Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD
set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. RECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. RECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or RECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. RECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or RECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject RECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall RECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES
A. RECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition,
blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licensees vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

RECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. RECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. RECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. RECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


16. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, RECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. RECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST

No member, officer or employee of RECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. RECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN’S BUSINESS ENTERPRISES REQUIREMENTS
A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) RECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.

4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, RECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this
Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve RECIPIENT of its obligations, if any, to require payment of the higher rates. RECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/ CALIFORNIA LABOR CODE

A. RECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – RECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. RECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. RECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.

F. RECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER'S COMPENSATION INSURANCE
In all operations connected with the work herein specified, the RECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246

RECIPIENT shall comply with the full provisions of Executive Order 11246 in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246 non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

RECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
LOYAL AGREEMENT
($30,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of October 13, 2009, by and between the City of Stockton, a municipal corporation ("CITY"), and Family and Youth Services of San Joaquin County, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Family and Youth Services of San Joaquin County in their effort to provide crisis counseling to youth and their families to residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $30,000 to pay for a portion of the cost of renovation to the Safe House Emergency Shelter, at the BORROWER'S facility located at 436 East Flora Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the renovation project will allow youth and families to continue receiving crisis counseling and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to NEPA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "BORROWER" is Family and Youth Services of San Joaquin County, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.
1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $30,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $30,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCAPROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.
1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the renovation of the Safe House Emergency Shelter at the BORROWER’S facility located at 436 East Flora Street, Stockton, California (the "PROJECT")

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $30,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $30,000 according to the following terms:

A. A forgivable loan in the amount of $30,000;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;
D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide comprehensive services to victims of domestic violence and sexual assault in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $12,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.

ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG LOAN; and
F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $30,000, as shown in the Budget. CITY's obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $30,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;
B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.
BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form
and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.
5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unfavorable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor
or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon
CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or
release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY; BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER’S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER’S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY’S prior written consent; (2) BORROWER’S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than
fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) Insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and
J. Lead-Based Paint. In the event BORROWER allows occupancy of
dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section
5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no
notice or cure periods for Events of Defaults which are monetary. For Events of Default which
are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of
Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b)
the action required to cure the deficiency, if any action to cure is possible, and (c) a date,
which shall not be less than thirty (30) calendar days after the date of receipt of the notice or
the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by
BORROWER and a failure to cure said Event of Default within the time specified in the notice
of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall
terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan
Documents or applicable law, proceed with any or all of the following remedies in any order or
combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal
amount outstanding under the CDBG Note, as well as any other monies advanced to
BORROWER by CITY including administrative costs, shall immediately become due and
payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by
BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining,
abating, or preventing any violation of said terms and conditions, and/or (3) seeking
declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal
amount outstanding under the CDBG Note, as well as any other monies advanced to
BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to
complete construction of the PROJECT, including without limitation (1) making changes in the
Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering
into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any
time to discontinue work without liability), and (3) taking any remedial actions with respect to
Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or
to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with
the authority to complete construction as needed to preserve CITY’S interest in seeing the
PROJECT developed in a timely manner (including the authority to take any remedial actions
with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with
Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition
leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any
monetary Event of Default;
H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “D” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’s request which clearly document BORROWER’S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT,
(1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO: City of Stockton Revitalization Department

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11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.
11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SUBORDINATION. Except as may be otherwise specifically provided herein, the CITY's City Manager may approve Subordination Agreements to subordinate the Deed of Trust securing this loan to the liens of the deeds of trust securing additional construction financing required by the BORROWER without further approval by the City Council provided the Subordination Agreement provides the City adequate notice and cure rights and is in a form approved by the City.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinafter written.

APPROVED AS TO FORM:

FAMILY AND YOUTH SERVICES OF SAN JOAQUIN COUNTY, a nonprofit benefit corporation

By: ____________________________
Borrower's Counsel

By: ____________________________
WES HONE
WYANE HOSE
Printed Name
Title

ATTEST:

City of Stockton, a municipal corporation

BY: ____________________________
KATHERINE GONG MEISSNER
CITY CLERK

APPROVED AS TO FORM:

RICHARD E. NOSKY
CITY ATTORNEY

By: ____________________________
ASSISTANT/DEPUTY CITY ATTORNEY
THE CITY OF STOCKTON

AND

WOMEN'S CENTER OF SAN JOAQUIN COUNTY,
A NON-PROFIT BENEFIT CORPORATION

BORROWER

LOAN AGREEMENT

DATED: 10/14/2009

($28,500 OF CDBG FUNDS)

CLOSED

APPROVED OCT 14, 2009

Fully

LSP377
LOAN AGREEMENT

($28,500—CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of October 14, 2009, by and between the City of Stockton, a municipal corporation ("CITY"), and Women's Center of San Joaquin County, a nonprofit organization ("BORROWER").

RE bâtals

A. CITY has determined it necessary and appropriate to support the Women's Center of San Joaquin County in their effort to provide comprehensive services to victims of domestic violence and sexual assault to residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $28,500 to pay for the renovation of a building which serves as the Women's Center Shelter at the BORROWER'S facility located at 905 North California Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the renovation project will allow victims of domestic violence and sexual abuse to continue receiving comprehensive treatment and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to NEPA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is Women's Center of San Joaquin County, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $28,500 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $28,500 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.
1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the renovation of a building which serves as the Women's Center Shelter at the BORROWER'S facility located at 905 North California Street, Stockton, California (the "PROJECT").

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $28,500 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $28,500 according to the following terms:

A. A forgivable loan in the amount of $28,500;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;
D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide comprehensive services to victims of domestic violence and sexual assault in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $12,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.

ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;
E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $28,500, as shown in the Budget. CITY'S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $28,500 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:
A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen
(15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such
filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.
5.17 **RELOCATION.** If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

**ARTICLE 6. PROJECT OPERATION**

6.1 **OPERATION OF PROJECT.** BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 **NONDISCRIMINATION.** BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

**ARTICLE 7. EMPLOYMENT**

7.1 **EQUAL EMPLOYMENT OPPORTUNITY.** BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate
such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law; and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit “C” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “C” until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.
8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a
"hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;
B. Construction. (1) BORROWER’S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY’S prior written consent; (2) BORROWER’S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such
involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY'S interest in seeing the PROJECTIONS developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);
F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “D” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or
who is in a position to participate in a decision making process or gain inside information, has
not obtained or will not obtain an interest in any contract, subcontract or agreement with
respect thereto or the proceeds thereunder, either for themselves or those with whom they
have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that
no member, officer, director, or employee of BORROWER who, with respect to the PROJECT,
(1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in
CITY’S decision making process, or (3) is in a position to gain inside information, has obtained
or will obtain a personal or financial interest or benefit from this PROJECT, or any contract,
subcontract or agreement with respect thereto or the proceeds thereunder, either for
themselves or those with whom they have family or business ties, during their tenure or for
one year thereafter. For purposes of this paragraph only, “personal or financial interest or
benefit” shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services
contributed by CITY or BORROWER under this Loan Agreement shall be used for any
partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the
date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be
governed by the laws of the State of California, except for those provisions relating to choice of
law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to
particular statutes, regulations, ordinances, or resolutions of the United States, the State of
California, or the City of Stockton shall be deemed to include the same statute, regulation,
ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other
provision as may thereafter govern the same subject as the provision to which specific
reference was made.

11.9 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any
legal or administrative action is commenced to interpret or to enforce the terms of the Loan
Documents, the prevailing party in any such action shall be entitled to recover all reasonable
attorneys’ fees (which as to any party shall include the allocated reasonable costs for services
of any party’s in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any
consent or approval of CITY or BORROWER required under the Loan Documents shall not be
unreasonably withheld. Any approval required under the Loan Documents shall be in writing
and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands
and communications between BORROWER and CITY shall be sufficiently given and shall not
be deemed given unless dispatched by registered or certified mail, postage prepaid, return
receipt requested, or delivered by a commercial delivery service which provides a signed
receipt for delivery or delivered personally, to BORROWER and CITY as follows:
11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.
11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SUBORDINATION. Except as may be otherwise specifically provided herein, the CITY’s City Manager may approve Subordination Agreements to subordinate the Deed of Trust securing this loan to the liens of the Deeds of Trust securing additional construction financing required by the BORROWER without further approval by the City Council provided the Subordination Agreement provides the CITY adequate notice and cure rights and is in a form approved by the CITY.
11.22 **SEVERABILITY.** Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.23 **AUTHORITY TO EXECUTE.** The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

**IN WITNESS WHEREOF,** the parties hereby have executed this Loan Agreement as of the date first above written.

**APPROVED AS TO FORM:**

By:

Borrower's Counsel

By: [Signature]

Women's Center of San Joaquin County, a nonprofit benefit corporation

By: [Signature]

Printed Name

Executive Director

Title

**ATTEST:**

City of Stockton, a municipal corporation

By: [Signature]

Katherine Gong Meisner

City Clerk

By: [Signature]

Kevin O'Rourke

INTERIM CITY MANAGER

**APPROVED AS TO FORM:**

OFFICE OF THE CITY ATTORNEY

By: [Signature]

Assistant/Deputy City Attorney
THE CITY OF STOCKTON

AND

FAMILY AND YOUTH SERVICES OF SAN JOAQUIN COUNTY,
A NON-PROFIT BENEFIT CORPORATION

BORROWER

LOAN AGREEMENT
DATED: SEPTEMBER 14, 2010
($65,000 OF CDBG FUNDS)

CLOSED

Date APPROVED SEP 14 2010

Lyne
LOAN AGREEMENT

($65,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of September 14, 2010, by and between the City of Stockton, a municipal corporation ("CITY"), and Family and Youth Services of San Joaquin County, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Family and Youth Services of San Joaquin County in their effort to provide crisis counseling to youth and their families to residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $65,000 to pay for a portion of the cost of renovation to the Opportunity House Transitional Living Program residential facility, at the BORROWER'S facility located at 426 East Flora Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the renovation project will allow youth and families to continue receiving crisis counseling and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is Family and Youth Services of San Joaquin County, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $65,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $65,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.
1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the renovation of the Opportunity House Transitional Living Program residential facility at the BORROWER’S facility located at 426 East Flora Street, Stockton, California (the "PROJECT")

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $65,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $65,000 according to the following terms:

A. A forgivable loan in the amount of $65,000.
B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide comprehensive services to victims of domestic violence and sexual assault in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $6,500 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $65,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $65,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.

ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed
or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to
BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party
requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably
deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 **LEAD-BASED PAINT.** If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 **DAMAGE TO PROPERTY.** If any building or improvement on the Property is damaged or destroyed by an Insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 **RELOCATION.** If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning
or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance
within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit “C” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “C” until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON- LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.
8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER’S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall
immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER’S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER’S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY’S prior written consent; (2) BORROWER’S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the
PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and
J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;
H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with
respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, “personal or financial interest or benefit” shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
11.13 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 **ASSIGNMENT AND ASSUMPTION.** BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 **WAIVER.** Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 **INTEGRATION.** This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.
11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SUBORDINATION. Except as may be otherwise specifically provided herein, the CITY’s City Manager may approve Subordination Agreements to subordinate the Deed of Trust securing this loan to the liens of the deeds of trust securing additional construction financing required by the BORROWER without further approval by the City Council provided the Subordination Agreement provides the City adequate notice and cure rights and is in a form approved by the City.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinafter written.

APPROVED AS TO FORM:  

By:  
Borrower's Counsel

FAMILY AND YOUTH SERVICES OF SAN JOAQUIN COUNTY, a nonprofit benefit corporation  

By:  
Wayne House
Printed Name
Title

ATTEST:  

CITY OF STOCKTON, a municipal corporation  

By:  
Katherine Gong Meissner
City Clerk

By:  
Bob Deis
City Manager

APPROVED AS TO FORM:  

JOHN LUEBBERKE  
City Attorney

By:  
Assistant/Deputy City Attorney

::ODMA\GRPWISE\COS.HRD.HRD_Library:103538.1
EXHIBIT "A"

Legal Description

APN: 139-174-03

Parcel 1:

Lot 5 and the East one-third of Lot 13 in Block 116, East of Center Street, according to the Official Map or Plat thereof.
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
DATED: SEPTEMBER 14, 2010
($30,000 OF CDBG FUNDS)
LOAN AGREEMENT

($30,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of September 14, 2010, by and between the City of Stockton, a municipal corporation ("CITY"), and Stockton Shelter for the Homeless, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Stockton Shelter for the Homeless in their effort to provide food, emergency shelter, clothing, and personal hygiene items to single adults and families;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $30,000 to pay for a portion of the construction of a storage building at the men's shelter and drop-in center, at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the storage building construction project will allow single adult males to continue receiving shelter services and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, and a promissory note. A deed of trust is not required, as the property is subleased to BORROWER from CITY through a ten-year sublease expiring on December 31, 2017. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "BORROWER" is Stockton Shelter for the Homeless, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $30,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $30,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project.
to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the storage building construction at the Men's Shelter and drop in center at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT")

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $30,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.
2.3 **TERM OF LOAN.** Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 **USE OF FUNDS.** CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 **LOAN PROVISIONS.** CITY agrees to provide BORROWER with the total of $30,000 according to the following terms:

A. A forgivable loan in the amount of $30,000;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 **REPAYMENT TERMS.** CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $3,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 **NON-RECOourse OBLIGATION.** The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $30,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $30,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 **FINANCING.** BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 **CONTRACTS AND SUBCONTRACTS.** All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 **PREVAILING WAGES.** To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 **PLANS AND SPECIFICATIONS.** Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 **CONFIGURATION OF THE PROJECT.** BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by CITY.

5.2 **COMMENCEMENT OF CONSTRUCTION.** BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to
respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be
reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety
bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and
shall be complete within one year thereafter. All insurance proceeds collected for such
damage or destruction shall be applied to the cost of such repairs or restoration and, if
such insurance proceeds shall be insufficient for such purpose, BORROWER shall
make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the
PROJECT results in the permanent displacement of residential tenants, homeowners,
or businesses, BORROWER shall comply with all applicable local, state and federal
statutes and regulations with respect to relocation planning, advisory assistance, and
payment of monetary benefits. BORROWER shall be solely responsible for payment of
any relocation benefits to any displaced persons and any other obligations associated
with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for
performance of provisions of the Loan Documents by either party shall be extended for
a period equal to the period of any delay directly affecting the PROJECT or this Loan
Agreement which is caused by: war; insurrection; strike or other labor disputes;
lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public
enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation;
suits filed by third parties concerning or arising out of this Loan Agreement; or
unreasonable weather conditions. An extension of time for any of the above-specified
causes will be deemed granted only if written notice by the party claiming the extension
is sent to the other party within ten (10) calendar days from the date the affected party
learns of the commencement of the cause and the resulting delay and such extension
of time is either accepted by the other party in writing, or is not rejected in writing by the
other party within ten (10) calendar days after receipt of the notice. In any event,
construction of the Project must be completed no later than ninety (90) calendar days
after the scheduled completion date specified herein, any avoidable delay
notwithstanding. Time of performance under this Loan Agreement may also be
extended for any cause for a period of time not to cumulatively exceed one hundred
twenty (120) days by the mutual written agreement of the CITY'S City Manager and
BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S
agents shall operate and manage the PROJECT after completion in full conformance
with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or
segregate in the development, construction, use, enjoyment, occupancy, conveyance,
lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of
race, color, ancestry, national origin, religion, sex, sexual orientation and preference,
age, marital status, family status, source of income, physical or mental disability,
Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or
any other arbitrary basis. BORROWER shall otherwise comply with all applicable
local, state, and federal laws concerning discrimination in housing.
ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand, and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such
advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON- LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or
threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties,
including all costs of administrative or legal proceedings and attorney's fees, that CITY may
directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any
representation, warranty, agreement, or covenant contained in this Loan Agreement with
respect to Hazardous Materials, or as a consequence of any use, generation, manufacture,
storage, release, or disposal (whether or not BORROWER knew of same) of any
Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the
PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall,
upon giving of applicable notice and expiration of applicable cure period, constitute an
"Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums
payable under the CDBG Note or any advances made under this Loan Agreement; (2)
BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses
inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S
failure to obtain and maintain the insurance coverage required under this Loan Agreement;
(4) BORROWER’S failure to make any other payment or assessment due under the Loan
Documents;

B. Construction. (1) BORROWER’S substantial deviation in the work of
construction specified in the Plans and Specifications submitted to CITY, without CITY’S
prior written consent; (2) BORROWER’S use of defective or unauthorized materials or
defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to
commence or complete construction, without proper justification under the unavoidable
delay provision of this Loan Agreement, according to the construction schedule specified in
this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT
for a period of more than fifteen (15) continuous calendar days; (5) any material adverse
change in the condition of BORROWER or the PROJECT that gives CITY reasonable
cause to believe that the PROJECT cannot be constructed by the scheduled completion
date according to the terms of this Loan Agreement; (6) the filing of any claim of lien
against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to
the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after
such filing or service without payment, discharge, or satisfaction as provided for in this
Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping
or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to
substantially comply with any federal, state, or local laws or applicable CITY restrictions
governing construction, including but not limited to provisions of this Loan Agreement
pertaining to affirmative action and equal employment opportunity, minority and female-
owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of
characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition
of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior
written approval that are prohibited under this Loan Agreement; (3) any material adverse
change in the condition of BORROWER or the PROJECT or permanent financing or
funding for the PROJECT that gives CITY reasonable cause to believe that the services
cannot be operated according to the terms of the Loan Documents;
D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:
A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.
ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.
11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

**COPY TO:**
City of Stockton Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director
BORROWER:  Stockton Shelter for the Homeless  
P.O. Box 4803  
Stockton, CA  95204  
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.
11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

STOCKTON SHELTER FOR THE HOMELESS, a nonprofit benefit corporation

By: __________________________
    Borrower's Counsel

By: __________________________
    JOHN R. REYNOLDS
    Printed Name
    EXECUTIVE DIRECTOR
    Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

By: __________________________
    KATHERINE GONG MEISSNER
    CITY CLERK

By: __________________________
    BOB DEIS
    CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEMBERKE
CITY ATTORNEY

By: __________________________
    ASSISTANT/DEPUTY CITY ATTORNEY
THE CITY OF STOCKTON

AND

GOSPEL CENTER RESUCE MISSION, INC.,
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
DATED: SEPTEMBER 14, 2010
($119,010 OF CDBG FUNDS)

CLOSED
APPROVED: SEP 14 2020

date

C-11-05

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LOAN AGREEMENT

($119,010---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of September 14, 2010, by and between the City of Stockton, a municipal corporation ("CITY"), and Gospel Center Rescue Mission, Inc., a nonprofit organization ("BORROWER").

RECATALS

A. CITY has determined it necessary and appropriate to support the Gospel Center Rescue Mission, Inc. in their effort to provide a primary medical care clinic to homeless residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $119,010 to pay for a portion of the cost of renovation of the former Edna Gleason residence to a primary care medical clinic for the homeless, at the BORROWER'S facility located at 423 South San Joaquin Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the renovation project will allow the homeless to receive primary medical care and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

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1.1 "BORROWER" is Gospel Center Rescue Mission, Inc., a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $119,010 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $119,010 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG LOAN.
1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the renovation of the former Edna Gleason residence for a medical clinic at the BORROWER'S facility located at 423 S. San Joaquin Street, Stockton, California (the "PROJECT")

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

**ARTICLE 2. TERMS OF LOAN**

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $119,010 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $119,010 according to the following terms:

A. A forgivable loan in the amount of $119,010;
B. Interest rate shall be at a rate of 0%.

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide comprehensive services to victims of domestic violence and sexual assault in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $6,500 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECURSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $119,010, as shown in the Budget. CITY'S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $119,010 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.

ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed
or otherwise authorized to perform the applicable construction work or service in the State
of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor
Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to
be paid, such rates of wages for construction work done in connection with the PROJECT.
BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction,
BORROWER shall submit to CITY, for its review and approval, the final plans and
specifications for development of the PROJECT (the “Plans and Specifications”).
BORROWER shall develop the PROJECT in full conformance with the Plans and
Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the
PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin
construction of the PROJECT no later than thirty (30) days after the date of issuance of a
notice to proceed for the PROJECT. BORROWER shall not commence construction until
CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all
predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and
the construction contract;

B. Submission and approval by CITY of certificates for all insurance under
this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and
licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to
respond within fifteen (15) days after receipt of written notice from BORROWER that all
predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of
construction, BORROWER shall diligently prosecute construction of the PROJECT to
completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the
responsibility of BORROWER to coordinate and schedule the work to be performed so that
commencement and completion of construction will take place in accordance with the
provisions of this Loan Agreement. CITY may extend the time for commencement or
completion in writing in its sole and absolute discretion. Any time extension granted to
BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER from its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party.
requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any notice that CITY reasonably
deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning
or arising out of this Loan Agreement; or unreasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance
within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.
8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any other real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall
immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the
PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and
J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;
H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 **BORROWER'S REMEDIES.** Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

**ARTICLE 11. GENERAL PROVISIONS**

11.1 **BORROWER'S WARRANTIES.** BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 **HUD REQUIREMENTS.** BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 **PROJECT MONITORING AND EVALUATION.** Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 **CONFLICTS OF INTEREST.** BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with
respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.
11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SUBORDINATION. Except as may be otherwise specifically provided herein, the CITY’s City Manager may approve Subordination Agreements to subordinate the Deed of Trust securing this loan to the liens of the deeds of trust securing additional construction financing required by the BORROWER without further approval by the City Council provided the Subordination Agreement provides the City adequate notice and cure rights and is in a form approved by the City.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By: __________________________
    Borrower’s Counsel

GOSPEL CENTER RESCUE MISSION, INC., a nonprofit benefit corporation

By: __________________________
    William R. Broad
    Printed Name
    CEO
    Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

BY: __________________________
    Katherine Gong Meissner
    City Clerk

BY: __________________________
    Bob Deis
    City Manager

APPROVED AS TO FORM:

JOHN LUEBERKE
CITY ATTORNEY

By: __________________________
    Assistant/Deputy City Attorney

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EXHIBIT “A”

Legal Description

Parcel 1:

The Northern 38.5 feet of lot 15 in Block 48, East of Center Street, in the said City of Stockton, according to the Official Map of Plat thereof.

Except therefrom the north 7.23 feet of the west 51.00 thereof.
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
DATED: MARCH 14, 2012
($28,000 OF CDBG-R FUNDS)
LOAN AGREEMENT

($28,000—CDBG-R Funds)

This Loan Agreement ("Loan Agreement") is made as of March 14, 2012, by and between the City of Stockton, a municipal corporation ("CITY"), and Stockton Shelter for the Homeless, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Stockton Shelter for the Homeless in their effort to provide food, emergency shelter, clothing, and personal hygiene items to single adults and families;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant - Recovery ("CDBG-R") loan in the amount of $28,000 to pay for the acquisition and installation of a walk-in refrigeration unit at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT"). CITY must expend all CDBG-R funds prior to September 30, 2012.

C. CITY believes that the allocation of these funds to assist in the acquisition and installation of a walk-in refrigeration unit will allow the shelter to continue providing shelter services and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG-R LOAN, BORROWER shall execute, among other things, a loan agreement and a promissory note. A deed of trust is not required, as the property is subleased to BORROWER from CITY through a ten-year sublease expiring on December 31, 2017. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG-R LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is Stockton Shelter for the Homeless, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG-R LOAN" is the loan of CDBG-R funds in the principal amount of $28,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG-R NOTE" is that certain promissory note in the principal amount of $28,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG-R LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCAPROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed.
of in the manner and in amounts that are consistent with normal practice and legal 
standard.

1.11 "HUD" means the United States Department of Housing and Urban 
Development.

1.12 "LOAN" means the CDBG-R LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between 
CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the 
CDBG-R NOTE, as they may be amended, modified, or restated from time to time, 
along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for 
the PROJECT as approved by the CITY.

1.16 "PROJECT" means the acquisition and installation of a walk-in 
refrigeration unit at the BORROWER’S facility located at 411 South Harrison Street, 
Stockton, California (the "PROJECT")

1.17 "PROPERTY" consists of the real property located in Stockton, California, 
and more particularly described in the attached Exhibit "A," which is incorporated into 
this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to 
accept the CDBG LOAN in the principal amount not to exceed $28,000 from CITY to 
BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver 
to CITY a promissory note ("CDBG-R Note") evidencing the terms of payment. To the 
maximum extent permitted by law, the project constructed with the proceeds of the 
CDBG-R Loan shall be security ("Security") for repayment of the Loan. The Note shall 
constitute a security agreement under the California Commercial Code. Upon request 
of CITY, the BORROWER shall execute and deliver to the CITY financing statements, 
pursuant to the applicable statutes, and any other documents or instruments as are 
required to convey to the CITY a valid perfected security interest in the Security. The 
BORROWER agrees to perform all acts the CITY may reasonably request so as to 
enable the CITY to maintain a valid perfected security interest in order to secure the 
repayment of the Note in accordance with its terms. CITY may file a copy of any 
financing statement in any jurisdiction as deemed appropriate from time to time in order 
to protect the security interest established hereby.
2.3 **TERM OF LOAN.** Unless sooner due pursuant to the CDBG-R Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 **USE OF FUNDS.** CDBG-R Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 **LOAN PROVISIONS.** CITY agrees to provide BORROWER with the total of **$28,000** according to the following terms:

A. A forgivable loan in the amount of **$28,000**;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 **REPAYMENT TERMS.** CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete construction of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $2,800 shall be due annually each anniversary date thereafter until fully paid.

2.7 **NON-RECOUSE OBLIGATION.** The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG-R LOAN; and

F. BORROWER has delivered the original CDBG-R Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER. THE CITY MUST EXPEND THE CDBG-R FUNDS BEFORE SEPTEMBER 30, 2012. THEREFORE, THE LAST REQUEST FOR DISBURSEMENT OF LOAN PROCEEDS FROM THE BORROWER MUST BE RECEIVED BY THE CITY NO LATER THAN SEPTEMBER 5, 2012. THE CITY SHALL NOT BE OBLIGATED TO MAKE ANY DISBURSEMENTS OF LOAN PROCEEDS THAT ARE REQUESTED AFTER THAT DATE.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $28,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $28,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the
ARTICLE 4. PREDEVELOPMENT

4.1 **FINANCING.** BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 **CONTRACTS AND SUBCONTRACTS.** All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 **PREVAILING WAGES.** To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 **PLANS AND SPECIFICATIONS.** Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 **CONFIGURATION OF THE PROJECT.** BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 **COMMENCEMENT OF CONSTRUCTION.** BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to
respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 **COMPLETION OF CONSTRUCTION.** Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 **QUALITY OF WORK.** BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 **ADDITIONS OR CHANGES IN WORK.** City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 **RECORDS.** BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be
reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety
bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROEJCT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and
shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.
ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such
advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 **INDEMNITY.** Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 **USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

**ARTICLE 9. HAZARDOUS MATERIALS**

9.1 **REPRESENTATIONS AND WARRANTIES.** BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or
threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 **NOTIFICATION TO CITY.** BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER's reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 **USE AND OPERATION OF PROJECT OR PROPERTY.** Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 **REMEDIAL ACTIONS.** If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties,
including all costs of administrative or legal proceedings and attorney’s fees, that CITY may
directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any
representation, warranty, agreement, or covenant contained in this Loan Agreement with
respect to Hazardous Materials, or as a consequence of any use, generation, manufacture,
storage, release, or disposal (whether or not BORROWER knew of same) of any
Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the
PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall,
upon giving of applicable notice and expiration of applicable cure period, constitute an
"Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER’S failure to pay when due any sums
payable under the CDBG Note or any advances made under this Loan Agreement; (2)
BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses
inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S
failure to obtain and maintain the insurance coverage required under this Loan Agreement;
(4) BORROWER’S failure to make any other payment or assessment due under the Loan
Documents;

B. Construction. (1) BORROWER’S substantial deviation in the work of
construction specified in the Plans and Specifications submitted to CITY, without CITY’S
prior written consent; (2) BORROWER’S use of defective or unauthorized materials or
defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to
commence or complete construction, without proper justification under the unavoidable
delay provision of this Loan Agreement, according to the construction schedule specified in
this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT
for a period of more than fifteen (15) continuous calendar days; (5) any material adverse
change in the condition of BORROWER or the PROJECT that gives CITY reasonable
cause to believe that the PROJECT cannot be constructed by the scheduled completion
date according to the terms of this Loan Agreement; (6) the filing of any claim of lien
against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to
the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after
such filing or service without payment, discharge, or satisfaction as provided for in this
Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping
or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to
substantially comply with any federal, state, or local laws or applicable CITY restrictions
governing construction, including but not limited to provisions of this Loan Agreement
pertaining to affirmative action and equal employment opportunity, minority and female-
owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of
characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of
any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior
written approval that are prohibited under this Loan Agreement; (3) any material adverse
change in the condition of BORROWER or the PROJECT or permanent financing or
funding for the PROJECT that gives CITY reasonable cause to believe that the services
cannot be operated according to the terms of the Loan Documents;
D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:
A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY'S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

D. Pursue any other remedy allowed at law or in equity.
ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.
11.6 **TERMS OF THIS AGREEMENT.** The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 **ATTORNEYS’ FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attn: City Manager

**COPY TO:**
City of Stockton Economic Development Department  
425 North El Dorado Street, 3rd Floor  
Stockton, CA 95202  
Attn: Director
BORROWER: Stockton Shelter for the Homeless  
P.O. Box 4803  
Stockton, CA 95204  
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.
11.20 **ACTION BY THE CITY.** Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 **SEVERABILITY.** Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 **AUTHORITY TO EXECUTE.** The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By:  
Borrower's Counsel

STOCKTON SHELTER FOR THE HOMELESS, a nonprofit benefit corporation

By:  
Printed Name: John R. Reynolds
Title: Executive Director

ATTEST:

CITY OF STOCKTON, a municipal corporation

By:  
BY: BONNIE PAIGE  
CITY CLERK

BY:  
BOB DEIS  
CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE  
CITY ATTORNEY

By:  
CITY ATTORNEY
EXHIBIT “A”

Legal Description

ALL THOSE PORTIONS OF LOTS 9, 11, 15 AND 16 IN BLOCK 3 SOUTH OF MORMON CHANNEL IN THE CITY OF STOCKTON ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF CHURCH STREET (A CITY STREET 60.6 FEET IN WIDTH) DISTANT ALONG SAID NORTH LINE SOUTH 78 DEGREES 23 MINUTES 17 SECONDS WEST 145.13 FEET FROM THE INTERSECTION OF SAID NORTH LINE WITH THE WEST LINE OF HARRISON STREET (A CITY STREET 80.8 FEET IN WIDTH):

(1) THENCE NORTH 0 DEGREES 44 MINUTES 35 SECONDS WEST 58.36;

(2) THENCE ALONG A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 588.00 FEET THROUGH AN ANGLE OF 41 DEGREES 00 MINUTES 01 SECONDS, AN ARC DISTANCE OF 420.77 FEET TO A POINT ON THE EASTERLY LINE OF SAID HARRISON STREET DISTANCE ALONG LAST SAID LINE NORTH 11 DEGREES 41 MINUTES 14 SECONDS WEST 45.9 FEET FROM THE INTERSECTIONS OF SAID EASTERLY LINE WITH THE NORTH LINE OF SONORA STREET (A CITY STREET 60.6 FEET IN WIDTH).
EXHIBIT “B”
Stockton Shelter for the Homeless
Project Budget

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EXHIBIT C
INSURANCE REQUIREMENTS

Before disbursal of funds CORPORATION shall deliver to CITY certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during the term of this agreement.

1. **Minimum Limits of Insurance**

   **GENERAL LIABILITY** insurance shall include Bodily Injury, Personal Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit.

   **Other Insurance Provisions Pertaining to General Liability:** The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

   **Automobile Liability Limits:** $1,000,000 combined single limit

   **Workers Compensation and Employer’s Liability Limits:** $1,000,000 each Accident

2. **General Conditions**

During the term of this Agreement and without limiting CORPORATION’S indemnification of the CITY, the CORPORATION shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the CORPORATION but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

   a. **Additional Insured/Loss Payee**

      The CITY, their boards, officers, agents and employees shall be included as additional insured’s by separate endorsement in all liability insurance policies except: Workers’ Compensation/ Employer’s Liability.

   b. **Insurance Requirements**

      All insurance required hereunder shall conform to CITY requirements established by charter, ordinance or policy and shall be filed with the City Risk Management Division for review.
c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on the CITY’s insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the CITY.

e. **30-Day Notice**

With respect to the interests of CITY such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the CITY by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to the City Risk Management Division and approved by the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. **Severability of Interest**

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

h. **Renewal**

Once the insurance has been approved by the CITY, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (g) above, must be submitted.

3. **Worker's Compensation**

By signing this Agreement, the CORPORATION hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the CORPORATION to comply with such provisions before commencing
the performance of the work of this Agreement.

4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the CORPORATION not related to this Agreement, the CORPORATION shall give the CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CORPORATION's best judgment may diminish the protection such insurance affords CITY. Further, CORPORATION shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The CITY may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Risk Management Division, the CITY reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the CORPORATION thirty (30) days advance written notice of such change. If such change should result in substantial additional cost to CORPORATION, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. Non-availability or non-affordability must be documented by a letter from CORPORATION's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, CORPORATION's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the CITY may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the CITY's interests and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the CORPORATION to the CITY upon demand or it may offset the cost of the premiums against any monies due to the CORPORATION from the CITY.

7. **Underlying Insurance**

CORPORATION shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect CORPORATION's and
CITY's interests and for ensuring that such persons comply with any applicable insurance statutes. CORPORATION is encouraged to seek professional advice in this regard.

8. INDEMNIFICATION

The Vendor shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the Vendor or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney's fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the Vendor or any of its employees or agents in the performance of this contract. The Vendor's obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.

If the Vendor should subcontract all or any portion of the work to be performed under this agreement, the Vendor shall require each sub-contractor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.
EXHIBIT "D"

HUD REQUIREMENTS ASSOCIATED WITH THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

I. RECORDKEEPING

A. RECIPIENT shall establish and maintain sufficient records in their original form to enable HUD to determine whether RECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the RECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the RECIPIENT until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The RECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The RECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts
and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the RECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by RECIPIENT and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to RECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that RECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the RECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and RECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:

a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head)
have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the RECIPIENT's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of RECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the RECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the RECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

II. REPORTS
A. RECIPIENT shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. An annual report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on RECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. RECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If RECIPIENT’s reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to RECIPIENT, or to impose other sanctions, at CITY’s sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), RECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by RECIPIENT is to be returned to CITY or retained by RECIPIENT. Where program income is to be retained by RECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When RECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, RECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.

A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.
B. CITY and RECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

RECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. RECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report or document. RECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY's environmental findings are based. RECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised RECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, RECIPIENT shall make available for examination all of its records.

B. RECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of RECIPIENT's fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.
1. RECIPIENT’s expending funds of $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133.

2. RECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of RECIPIENT’s fiscal year, shall submit a copy of the report to CITY.

C. In the event RECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor’s assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for RECIPIENT’s failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily

2. Withholding or disallowing overhead costs

3. Suspending Federal awards until the audit is conducted; or

4. Terminating the Federal award

VIII. EQUIPMENT RECORDS
Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to RECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

RECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the RECIPIENT’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The RECIPIENT’s policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:
   1. Abide by the terms of the statement; and
   2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:
   1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,
   2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A,B,C,D,E, and F.

XI. NON-DISCRIMINATION
A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. RECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, RECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by RECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Part 60, the RECIPIENT, for itself and its successors and assigns, agrees that:

A. RECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer,
recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. RECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. RECIPIENT shall send a notice to each labor union or representative of workers with which RECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of RECIPIENT's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. RECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. RECIPIENT shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to RECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of RECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and RECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. RECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors,
unless exempted by rules, regulations, or orders of the Secretary of Labor
issued pursuant to Section 204 of Executive Order 11246 of September 24,
1965, so that such provisions will be binding upon each such contractor,
subcontractor, or vendor, as the case may be. RECIPIENT will take such
action with respect to any construction contract, subcontract, or purchase
order as the CITY or HUD may direct as a means of enforcing such
provisions, including sanctions for noncompliance. For the purpose of
including such provisions in any construction contract, subcontract, or
purchase order, as required hereby, the first two lines of this subsection shall
be changed to read “During the performance of this Contract, RECIPIENT
agrees as follows:” and the term “RECIPIENT” shall be changed to
“Contractor.”

H. Except as provided in California Government Code Section 12940, et seq.,
RECIPIENT shall not engage in the following prohibited employment
practices: Refusal to hire or employ any person or refusal to select any
person for any training program leading to employment, or to bar or to
discharge such person from employment or from such training program
leading to employment, or discriminate against such person in compensation
or in terms, conditions or privileges of employment because of race, color,
religion, creed, sex, sexual preference or orientation, national origin,
ancestry, physical handicap, medical condition, age, marital status, mental
condition, blindness or other physical disability, acquired immune deficiency
syndrome (AIDS), acquired or perceived, familial status, pregnancy,
childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME
PERSONS

A. The work to be performed under this Loan Agreement is on a Project
assisted under a program providing direct federal financial assistance from
HUD and is subject to the requirements of Section 3 of the Housing and
Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter
referred to as "Section 3." Section 3 requires that, to the greatest extent
feasible, opportunities for training and employment be given to lower-income
residents of the Project area and agreements for work in connection with the
project be awarded to business concerns which are located in, or owned in
substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said
Section 3 and the regulations issued pursuant thereto by the Secretary of
HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders
of HUD issued thereunder prior to the execution of this Loan Agreement.
The parties to this Loan Agreement certify and agree that they are under no
contractual or other disability which would prevent them from complying with these requirements.

C. RECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. RECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or RECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. RECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or RECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject RECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall RECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES
A. RECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."
3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

RECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. RECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. RECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. RECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


16. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, RECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. RECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST
No member, officer or employee of RECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. RECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) RECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.
4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, RECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve RECIPIENT of its obligations, if any, to require payment of the higher rates. RECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. RECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – RECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. RECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State
Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. RECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.

F. RECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER’S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the RECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246

RECIPIENT shall comply with the full provisions of Executive Order 11246 in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246 non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

RECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
THE CITY OF STOCKTON

AND

EMERGENCY FOOD BANK & FAMILY SERVICES OF STOCKTON/SAN JOAQUIN
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
DATED: MARCH 14, 2012
($69,980 OF CDBG-R FUNDS)
LOAN AGREEMENT
($69,980---CDBG-R Funds)

This Loan Agreement ("Loan Agreement") is made as of March 14, 2012, by and between the City of Stockton, a municipal corporation ("CITY"), and Emergency Food Bank & Family Services of Stockton/San Joaquin, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Emergency Food Bank & Family Services of Stockton/San Joaquin in their effort to provide food and education to those in need in our community;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant - Recovery ("CDBG-R") loan in the amount of $69,980 to pay for the expansion of a commercial cooler unit at the BORROWER'S facility located at 7 West Scotts Avenue, Stockton, California (the "PROJECT"). CITY must expend all CDBG-R funds prior to September 30, 2012.

C. CITY believes that the allocation of these funds to assist in the Cooler Expansion Project will allow the BORROWER to continue providing services and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG-R LOAN, BORROWER shall execute, among other things, a loan agreement and a promissory note. A deed of trust is not required, as the property is leased to BORROWER from CITY through a twenty-year lease expiring on September 9, 2025. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG-R LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is Emergency Food Bank & Family Services of Stockton/San Joaquin, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG-R LOAN" is the loan of CDBG-R funds in the principal amount of $69,980 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG-R NOTE" is that certain promissory note in the principal amount of $69,980 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROPERTY at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG-R LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.
1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG-R LOAN.

1.13 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG-R NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the Cooler Expansion Project at the BORROWER'S facility located at 7 West Scotts Avenue, Stockton, California (the "PROJECT").

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $69,980 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG-R Note") evidencing the terms of payment. To the maximum extent permitted by law, the project constructed with the proceeds of the CDBG-R Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG-R Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.
2.4 USE OF FUNDS. CDBG-R Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $69,980 according to the following terms:

A. A forgivable loan in the amount of $69,980;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete construction of the PROJECT in Stockton; and (2) provide food to those in need in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $6,998 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG-R LOAN; and

F. BORROWER has delivered the original CDBG-R Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER. THE CITY MUST EXPEND CDBG-R BEFORE SEPTEMBER 30, 2012. THEREFORE, THE LAST REQUEST FOR DISBURSEMENT OF LOAN PROCEEDS FROM THE BORROWER MUST BE RECEIVED BY THE CITY NO LATER THAN SEPTEMBER 5, 2012. THE CITY SHALL NOT BE OBLIGATED TO MAKE ANY DISBURSEMENTS OF LOAN PROCEEDS THAT ARE REQUESTED AFTER THAT DATE.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $69,980, as shown in the Budget. CITY'S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $69,980 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 **FINANCING.** BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 **CONTRACTS AND SUBCONTRACTS.** All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 **PREVAILING WAGES.** To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 **PLANS AND SPECIFICATIONS.** Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 **CONFIGURATION OF THE PROJECT.** BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 **COMMENCEMENT OF CONSTRUCTION.** BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to
respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be
reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety
bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER'S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 **LEAD-BASED PAINT.** If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 **DAMAGE TO PROPERTY.** If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and
shall be complete within one year thereafter. All insurance proceeds collected for such
damage or destruction shall be applied to the cost of such repairs or restoration and, if
such insurance proceeds shall be insufficient for such purpose, BORROWER shall
make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the
PROJECT results in the permanent displacement of residential tenants, homeowners,
or businesses, BORROWER shall comply with all applicable local, state and federal
statutes and regulations with respect to relocation planning, advisory assistance, and
payment of monetary benefits. BORROWER shall be solely responsible for payment of
any relocation benefits to any displaced persons and any other obligations associated
with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for
performance of provisions of the Loan Documents by either party shall be extended for
a period equal to the period of any delay directly afecting the PROJECT or this Loan
Agreement which is caused by: war; insurrection; strike or other labor disputes;
lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public
enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation;
suits filed by third parties concerning or arising out of this Loan Agreement; or
unseasonable weather conditions. An extension of time for any of the above-specified
causes will be deemed granted only if written notice by the party claiming the extension
is sent to the other party within ten (10) calendar days from the date the affected party
learns of the commencement of the cause and the resulting delay and such extension
of time is either accepted by the other party in writing, or is not rejected in writing by the
other party within ten (10) calendar days after receipt of the notice. In any event,
construction of the Project must be completed no later than ninety (90) calendar days
after the scheduled completion date specified herein, any avoidable delay
notwithstanding. Time of performance under this Loan Agreement may also be
extended for any cause for a period of time not to cumulatively exceed one hundred
twenty (120) days by the mutual written agreement of the CITY’S City Manager and
BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S
agents shall operate and manage the PROJECT after completion in full conformance
with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or
segregate in the development, construction, use, enjoyment, occupancy, conveyance,
lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of
race, color, ancestry, national origin, religion, sex, sexual orientation and preference,
age, marital status, family status, source of income, physical or mental disability,
Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or
any other arbitrary basis. BORROWER shall otherwise comply with all applicable
local, state, and federal laws concerning discrimination in housing.
ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such
advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or
threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties,
including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;
D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:
A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY'S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 **BORROWER'S REMEDIES.** Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

D. Pursue any other remedy allowed at law or in equity.
ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG-R funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “D” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.
11.6 **TERMS OF THIS AGREEMENT.** The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

**COPY TO:**
City of Stockton Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director
BORROWER: Emergency Food Bank & Family Services of Stockton/San Joaquin
7 West Scotts Avenue
Stockton, CA 95203
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.
11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By: ________________________  Emergency Food Bank & Family Services of Stockton/San Joaquin, a nonprofit benefit corporation
   Borrower's Counsel

By: ________________________
   James T. Viall
   Printed Name
   Exec. Director
   Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

By: ________________________  BONNIE PAIGE
   CITY CLERK

By: ________________________  BOB DEIS
   CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ________________________
   CITY ATTORNEY
EXHIBIT "A"

Legal Description

All that certain piece or parcel of land situate, lying and being in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

Commencing at the southwest corner of Block 17, West of Center Street, as said Block is so designated and delineated on the Official Map of the City of Stockton adopted by the City Council of said City on July 23, 1894, thence S.11(40'57"E. 363.21 feet along the ease line of Commerce Street to the true POINT OF BEGINNING; thence N.78(28'01"E. 303 feet along the south line of Mormon Channel, to a point on the west line of Center Street; thence S.11(40'57"E. 91.29 feet along said west line; thence S.78(22'37" W. 37.1 feet; thence S.11(40'57"E. 34.12 feet; thence S.78(22'37"W. 265.9 feet to the east line of Commerce Street; thence N.11(40'57"W. 125.89 feet to the hereinbefore mentioned POINT OF BEGINNING.

Contains 0.845 acres more or less.
EXHIBIT “B”

Emergency Food Bank & Family Services of Stockton/San Joaquin
Project Budget

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EXHIBIT C
INSURANCE REQUIREMENTS

Before disbursal of funds CORPORATION shall deliver to CITY certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during the term of this agreement.

1. Minimum Limits of Insurance

GENERAL LIABILITY insurance shall include Bodily Injury, Personal Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer’s Liability Limits: $1,000,000 each Accident

2. General Conditions

During the term of this Agreement and without limiting CORPORATION’S indemnification of the CITY, the CORPORATION shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the CORPORATION but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The CITY, their boards, officers, agents and employees shall be included as additional insured's by separate endorsement in all liability insurance policies except: Workers' Compensation/ Employer's Liability.

b. Insurance Requirements

All insurance required hereunder shall conform to CITY requirements established by charter, ordinance or policy and shall be filed with the City Risk Management Division for review.
c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on the CITY's insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the CITY.

e. **30-Day Notice**

With respect to the interests of CITY such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the CITY by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to the City Risk Management Division and approved by the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. **Severability of Interest**

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

h. **Renewal**

Once the insurance has been approved by the CITY, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (g) above, must be submitted.

3. **Worker's Compensation**

By signing this Agreement, the CORPORATION hereby certifies that it is aware of the provisions of Section 3700, *et seq.*, of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the CORPORATION to comply with such provisions before commencing
the performance of the work of this Agreement.

4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the CORPORATION not related to this Agreement, the CORPORATION shall give the CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in CORPORATION's best judgment may diminish the protection such insurance affords CITY. Further, CORPORATION shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The CITY may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Risk Management Division, the CITY reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the CORPORATION thirty (30) days advance written notice of such change. If such change should result in substantial additional cost to CORPORATION, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. Non-availability or non-affordability must be documented by a letter from CORPORATION's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, CORPORATION's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the CITY may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the CITY's interests and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the CORPORATION to the CITY upon demand or it may offset the cost of the premiums against any monies due to the CORPORATION from the CITY.

7. **Underlying Insurance**

CORPORATION shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect CORPORATION's and
CITY's interests and for ensuring that such persons comply with any applicable insurance statutes. CORPORATION is encouraged to seek professional advice in this regard.

8. INDEMNIFICATION

The Vendor shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the Vendor or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney’s fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the Vendor or any of its employees or agents in the performance of this contract. The Vendor’s obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.

If the Vendor should subcontract all or any portion of the work to be performed under this agreement, the Vendor shall require each sub-contractor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.
EXHIBIT "D"

HUD REQUIREMENTS ASSOCIATED WITH THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

I. RECORDKEEPING

A. The RECIPIENT shall establish and maintain sufficient records in their original form to enable HUD to determine whether RECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the RECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the RECIPIENT until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The RECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The RECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts
and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

   a. The income characteristics of families and unrelated individuals in the service area.

   b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

      (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

      (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

      (iii). Data showing the size and annual income of the family of each person receiving the benefit.

   c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the RECIPIENT shall provide:

      (i). A copy of a written agreement from each assisted business containing:

      (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by RECIPIENT and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to RECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that RECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the RECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and RECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:

a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head)
have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the RECIPIENT's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of RECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the RECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the RECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

II. REPORTS
A. RECIPIENT shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. An annual report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on RECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. RECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If RECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to RECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), RECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by RECIPIENT is to be returned to CITY or retained by RECIPIENT. Where program income is to be retained by RECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When RECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, RECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.

A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.
B. CITY and RECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

RECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. RECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report or document. RECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY's environmental findings are based. RECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised RECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, RECIPIENT shall make available for examination all of its records.

B. RECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of RECIPIENT's fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.
1. RECIPIENT’s expending funds of $300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133.

2. RECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of RECIPIENT’s fiscal year, shall submit a copy of the report to CITY.

C. In the event RECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor’s assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for RECIPIENT’s failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily

2. Withholding or disallowing overhead costs

3. Suspending Federal awards until the audit is conducted; or

4. Terminating the Federal award

VIII. EQUIPMENT RECORDS
Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;

2. date of acquisition;

3. the acquisition cost or assigned value to the program; and,

4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to RECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

RECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the RECIPIENT’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The RECIPIENT's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A,B,C,D,E, and F.

XI. NON-DISCRIMINATION
A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. RECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, RECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by RECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Part 60, the RECIPIENT, for itself and its successors and assigns, agrees that:

A. RECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer,
recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. RECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. RECIPIENT shall send a notice to each labor union or representative of workers with which RECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of RECIPIENT's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. RECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. RECIPIENT shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to RECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of RECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and RECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. RECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors,
unless exempted by rules, regulations, or orders of the Secretary of Labor
issued pursuant to Section 204 of Executive Order 11246 of September 24,
1965, so that such provisions will be binding upon each such contractor,
subcontractor, or vendor, as the case may be. RECIPPIENT will take such
action with respect to any construction contract, subcontract, or purchase
order as the CITY or HUD may direct as a means of enforcing such
provisions, including sanctions for noncompliance. For the purpose of
including such provisions in any construction contract, subcontract, or
purchase order, as required hereby, the first two lines of this subsection shall
be changed to read “During the performance of this Contract, RECIPPIENT
agrees as follows:” and the term “RECIPPIENT” shall be changed to
“Contractor.”

H. Except as provided in California Government Code Section 12940, et seq.,
RECIPPIENT shall not engage in the following prohibited employment
practices: Refusal to hire or employ any person or refusal to select any
person for any training program leading to employment, or to bar or to
discharge such person from employment or from such training program
leading to employment, or discriminate against such person in compensation
or in terms, conditions or privileges of employment because of race, color,
religion, creed, sex, sexual preference or orientation, national origin,
ancestry, physical handicap, medical condition, age, marital status, mental
condition, blindness or other physical disability, acquired immune deficiency
syndrome (AIDS), acquired or perceived, familial status, pregnancy,
childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME
PERSONS

A. The work to be performed under this Loan Agreement is on a Project
assisted under a program providing direct federal financial assistance from
HUD and is subject to the requirements of Section 3 of the Housing and
Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter
referred to as "Section 3." Section 3 requires that, to the greatest extent
feasible, opportunities for training and employment be given to lower-income
residents of the Project area and agreements for work in connection with the
project be awarded to business concerns which are located in, or owned in
substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said
Section 3 and the regulations issued pursuant thereto by the Secretary of
HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders
of HUD issued thereunder prior to the execution of this Loan Agreement.
The parties to this Loan Agreement certify and agree that they are under no
contractual or other disability which would prevent them from complying with these requirements.

C. RECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. RECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or RECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. RECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or RECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject RECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall RECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES
A. RECIPENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."
3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

RECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. RECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. RECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. RECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


16. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, RECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. RECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST
No member, officer or employee of RECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. RECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women’s business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

B. In all CDBG services solicitation, CITY’s Compliance Officer shall ensure that (whether by bid, RFP or RFQ) RECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE’s and WBE’s.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY’s Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.
4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, RECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve RECIPIENT of its obligations, if any, to require payment of the higher rates. RECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/ CALIFORNIA LABOR CODE

A. RECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – RECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. RECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State
Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. RECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.

F. RECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER'S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the RECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246

RECIPIENT shall comply with the full provisions of Executive Order 11246 in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246 non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

RECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
THE CITY OF STOCKTON

AND

CHRISTOPHER BENNITT

LOAN AGREEMENT

DATED: March 13, 2013

$350,000

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

FOR REHABILITATION OF

133 S. CALIFORNIA STREET, STOCKTON
LOAN AGREEMENT

($350,000—CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of March 13, 2013, by and between the City of Stockton, a municipal corporation ("CITY"), and Christopher Bennitt ("BORROWER").

RECITALS

A. CITY wishes to promote the development of more transitional housing programs in the Stockton community and to provide a greater choice of housing opportunities for homeless and very-low income persons.

B. BORROWER has requested that the CITY provide a loan in the amount of $350,000 to assist in the renovation of the property at 133 South California Street, Stockton, California for use as a transitional housing program for homeless Veterans. The program will be operated by Dignity's Alcove, a non-profit organization, or its successors (hereinafter "OPERATOR").

C. CITY believes that the renovation of the property and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other documents, this AGREEMENT, a regulatory agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these collective agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, CITY and BORROWER hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms as used throughout this Agreement, the attached Exhibits and incorporated documents, shall have the meaning set forth below:

1.1 "BORROWER" is Christopher Bennitt.

1.2 "BUDGET" refers to that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.

1.4 "CDBG LOAN" refers to the loan of CDBG funds in the principal amount of $350,000 by the CITY to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" (the Note) refers to that certain promissory note in the principal amount of Three Hundred Fifty Thousand Dollars ($350,000) to be executed by BORROWER in favor of the CITY, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereto. The terms of the Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" refers to the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 “COMMENCEMENT OF REHABILITATION” refers to the period of time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, and excludes maintenance of the PROPERTY in its status quo condition and work solely related to remediation of Hazardous Materials.

1.8 “CONTRACTOR” is a private individual, partnership or corporation licensed by the California State Contractor’s Licensing Board.

1.9 "ELIGIBLE COSTS" refers to those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.202 and in the Budget as specified in the attached Exhibit “B”, which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "HAZARDOUS MATERIALS" refers to any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" refers to the United States Department of Housing and Urban Development.

1.12 "LOAN" refers to the CDBG LOAN.

1.13 "LOAN AGREEMENT" refers to this Loan Agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" refers collectively to this Loan Agreement, the Deed of Trust, and the CDBG Note, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to those documents.
1.15 "MONETARY DEFAULT" refers to BORROWER's failure to make payments of the annual principal installment as due in the event of an uncured non-monetary default pursuant to the terms of the Agreement.

1.16 "PLANS AND SPECIFICATIONS" refers to the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" refers to the renovation of the property at 133 South California Street, Stockton, California for use as a transitional housing program for homeless Veterans which will be operated by OPERATOR.

1.18 "PROPERTY" refers to the real property located in Stockton, California, and more particularly described in Exhibit "A" attached hereto, which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" refers to the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $350,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the Property shall be security ("Security") for repayment of the Loan. Upon request of CITY, the BORROWER shall execute and deliver to the CITY a deed of trust against the Property. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in the Property in order to secure the repayment of the Note in accordance with its terms. CITY may record a Deed of Trust in the San Joaquin County Records, or in any jurisdiction deemed legally appropriate at the time of recording, in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $350,000 according to the following terms:

A. A forgivable loan in the amount of $350,000;

B. Interest rate shall be at a rate of zero 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years;
D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this Loan Agreement; and

E. Prepayment of the outstanding loan balance shall be permitted without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this Loan Agreement. Additional compliance shall be the continuance of the BORROWER to: (1) complete the rehabilitation PROJECT; and (2) ongoing use as a transitional housing facility for homeless veterans operated by OPERATOR, or similar management and of similar terms acceptable to CITY and BORROWER. CITY shall determine compliance, in its sole but reasonable discretion, no less than thirty (30) calendar days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. In the event that CITY notifies BORROWER that it is not in compliance within said thirty (30) calendar day period, BORROWER shall be provided with a right to cure or to cause the OPERATOR or its successor, to cure any alleged non-compliance within ten (10) calendar days. Upon said cure by BORROWER, the annual installment shall be deemed forgiven. City shall not unreasonably withhold, delay or condition its determination of compliance herein. In the event that BORROWER fails to diligently commence to cure or cause the OPERATOR to cure the non-compliance, equal payments of $35,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOOURSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.

ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no uncured Event of Default as provided in Article 10;

B. BORROWER has obtained all building permits necessary for the completion of the project and all code violations shall have been remedied;

C. BORROWER has provided all labor compliance documentation.

D. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;
E. No later than thirty (30) days following delivery of the same by BORROWER to CITY, CITY has inspected all work completed as of the time of the billing and reviewed all invoices. In the event that CITY has not notified BORROWER otherwise within said thirty (30) day period, CITY shall be deemed to have accepted the work and invoices.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER. The CITY will withhold fifteen (15%) retention from each payment made under this Loan Agreement. The retention will be released upon issuance of a final occupancy permit.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of loan proceeds shall be $350,000, as shown in the Budget. CITY'S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $350,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. The parties acknowledge and agree that the final plans and specifications for development of the PROJECT (the “Plans and Specifications”) have previously been approved by the City's Economic Development Department (“EDD”) or whatever designation is currently assigned to EDD at that time. Any further modifications to the Plans and Specifications shall be subject to the approval of EDD. EDD shall not unreasonably withhold, condition, or delay its approval of any modifications to the Plans and Specifications. EDD shall have a period of fourteen (14) days (the “Review Period”) to review the Plans and Specifications. EDD shall be deemed to have approved the Plans as presented unless, on or before the last day of the Review Period, EDD has delivered to BORROWER a written notice (the “Response”) describing (a) the items in the Plans and Specification that are not acceptable; and (b) the specific changes that must be made to the Plans and Specifications to secure EDD’s approval. BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by EDD.
ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract in accordance with Section 4.4 above;

B. Submission and approval by CITY of certificates for all insurance required under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and reasonable discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 982.401 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. CITY must be notified in a timely manner of any material changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Any such material changes in the work required to be performed including any additions, changes, or deletions to the approved Plans and Specifications
shall be made and consented to by the CITY in accordance with the provisions of Section 4.4 above. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than three years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER 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 the PROJECT, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to the PROJECT at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY,
without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S reasonable satisfaction that it or a third party operator is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, at its sole discretion, opt to discharge the lien, encumbrance, charge, or claim at BORROWER'S expense. In the alternate, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for disabled access.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint, and maintains records which confirms the tests and that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this Loan Agreement shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."
5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER, at his/her sole cost shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time for performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER shall operate and manage the PROJECT after completion by leasing the Property to OPERATOR who will operate a transitional housing program on the PROPERTY.
6.2 NONDISCRIMINATION. BORROWER shall use its good faith efforts to cause OPERATOR, or its successor to not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall use its good faith efforts to cause OPERATOR, or its successor to otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may take action directly against the contractor or subcontractor as permitted by law.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.
8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its actual knowledge, as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater.
conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.
9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days, except due to force majeure; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement, unless caused by a force majeure event; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction;

C. **Operation.** (1) discrimination by BORROWER or OPERATOR on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;
D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement.

F. Representations and Warranties. A determination by a mutually agreed upon neutral third-party and/or other authoritative body, that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; and (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest on the PROPERTY shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for monetary defaults as defined above. For non-monetary defaults, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if such can be cured; and (c) ten (10) calendar days in accordance with section 2.6 above, to cure the default.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default, CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:
A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.
ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this Loan Agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Loan Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S reasonable request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation,
ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director

BORROWER: Christopher Bennitt
Post Office Box 8346
Stockton, CA 95208

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except
in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY'S City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 NO THIRD-PARTY BENEFICIARIES. All of the provisions of the Loan Documents are intended to bind and benefit only the CITY and the BORROWER, and their respective permitted successors and assigns. It is not intended that any provisions of this Loan Agreement benefit, and shall not be construed that any provisions of this Loan Agreement benefit nor shall said agreement be enforceable by any tenant, prospective tenant, creditor, contractor, or other third party.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
11.23 **AUTHORITY TO EXECUTE.** The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

11.24 **SUBORDINATION.** Borrower or his successor in interest, may in future seek to secure a loan from a state or federal bank, life insurance company or correspondent thereof, federal or state savings and loan association or other institutional lender regulated by federal or state authority for the purpose of obtaining additional financing on the PROPERTY. The amount of the new loan combined with the unpaid balance amount under the Deed of Trust at the time of the new loan shall not exceed 80% of the appraised value of the PROPERTY. Appraised value to be determined by a licensed state appraiser approved by CITY. Should Borrower obtain such funding, City Manager agrees to execute a separate subordination agreement in recordable form and not to unreasonably withhold such signature, provided no event of default has occurred.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

Christopher Bennitt

By ______________________

CHRISTOPHER BENNITT
PRINTED NAME

_____________________

TITLE

ATTEST:

City of Stockton, a municipal corporation

By: ______________________

BONNIE PAIGE
City Clerk

BOB DEIS
City Manager

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: ______________________
EXHIBIT “A”

LEGAL DESCRIPTION

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

Lots 10 and 12 in Block 23, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-130-10
EXHIBIT “B”
PROJECT BUDGET
133 S. CALIFORNIA STREET
CITY OF STOCKTON CDBG PROJECT

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EXHIBIT “C”

INSURANCE REQUIREMENTS

Before Loan disbursal and issuance of a notice to proceed, Borrower shall deliver to Lender certificate(s) of insurance, and shall maintain such coverage in full force and effect during construction of the Project.

1. Minimum Limits of Insurance

General Liability Limits: $2,000,000 General Aggregate and $1,000,000 per occurrence for bodily injury, personal injury, and property damage.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer’s Liability Limits: $1,000,000 Each Accident

2. General Conditions

During the term of this Agreement and without limiting the Borrower’s indemnification of the City, the Borrower shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the Borrower but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The City, their boards, officers, agents and employees shall be included as additional insured’s by separate endorsement in all liability insurance policies except: Workers’ Compensation/ Employer’s Liability and second-party Legal Liability coverages (such as Fire Legal) and Owners and Contractors Protective Liability, in which latter case the City shall be the named insured. The City shall be named loss payee as its interest may appear in all required property, fidelity or surety coverages.
b. **Insurance Requirements**

All insurance required hereunder shall conform to City requirements established by charter, ordinance or policy and shall be filed with the City Administrative Services Division for review.

During the period of construction, Borrower must obtain or cause to be obtained a builder’s risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the City as loss payee as its interest may appear.

After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender’s loss payable endorsement listing the City and Borrower as the loss payees as their interests may appear. This policy must remain in effect throughout the term of the Loan.

c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by City and shall not call on the City’s insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the City.

e. **30-Day Notice**

With respect to the interests of City such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the City by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to and approved by the City Attorney and the City Administrative Services Division prior to commencement of any work or tenancy under this Agreement.
g. **Acceptable Evidence**

The appropriate City special endorsement forms are the preferred forms of evidence of insurance. Alternatively, Borrower may submit two (2) certified copies of the full policy or other evidence acceptable to the City Attorney containing language that complies with subparagraphs (a) through (f) above. With respect to liability insurance, either a signed copy of the policy declaration page or a letter from Borrower's insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the City as specified in subparagraph "e" of this section will satisfy this requirement.

h. **Severability of Interest**

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

i. **Renewal**

Once the insurance has been approved by the City, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (h) above, must be submitted.

j. **Proceeds**

All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the construction lender(s) and the City, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the construction lenders, second to repay the Loan, and third to repay the Loan to Borrower from the City. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, the Borrower shall have the right to rebuild the Project, and to use manner that provides adequate security to the City for repayment of the Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar
arrangement, and (c) no material default then exists under the Loan. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the Loan.

3. Worker's Compensation

By signing this Agreement, the Borrower hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the Borrower to comply with such provisions before commencing the performance of the work of this Agreement.

4. Aggregate Limits/Blanket Coverage

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the Borrower not related to this Agreement, the Borrower shall give the City prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Borrower's best judgment may diminish the protection such insurance affords City. Further, Borrower shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The City may specify a minimum acceptable aggregate for each line of coverage required.

5. Modification of Coverage

Upon advice from the City Administrative Services Division, the City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Borrower forty-five (45) days advance written notice of such change. If such change should result in substantial additional cost to Borrower, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.

6. Failure to Procure Insurance

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the City. Non-availability or non-affordability must be documented by a letter from Borrower's insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.
Within the foregoing constraints, Borrower's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the City may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the City's interests and pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Borrower to the City upon demand or it may offset the cost of the premiums against any monies due to the Borrower from the City.

7. **Underlying Insurance**

Borrower shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower’s and City's interests and for ensuring that such persons comply with any applicable insurance statutes. Borrower is encouraged to seek professional advice in this regard.
EXHIBIT “D”

HUD REQUIREMENTS ASSOCIATED WITH THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

I. RECORDKEEPING

A. RECIPIENT shall establish and maintain sufficient records in their original form to enable HUD to determine whether RECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the RECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the RECIPIENT until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The RECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The RECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project
architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

   a. The income characteristics of families and unrelated individuals in the service area.

   b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

      (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

      (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

      (iii). Data showing the size and annual income of the family of each person receiving the benefit.

   c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the RECIPIENT shall provide:

      (i). A copy of a written agreement from each assisted business containing:

      (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;

      (iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,
(iv) A description of actions to be taken by RECIPIENT and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;

(ii). Certification that the activity was designed to address the urgent need;
(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to RECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that RECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the RECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and RECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:

a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.
b. Data on employment in each of the RECIPIENT's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of RECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the RECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the RECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.

II. REPORTS

A. RECIPIENT shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:
1. An annual report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on RECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. RECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If RECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to RECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), RECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by RECIPIENT is to be returned to CITY or retained by RECIPIENT. Where program income is to be retained by RECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When RECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, RECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.

A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and RECIPIENT shall take all required actions necessary to comply with:
1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

RECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. RECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report or document. RECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY’s environmental findings are based. RECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised RECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, RECIPIENT shall make available for examination all of its records.

B. RECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of RECIPIENT’s fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. RECIPIENT’s expending funds of $300,000 or more in a year in Federal awards shall have a single or program-specific audit
conducted for that year in accordance with the provisions of OMB Circular A-133.

2. RECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of RECIPIENT's fiscal year, shall submit a copy of the report to CITY.

C. In the event RECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for RECIPIENT's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily

2. Withholding or disallowing overhead costs

3. Suspending Federal awards until the audit is conducted; or

4. Terminating the Federal award
VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to RECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

RECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the RECIPIENT’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The RECIPIENT's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing if is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,

2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A,B,C,D,E, and F.
XI. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. RECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, RECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by RECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246 and implementing regulations at 41 CFR Part 60, the RECIPIENT, for itself and its successors and assigns, agrees that:

A. RECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. RECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be
limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. RECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. RECIPIENT shall send a notice to each labor union or representative of workers with which RECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of RECIPIENT's commitments under Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. RECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. RECIPIENT shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to RECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of RECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and RECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. RECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of
these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. RECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read "During the performance of this Contract, RECIPIENT agrees as follows:" and the term "RECIPIENT" shall be changed to "Contractor."

H. Except as provided in California Government Code Section 12940, et seq., RECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The work to be performed under this Loan Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereeto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no
contractual or other disability which would prevent them from complying with these requirements.

C. RECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. RECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or RECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. RECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or RECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject RECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION

There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall RECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.
XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

A. RECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."
3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

RECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. RECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. RECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. RECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


16. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, RECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. RECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.
XVIII. CONFLICT OF INTEREST

No member, officer or employee of RECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. RECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) RECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.
4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, RECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve RECIPIENT of its obligations, if any, to require payment of the higher rates. RECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. RECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – RECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. RECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State
Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. RECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.

F. RECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER'S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the RECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246

RECIPIENT shall comply with the full provisions of Executive Order 11246 in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246 non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

RECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
DATED: June 18, 2014
($30,000 OF CDBG FUNDS)
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION

BORROWER

LOAN AGREEMENT

DATED:  June 18, 2014

($30,000 OF CDBG FUNDS)
LOAN AGREEMENT

($30,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of June 18, 2014, by and between the City of Stockton, a municipal corporation ("CITY"), and Stockton Shelter for the Homeless, a nonprofit organization ("BORROWER").

REICITALS

A. CITY has determined it necessary and appropriate to support the Stockton Shelter for the Homeless in their effort to provide food, emergency shelter, clothing, and personal hygiene items to single adults and families;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $30,000 to pay for a portion of the fixture replacements and repairs to the nine bathrooms at the family shelter, at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the bathroom improvement project will allow families to continue receiving shelter services and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, and a promissory note. A deed of trust is not required, as the property is subleased to BORROWER from CITY through a ten-year sublease expiring on December 31, 2017. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Stockton Shelter for the Homeless, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit “B,” which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $30,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $30,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit “B,” which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCAPROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum
byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12  "HUD" means the United States Department of Housing and Urban Development.

1.13  "LOAN" means the CDBG LOAN.

1.14  "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15  "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16  "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17  "PROJECT" means the storage building construction at the Men’s Shelter and drop in center at the BORROWER’S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT")

1.18  "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19  "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1  AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $30,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2  SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any
financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $30,000 according to the following terms:

A. A forgivable loan in the amount of $30,000;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $3,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUERCE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $30,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $30,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORRWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any
Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be
constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;
I. **Cross Default Provision.** Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. **Lead-Based Paint.** In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 **CITY'S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY'S interest in seeing the PROJEJCT developed in a timely manner (including the authority to
take any remedial actions with respect to Hazardous Materials that CITY or the receiver
deems necessary to comply with Hazardous Materials Laws or to render the
PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any
condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any
monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions
herein, pursue the rights and remedies permitted under California Civil Code Section
2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any
of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance
by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants
(1) that it has access to professional advice and support to the extent necessary to
enable BORROWER to fully comply with the terms of the Loan Documents, and to
otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in
good standing under the laws of the State of California, (3) that it has the full power and
authority to undertake the PROJECT and to execute the Loan Documents, (4) that the
persons executing and delivering the Loan Documents are authorized to execute and
deliver such documents on behalf of BORROWER, and (5) that BORROWER will
perform the necessary predevelopment tasks to enable construction of the PROJECT to
begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and
accountable for the performance of the terms and conditions of this agreement,
notwithstanding that BORROWER may employ consultants to perform any of its
activities. BORROWER will be responsible for complying with federal program and
funding requirements of the U.S. Department of Housing and Urban Development
"HUD. As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD
requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise
provided for in this Loan Agreement, BORROWER shall maintain and submit records to
CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.
11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

**COPY TO:**
City of Stockton Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director

**BORROWER:**
Stockton Shelter for the Homeless
P.O. Box 4803
Stockton, CA 95204
Attn: Executive Director

11.13 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.14 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 **ASSIGNMENT AND ASSUMPTION.** BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is
specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinafore written.

APPROVED AS TO FORM: STOCKTON SHELTER FOR THE HOMELESS, a nonprofit benefit corporation

By: ____________________________  By: ____________________________
    Borrower’s Counsel

    (Signature)

Margaret Burns
Printed Name

Dir. of Operations & Fund Development

ATTEST:

CITY OF STOCKTON, a municipal corporation

By: ____________________________  By: ____________________________
   KURT WILSON
   CITY MANAGER

BONNIE PAGE
CITY CLERK

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ____________________________
   ASSISTANT/DEPUTY CITY ATTORNEY
THE CITY OF STOCKTON

AND

ALCOHOL AND DRUG AWARENESS PROGRAM,
A NON-PROFIT BENEFIT CORPORATION

DOING BUSINESS AS NEW DIRECTIONS,
A NON-PROFIT ORGANIZATION

LOAN AGREEMENT

DATED: December 19, 2014

($55,000 OF CDBG FUNDS)
LOAN AGREEMENT

($55,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of December 19, 2014, by and between the City of Stockton, a municipal corporation ("CITY"), and Alcohol and Drug Awareness Program, a non-profit benefit corporation, dba New Directions, a nonprofit organization ("BORROWER").

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A. CITY has determined it is necessary and appropriate to support the Alcohol and Drug Awareness Program in their effort to provide substance abuse treatment and education to homeless and low-income residents of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $55,000 to pay for security and energy efficiency improvements which will help the long-term sustainability of the substance abuse treatment programs provided to homeless and low-income individuals by BORROWER at its facility located at 1981 Cherokee Road, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds will allow the continuation of substance abuse treatment services to low-income residents of the community and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to NEPA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Alcohol and Drug Awareness Program, a non-profit benefit corporation, dba New Directions, a nonprofit organization, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $55,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $55,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.
1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT, the CDBG NOTE, and the DEED OF TRUST, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the security and energy efficiency improvements to buildings which provide housing and substance abuse treatment to homeless and low-income individuals at the BORROWER’S facility located at 1981 Cherokee Road, Stockton, California.

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $55,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building improved with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.
2.3 **TERM OF LOAN.** Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If the project is not completed thirty (30) days prior to the anniversary date, the term may be extended for one additional year.

2.4 **USE OF FUNDS.** CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 **LOAN PROVISIONS.** CITY agrees to provide BORROWER with the total of $55,000 according to the following terms:

   A. A forgivable loan in the amount of $55,000;

   B. Interest rate shall be at a rate of 0%;

   C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

   D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

   E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 **REPAYMENT TERMS.** CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the PROJECT; and (2) provide substance abuse treatment to low- and very low-income people in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $5,500 shall be due annually each anniversary date thereafter until fully paid.

2.7 **NON-RECOUCE OBLIGATION.** The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undispursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $55,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $55,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4 – PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.
4.3 **PREVAILING WAGES.** To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORRWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 **PLANS AND SPECIFICATIONS.** Before commencement of construction, BORRWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORRWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

**ARTICLE 5 –DEVELOPMENT OF PROJECT**

5.1 **CONFIGURATION OF THE PROJECT.** BORRWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 **COMMENCEMENT OF CONSTRUCTION.** BORRWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORRWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORRWER that all predevelopment requirements have been met.

5.3 **COMPLETION OF CONSTRUCTION.** Following commencement of construction, BORRWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of BORRWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORRWER to enable BORRWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.
5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information.
reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably
5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions.
An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.
BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWS, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.
8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.
9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to
commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of
final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

1. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to
comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “D” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.
11.4 **CONFLICTS OF INTEREST.** BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 **POLITICAL ACTIVITY.** None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 **TERMS OF THIS AGREEMENT.** The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not
be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY:
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO:
Economic Development Department
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Director

BORROWER:
Alcohol and Drug Awareness Program
1981 Cherokee Road
Stockton, CA 95205
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release.
from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’S City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 NO THIRD-PARTY BENEFICIARIES. All of the provisions of the Loan Documents are intended to bind and benefit only the CITY and the BORROWER, and their respective permitted successors and assigns. It is not intended that any provisions of this Loan Agreement benefit, and shall not be construed that any provisions of this Loan Agreement benefit nor shall said agreement be enforceable by any tenant, prospective tenant, creditor, contractor, or other third party.

11.22 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
11.23 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

APPROVED AS TO FORM: Alcohol and Drug Awareness Program, a nonprofit benefit corporation

By: 
Borrower’s Counsel

By: 
Dale Benner

Printed Name

Executive Director

Title

City of Stockton, a municipal corporation

ATTEST:

By: 
Kurt O. Wilson
City Manager

APPROVED AS TO FORM:

JOHN M. LUEBERKE
City Attorney

By:

City Clerk

By:
THE CITY OF STOCKTON

AND

WOMEN'S CENTER – YOUTH & FAMILY SERVICES
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($40,000 OF CDBG FUNDS)
LOAN AGREEMENT
($40,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of June 21, 2016, by and between the City of Stockton, a municipal corporation ("CITY"), and the Women’s Center – Youth & Family Services, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Women’s Center – Youth & Family Services in their effort to successfully operate an emergency shelter for battered women and their children in the City of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $40,000 to pay for a basement remodel and water damage repair, at the BORROWER’S facility located at 905 N. California Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the basement remodel and water damage repair project will support the emergency shelter for battered women and their children in Stockton, and fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a promissory note, and a deed of trust. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Women's Center – Youth & Family Services, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $40,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $40,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum
byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the kitchen improvement project at the Women's Center – Youth & Family Services at the BORROWER'S facility located at 905 N. California Street, Stockton, California (the "PROJECT").

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $40,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any
financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 **TERM OF LOAN.** Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 **USE OF FUNDS.** CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B."

2.5 **LOAN PROVISIONS.** CITY agrees to provide BORROWER with the total of $40,000 according to the following terms:

   A. A forgivable loan in the amount of $40,000;
   
   B. Interest rate shall be at a rate of 0% ;
   
   C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;
   
   D. BORROWER shall execute a Promissory Note and Deed of Trust in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

   E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 **REPAYMENT TERMS.** CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $4,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 **NON-RECOUSE OBLIGATION.** The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undistributed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $40,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $40,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVERSEABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "C" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "C" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.
9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY
or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;
I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJEJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver
deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 **BORROWER'S REMEDIES.** Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

**ARTICLE 11. GENERAL PROVISIONS**

11.1 **BORROWER'S WARRANTIES.** BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 **HUD REQUIREMENTS.** BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “D” which is incorporated as a part of this Agreement.

11.3 **PROJECT MONITORING AND EVALUATION.** Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.
11.4 **CONFLICTS OF INTEREST.** BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 **POLITICAL ACTIVITY.** None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 **TERMS OF THIS AGREEMENT.** The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 **GOVERNING LAW.** The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 **ATTORNEYS’ FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys’ fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.
11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY:
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO:
City of Stockton Economic Development Department
401 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

BORROWER:
Women’s Center – Youth & Family Services
620 N. San Joaquin Street
Stockton, CA 95202
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.
11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By: _____________________________
   Borrower’s Counsel

WOMEN’S CENTER – YOUTH & FAMILY SERVICES, a nonprofit benefit corporation

By: _____________________________
   Joelle Gomez
   Printed Name
   CEO
   Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

By: _____________________________
   BONNIE PAGE
   CITY CLERK

BY: _____________________________
   KURT WILSON
   CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: _____________________________
   ASSISTANT/DEPUTY CITY ATTORNEY
THE CITY OF STOCKTON

AND

WOMEN'S CENTER – YOUTH & FAMILY SERVICES
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($40,000 OF CDBG FUNDS)
LOAN AGREEMENT
($40,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of June 21, 2016, by and
between the City of Stockton, a municipal corporation ("CITY"), and the Women's
Center – Youth & Family Services, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the
Women’s Center – Youth & Family Services in their effort to successfully operate an
emergency shelter for battered women and their children in the City of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a
Community Development Block Grant ("CDBG") loan in the amount of $40,000 to pay
for a basement remodel and water damage repair, at the BORROWER’S facility located
at 905 N. California Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the basement
remodel and water damage repair project will support the emergency shelter for
battered women and their children in Stockton, and fulfillment of the terms of this
AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of
its residents, and in accordance with the public purpose and provisions of the applicable
State and Federal laws and requirements under which the said PROJECT has been
undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT
pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58
and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among
other things, a loan agreement, a promissory note, and a deed of trust. These
instruments are intended to secure repayment and performance of other covenants
contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements,
obligations, and representations, and in further consideration for the making of the
CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Women's Center – Youth & Family Services, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $40,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $40,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum
byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the kitchen improvement project at the Women’s Center – Youth & Family Services at the BORROWER’S facility located at 905 N. California Street, Stockton, California (the “PROJECT”)

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit “A,” which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $40,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the building renovated with the proceeds of the CDBG Loan shall be security ("Security") for repayment of the Loan. The Note shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in the Security. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any
financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit “B.”

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $40,000 according to the following terms:

A. A forgivable loan in the amount of $40,000;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note and Deed of Trust in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $4,000 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER’S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER’S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $40,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $40,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) 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 CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection "J."

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "D," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit “C” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “C” until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.
9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims, demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY.
or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;
I. **Cross Default Provision.** Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. **Lead-Based Paint.** In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 **CITY’S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver
deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development "HUD." As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit "D" which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.
11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.
11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO: City of Stockton Economic Development Department
401 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

BORROWER: Women’s Center – Youth & Family Services
620 N. San Joaquin Street
Stockton, CA 95202
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.
11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’S City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’S City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By: __________________________
Borrower’s Counsel

WOMEN’S CENTER – YOUTH & FAMILY SERVICES, a nonprofit benefit corporation

By: __________________________
Printed Name
Joelle Gomez
Title
CEO

ATTEST:

CITY OF STOCKTON, a municipal corporation

BY: __________________________
BY: __________________________
BONNIE PAGE
KURT WILSON
CITY CLERK
CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: __________________________
ASSISTANT/DEPUTY CITY ATTORNEY
EXHIBIT “A”

Legal Description

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

The North 30 feet of Lot 10 and all of Lot 12, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 139-180-42
Also known as 905 N. California Street
EXHIBIT “B”
WCYFS Basement Remodel & Water Damage
Project Budget

The following cost includes labor, equipment and materials necessary to complete the
improvements at the above location per the attached space plan and specs, and building standards.

**Basement and Concrete on west side of Building only**

*Rough scope of work includes:*

- Abate all of the affected areas as needed to obtain a third party clearance.
  
  Abatement: 18,969.64

- Replacing all abated flooring, trim, drywall, insulation, shelving and paint.
- Reinstall existing cabinets, countertops and restroom fixtures in abated areas.
  
  Reconstruction: 38,390.00

- Remove concrete on west side of the building.
- Install lift station, leach lines, new concrete with curb and drainage channel per drawing.
  
  Site Work: 48,111.60

**Total: $105,471.24**

**Additional Work:**

*Rough scope of work includes:*

- Supply and install new open face cabinet and granite countertops.
- Supply and install all new plumbing fixtures in basement.
- Rewire basement electrical.

**Additional work not to exceed $50,000.00***

**Scope of additional work may be limited based on “not to exceed” total.**

**Total: $155,471.24**

Funded by City of Stockton CDBG: $40,000
Funded by Other Sources: $115,471.24
EXHIBIT C
INSURANCE REQUIREMENTS

Before disbursal of funds BORROWER shall deliver to CITY certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during the term of this agreement.

1. Minimum Limits of Insurance

GENERAL LIABILITY insurance shall include Bodily Injury, Personal Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer's Liability Limits: $1,000,000 each Accident

2. General Conditions

During the term of this Agreement and without limiting BORROWER'S indemnification of the CITY, the BORROWER shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the BORROWER but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The CITY, their boards, officers, agents and employees shall be included as additional insured's by separate endorsement in all liability insurance policies except: Workers' Compensation/ Employer's Liability.

b. Insurance Requirements

All insurance required hereunder shall conform to CITY requirements established by charter, ordinance or policy and shall be filed with the City Risk Management Division for review.

c. Primary Insurance
Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on the CITY's insurance for contributions.

d. Admitted Carrier/Licensed California Broker

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the CITY.

e. 30-Day Notice

With respect to the interests of CITY such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the CITY by the carrier(s).

f. Prior Approval

Evidence of insurance shall be submitted to the City Risk Management Division and approved by the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. Severability of Interest

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

h. Renewal

Once the insurance has been approved by the CITY, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (g) above, must be submitted.

3. Worker's Compensation

By signing this Agreement, the BORROWER hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the BORROWER to comply with such provisions before
commencing the performance of the work of this Agreement.

4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the BORROWER not related to this Agreement, the BORROWER shall give the CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in BORROWER’S best judgment may diminish the protection such insurance affords CITY. Further, BORROWER shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The CITY may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Risk Management Division, the CITY reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the CORPORATION thirty (30) days advance written notice of such change. If such change should result in substantial additional cost to BORROWER, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. Non-availability or non-affordability must be documented by a letter from BORROWER’S insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, BORROWER’S failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the CITY may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the CITY’s interests and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the BORROWER to the CITY upon demand or it may offset the cost of the premiums against any monies due to the BORROWER from the CITY.

7. **Underlying Insurance**

BORROWER shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect BORROWER’S and
CITY's interests and for ensuring that such persons comply with any applicable insurance statutes. BORROWER is encouraged to seek professional advice in this regard.
I. RECORDKEEPING

A. BORROWER ("SUBRECIPIENT") shall establish and maintain sufficient records in their original form to enable HUD to determine whether SUBRECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the SUBRECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the Borrower until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The SUBRECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The SUBRECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the
eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the SUBRECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by Subrecipient and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person’s family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to SUBRECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that SUBRECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the SUBRECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and SUBRECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:
a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the SUBRECIPIENT’s operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission’s EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women’s business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of SUBRECIPIENT’s affirmative steps to assure that minority business and women’s business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the SUBRECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
II. REPORTS

A. Subrecipient shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on SUBRECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. SUBRECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If SUBRECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to SUBRECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), SUBRECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by SUBRECIPIENT is to be returned to CITY or retained by SUBRECIPIENT. Where program income is to be retained by SUBRECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When SUBRECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, SUBRECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.
A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and SUBRECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

SUBRECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. SUBRECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report of document. SUBRECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY’s environmental findings are based. SUBRECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised SUBRECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, SUBRECIPIENT shall make available for examination all of its records.
B. SUBRECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of SUBRECIPIENT's fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. SUBRECIPIENT's expending funds of $750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR, Part 200.

2. SUBRECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of SUBRECIPIENT's fiscal year, shall submit a copy of the report to CITY.

C. In the event SUBRECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for Subrecipient's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily.
2. Withholding or disallowing overhead costs

3. Suspending Federal awards until the audit is conducted; or

4. Terminating the Federal award

VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;

2. date of acquisition;

3. the acquisition cost or assigned value to the program; and,

4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to SUBRECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

SUBRECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is
prohibited in the SUBRECIPIENT's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The SUBRECIPIENT's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,
2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A,B,C,D,E, and F.

XI. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. SUBRECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, SUBRECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by SUBRECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246, as amended, and implementing regulations at 41 CFR Part 60, the Borrower, for itself and its successors and assigns, agrees that:

A. SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap,
medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. SUBRECIPIENT shall send a notice to each labor union or representative of workers with which SUBRECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of SUBRECIPIENT's commitments under Executive Order 11246, as amended, of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. SUBRECIPIENT shall comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. SUBRECIPIENT shall furnish all information and reports required by Executive Order 11246, as amended, of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to SUBRECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
F. In the event of SUBRECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and SUBRECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246, as amended, of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. SUBRECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. SUBRECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read “During the performance of this Contract, SUBRECIPIENT agrees as follows:” and the term “SUBRECIPIENT” shall be changed to “Contractor.”

H. Except as provided in California Government Code Section 12940, et seq., SUBRECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The work to be performed under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD
and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. SUBRECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. SUBRECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or SUBRECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. SUBRECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or SUBRECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject SUBRECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION
There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall SUBRECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

A. SUBRECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made
and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased.

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

SUBRECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. SUBRECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. SUBRECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan
Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. SUBRECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975, as amended.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


16. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, SUBRECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. SUBRECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST

No member, officer or employee of SUBRECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. SUBRECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) SUBRECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:
1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.

4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, SUBRECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligations, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full in all such contracts
subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. SUBRECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – SUBRECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. SUBRECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. SUBRECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.

F. SUBRECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.
XXII. WORKER’S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the SUBRECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246, as amended,

SUBRECIPIENT shall comply with the full provisions of Executive Order 11246, as amended, in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246, as amended, non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($60,000 OF CDBG FUNDS)
FORGIVABLE LOAN AGREEMENT
($60,000—CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of February 7, 2015, by and between the City of Stockton, a municipal corporation ("CITY"); and the Stockton Shelter for the Homeless a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Stockton Shelter for the Homeless in their effort to successfully administer direct emergency services and shelter for the homeless in Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $60,000 to pay for a new HVAC heating and air conditioning system at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the HVAC project will support the emergency shelter in Stockton, and fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement and a promissory note. A deed of trust is not required, as the property is leased to BORROWER from the State of California. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Stockton Shelter for the Homeless, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "A," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $60,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $60,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum
byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the HVAC project at the Stockton Shelter for the Homeless at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT")

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $60,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the Note and this Loan Agreement shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in all equipment, accounts, and general tangibles, now owned or hereafter acquired by BORROWER. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any
financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "A."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $60,000 according to the following terms:

A. A forgivable loan in the amount of $60,000;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $3,884.20 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $60,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $60,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "C," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "B" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "B" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNIFICATION. The BORROWER shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the BORROWER or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney's fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the BORROWER or any of its employees or agents in the performance of this contract. The BORROWER'S obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.

If the BORROWER should subcontract all or any portion of the work to be performed under this agreement, the BORROWER shall require each sub-contractor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the
available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

**ARTICLE 9. HAZARDOUS MATERIALS**

9.1 **REPRESENTATIONS AND WARRANTIES.** BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 **NOTIFICATION TO CITY.** BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 **USE AND OPERATION OF PROJECT OR PROPERTY.** Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or the PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 **REMEDIAL ACTIONS.** If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination,
cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.

9.5      RIGHT OF CONTEST. BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6      ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

ARTICLE 10. DEFAULT AND REMEDIES

10.1      EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to
completion of the PROJECT for a period of more than fifteen (15) continuous calendar
days; (5) any material adverse change in the condition of BORROWER or the
PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be
constructed by the scheduled completion date according to the terms of this Loan
Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY
or service on CITY of any stop notice relating to the Loan and the continuance of the
claim of lien or stop notice for twenty (20) days after such filing or service without
payment, discharge, or satisfaction as provided for in this Loan Agreement; (7)
BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide
records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply
with any federal, state, or local laws or applicable CITY restrictions governing
construction, including but not limited to provisions of this Loan Agreement pertaining to
affirmative action and equal employment opportunity, minority and female-owned
business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of
characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition
of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior
written approval that are prohibited under this Loan Agreement; (3) any material
adverse change in the condition of BORROWER or the PROJECT or permanent
financing or funding for the PROJECT that gives CITY reasonable cause to believe that
the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or
continuous breach by BORROWER of any material obligations on BORROWER
imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or
continuous breach by BORROWER of any material obligations on BORROWER
imposed by any other agreements with respect to the financing, development, or
operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such
agreement;

F. Representations and Warranties. A determination by CITY that any
of BORROWER'S representations or warranties made in the Loan Documents, any
statements made to CITY by BORROWER, or any certificates, documents, or
schedules supplied to CITY by BORROWER were untrue in any material respect when
made, or that BORROWER concealed from or failed to disclose a material fact from
CITY;

G. Damage to PROPERTY. Material damage or destruction to the
PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take
steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any
corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for
bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any
involuntary filing brought by another party before the earlier of final relief or sixty (60)
days after the filing; (2) making a general assignment for the benefit of creditors; (3)
applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to
obtain a full dismissal of any such involuntary application brought by another party
before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5)
failure, inability or admission in writing of its inability to pay its debts as they become
due;

I. Cross Default Provision. Any default in payment or any other terms
of any other approved security interest shall constitute a default under the CDBG Note;
and

J. Lead-Based Paint. In the event BORROWER allows occupancy of
dwelling unit before lead-based paint clearance is obtained, if required, pursuant to
Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be
no notice or cure periods for Events of Defaults which are monetary. For Events of
Default which are not exclusively monetary, CITY shall give written notice to
BORROWER of any Event of Default by specifying: (a) the nature of the event or
deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any
action to cure is possible, and (c) a date, which shall not be less than thirty (30)
calendar days after the date of receipt of the notice or the date the notice was refused,
by which such action to cure must be taken.

10.3 CITY'S REMEDIES. Upon the happening of an Event of Default by
BORROWER and a failure to cure said Event of Default within the time specified in the
notice of Event of Default (if a notice is required), CITY'S obligation to disburse Loan
proceeds shall terminate, and CITY may also, in addition to other rights and remedies
permitted by the Loan Documents or applicable law, proceed with any or all of the
following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal
amount outstanding under the CDBG Note, as well as any other monies advanced to
BORROWER by CITY including administrative costs, shall immediately become due
and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific
performance by BORROWER of the terms and conditions of the Loan Documents,
and/or (2) enjoining, abating, or preventing any violation of said terms and conditions,
and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the
principal amount outstanding under the CDBG Note, as well as any other monies
advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its
judgment to complete construction of the PROJECT, including without limitation (1)
making changes in the Plans and Specifications or other work or materials with respect
to the PROJECT, (2) entering into, modifying, or terminating any contractual
arrangements (subject to CITY'S right at any time to discontinue work without liability),
and (3) taking any remedial actions with respect to Hazardous Materials that CITY
deems necessary to comply with Hazardous Materials Laws or to render the
PROPERTY suitable for occupancy;
E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “C” which is incorporated as a part of this Agreement.
11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated
reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 **TIME.** Time is of the essence in these Loan Documents.

11.11 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

**COPY TO:**
City of Stockton Economic Development Department
400 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

**BORROWER:**
Stockton Shelter for the Homeless
P.O. Box 4803
Stockton, CA 95204
Attn: Executive Director

11.13 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.14 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 **ASSIGNMENT AND ASSUMPTION.** BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party,
except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM: STOCKTON SHELTER FOR THE HOMELESS, a nonprofit benefit corporation

By: ____________________________
Borrower's Counsel

By: ____________________________
Printed Name

CEO

Title

ATTEST: CITY OF STOCKTON, a municipal corporation

BY: CHRISTIAN CLEGG
DEPUTY CITY MANAGER/INTERIM CITY CLERK

BY: KURT O. WILSON
CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ____________________________
ASSISTANT/DEPUTY CITY ATTORNEY
THE CITY OF STOCKTON

AND

STOCKTON SHELTER FOR THE HOMELESS
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($60,000 OF CDBG FUNDS)
FORGIVABLE LOAN AGREEMENT

($60,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of February 1, 2019, by and between the City of Stockton, a municipal corporation ("CITY"), and the Stockton Shelter for the Homeless a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Stockton Shelter for the Homeless in their effort to successfully administer direct emergency services and shelter for the homeless in Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $60,000 to pay for a new HVAC heating and air conditioning system at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the HVAC project will support the emergency shelter in Stockton, and fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement and a promissory note. A deed of trust is not required, as the property is leased to BORROWER from the State of California. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Stockton Shelter for the Homeless, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit “A,” which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $60,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $60,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit “A,” which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum
byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the HVAC project at the Stockton Shelter for the Homeless at the BORROWER'S facility located at 411 South Harrison Street, Stockton, California (the "PROJECT")

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $60,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the Note and this Loan Agreement shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in all equipment, accounts, and general tangibles, now owned or hereafter acquired by BORROWER. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any
financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown on Exhibit "A."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $60,000 according to the following terms:

A. A forgivable loan in the amount of $60,000;
B. Interest rate shall be at a rate of 0%;
C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;
D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and
E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $3,884.20 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUPSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undischarged Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $60,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $60,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORRWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility.
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 **BARRIERS TO THE DISABLED.** The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 **LEAD-BASED PAINT.** If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "C," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit "B" to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit "B" until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNIFICATION. The BORROWER shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the BORROWER or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney's fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the BORROWER or any of its employees or agents in the performance of this contract. The BORROWER'S obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.

If the BORROWER should subcontract all or any portion of the work to be performed under this agreement, the BORROWER shall require each sub-contractor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the
available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER’S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination,
cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER’S right of contest below.

9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER’S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER’S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY’S prior written consent; (2) BORROWER’S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to
completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER'S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER'S or any corporation controlling BORROWER'S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party
before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY'S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY'S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY'S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;
E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “C” which is incorporated as a part of this Agreement.
11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.

11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS’ FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated
reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.

11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
425 North E. Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO: City of Stockton Economic Development Department
400 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

BORROWER: Stockton Shelter for the Homeless
P.O. Box 4803
Stockton, CA 95204
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party,
except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’s City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY’s City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM: STOCKTON SHELTER FOR THE HOMELESS, a nonprofit benefit corporation

By: ____________________________
   Borrower's Counsel

By: ____________________________
   Printed Name
   John McMillan
   Title
   CEO

ATTEST: CITY OF STOCKTON, a municipal corporation

BY: ____________________________
   Christian Clegg
   Deputy City Manager/Interim City Clerk

BY: ____________________________
   Kurt O. Wilson
   City Manager

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ____________________________
   Assistant/Deputy City Attorney
**EXHIBIT A**

Stockton Shelter for the Homeless  
Project Budget

<table>
<thead>
<tr>
<th>HVAC Project</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor &amp; Materials, including building permit fees, air conditioning units, engineering, connections to existing ductwork, and roof penetrations repairs.</td>
<td>$60,000</td>
</tr>
</tbody>
</table>
NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

Exhibit 1:
Insurance Requirements for Most Contracts
(Not for Professional Services or Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation**: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:
Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). Additional insured Name of Organization shall read “City of Stockton, its officers, officials, employees, and volunteers.” Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the Contractor’s insurance coverage shall be endorsed as primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor’s insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions
Self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

**Verification of Coverage**

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

**Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

**Special Risks or Circumstances**

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Certificate Holder Address**

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton  
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202
The City of Stockton is now using www.PINSAdvantage.com to track Insurance Certificates and all related documents.

WHAT IS THE PROCESS?

The PINS system starts with The City of Stockton. A Stockton User logs into PINS and emails a request for proof of insurance to the Vendor/Contractor. The Vendor/Contractor forwards the request email to their Insurance Agent(s). The Insurance Agent(s) logs into www.PINSAdvantage.com and completes the insurance certificate online.

Note: Vendors will receive the insurance request email from: no-reply@pinsadvantage.com

Thank you for your compliance!
EXHIBIT C

HUD REQUIREMENTS ASSOCIATED WITH THE USE OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CFDA #14.218 FUNDS

I. RECORDKEEPING

A. BORROWER ("SUBRECIPIENT") shall establish and maintain sufficient records in their original form to enable HUD to determine whether SUBRECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the SUBRECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the Borrower until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The SUBRECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The SUBRECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for a least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the
eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the SUBRECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by Subrecipient and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to SUBRECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that SUBRECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the SUBRECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and SUBRECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:
a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the SUBRECIPIENT's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of SUBRECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the SUBRECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
II. REPORTS

A. Subrecipient shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on SUBRECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. SUBRECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If SUBRECIPIENT’s reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to SUBRECIPIENT, or to impose other sanctions, at CITY’s sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), SUBRECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by SUBRECIPIENT is to be returned to CITY or retained by SUBRECIPIENT. Where program income is to be retained by SUBRECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When SUBRECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, SUBRECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.
A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and SUBRECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

SUBRECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. SUBRECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report or document. SUBRECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY’s environmental findings are based. SUBRECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised SUBRECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, SUBRECIPIENT shall make available for examination all of its records.
B. SUBRECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of SUBRECIPIENT’s fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. SUBRECIPIENT’s expending funds of $750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR, Part 200.

2. SUBRECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of SUBRECIPIENT’s fiscal year, shall submit a copy of the report to CITY.

C. In the event SUBRECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor’s assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for Subrecipient’s failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily
2. Withholding or disallowing overhead costs
3. Suspending Federal awards until the audit is conducted; or
4. Terminating the Federal award

VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to SUBRECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

SUBRECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is
prohibited in the SUBRECIPIENT's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;
2. The SUBRECIPIENT’s policy of maintaining a drug-free workplace;
3. Any available drug counseling, rehabilitation, and employee assistance programs; and
4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and
2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or;
2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A, B, C, D, E, and F.

XII. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. SUBRECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, SUBRECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person’s race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by SUBRECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246, as amended, and implementing regulations at 41 CFR Part 60, the Borrower, for itself and its successors and assigns, agrees that:

A. SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap,
medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. SUBRECIPIENT shall send a notice to each labor union or representative of workers with which SUBRECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of SUBRECIPIENT's commitments under Executive Order 11246, as amended, of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. SUBRECIPIENT shall comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. SUBRECIPIENT shall furnish all information and reports required by Executive Order 11246, as amended, of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to SUBRECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
F. In the event of SUBRECIPIENT’s noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and SUBRECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246, as amended, of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. SUBRECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. SUBRECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read “During the performance of this Contract, SUBRECIPIENT agrees as follows:” and the term “SUBRECIPIENT” shall be changed to “Contractor.”

H. Except as provided in California Government Code Section 12940, et seq., SUBRECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The work to be performed under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD
and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. SUBRECPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. SUBRECPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or SUBRECPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. SUBRECPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or SUBRECPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject SUBRECPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION
There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall SUBRECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

A. SUBRECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."
2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

SUBRECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. SUBRECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. SUBRECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning
requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. SUBRECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975, as amended.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


17. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, SUBRECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. SUBRECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST

No member, officer or employee of SUBRECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. SUBRECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.
B. In all CDBG services solicitation, CITY’s Compliance Officer shall ensure that (whether by bid, RFP or RFQ) SUBRECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE’s and WBE’s.

2. Obtaining the Minority and Women’s Business Enterprises Registry from the CITY’s Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

(i). Any minority and women trade association publication;

(ii). Any local newspaper;

(iii). Any local minority paper;

(iv). Daily construction trade paper; and

(v). Local construction trade paper.

4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, SUBRECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD
requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligations, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. SUBRECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – SUBRECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. SUBRECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. SUBRECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.
F. SUBRECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER'S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the SUBRECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246, as amended,

SUBRECIPIENT shall comply with the full provisions of Executive Order 11246, as amended, in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246, as amended, non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
EXHIBIT E
GRANTEE CDBG CERTIFICATIONS
CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official: ___________________________ Date: 5-10-16
Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available;

2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2014, 2015, 2016, (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may
be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

**Excessive Force** -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

**Compliance With Anti-discrimination laws** -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

**Lead-Based Paint** -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

**Compliance with Laws** -- It will comply with applicable laws.

Signature/Authorized Official

City Manager

Date

Title
Specific HOME Certifications

The HOME participating jurisdiction certifies that:

**Tenant Based Rental Assistance** -- If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

**Eligible Activities and Costs** -- it is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

**Appropriate Financial Assistance** -- before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing.

Signature/Authorized Official

Date

City Manager
Title
ESG Certifications

The Emergency Solutions Grants Program Recipient certifies that:

**Major rehabilitation/conversion** – If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

**Essential Services and Operating Costs** – In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

**Renovation** – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

**Supportive Services** – The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

**Matching Funds** – The jurisdiction will obtain matching amounts required under 24 CFR 576.201.

**Confidentiality** – The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

**Homeless Persons Involvement** – To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted under the program.

**Consolidated Plan** – All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan.
Discharge Policy – The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

[Signature]
Signature/Authorized Official

5-10-16
Date

City Manager
Title
APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
THE CITY OF STOCKTON

AND

EMERGENCY FOOD BANK OF SAN JOAQUIN COUNTY
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($38,842 OF CDBG FUNDS)
LOAN AGREEMENT

($38,842—CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of March 27, 2019, by and between the City of Stockton, a municipal corporation ("CITY"), and the Emergency Food Bank of San Joaquin County, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Emergency Food Bank of San Joaquin County in their effort to successfully administer service programs which provide nutritious food assistance to those going hungry in Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $38,842 to pay for a five-year lease-to-own installation and servicing of an electrified security fence along the rear perimeter of the BORROWER'S facility located at 7 W. Scotts Avenue, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the security fence project will support the food bank in Stockton, and fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement and a promissory note. A deed of trust is not required, as the property is leased to BORROWER from the City of Stockton. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Emergency Food Bank of San Joaquin County, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "A," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $38,842 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $38,842 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants,"
"contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the electrified security fence project at the Emergency Food Bank of San Joaquin County at the BORROWER'S facility located at 7 W. Scotts Avenue, Stockton, California (the "PROJECT")

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $38,842 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") evidencing the terms of payment. To the maximum extent permitted by law, the Note and this Loan Agreement shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in all equipment, accounts, and general tangibles, now owned or hereafter acquired by BORROWER. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the
repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.

2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "A."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $38,842 according to the following terms:

A. A forgivable loan in the amount of $38,842;

B. Interest rate shall be at a rate of 0%;

C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;

D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and

E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $3,884.20 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $38,842, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $38,842 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the "Plans and Specifications"). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

   A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

   B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

   C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 **DAMAGE TO PROPERTY.** If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 **RELOCATION.** If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY’S City Manager and BORROWER.

**ARTICLE 6. PROJECT OPERATION**

6.1 **OPERATION OF PROJECT.** BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "C," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontractors for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any noncompliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit “B” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “B” until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney’s fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY’S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY’S choosing, to pay CITY’S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER’S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.
9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney’s fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

   A. **Monetary.** (1) BORROWER’S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER’S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER’S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER’S failure to make any other payment or assessment due under the Loan Documents;

   B. **Construction.** (1) BORROWER’S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY’S prior written consent; (2) BORROWER’S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER’S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY
or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;
I. Cross Default Provision. Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. Lead-Based Paint. In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE. There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 CITY’S REMEDIES. Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver
deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER’S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “C” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.
11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY’S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party’s in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.
11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO: City of Stockton Economic Development Department
401 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

BORROWER: Emergency Food Bank of San Joaquin County
7 West Scotts Avenue
Stockton, CA 95203
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.
11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

EMERGENCY FOOD BANK OF SAN JOAQUIN COUNTY, a nonprofit benefit corporation

By: ________________________________
   Borrower's Counsel

By: ________________________________
   ________________________________
   Printed Name
   ________________________________
   Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

By: ________________________________
   CHRISTIAN CLEGGE
   DEPUTY CITY MANAGER/INTERIM CITY CLERK

By: ________________________________
   ________________________________
   KURT WILSON
   CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ________________________________
   ________________________________
   ASSISTANT/DEPUTY CITY ATTORNEY
## EXHIBIT A

**Emergency Food Bank of San Joaquin County**

**Project Budget**

<table>
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<tr>
<th>Security Fence Project</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrified Steel Fence (incl. service and maintenance), solar powered <em>(Leased-to-own $710/month for 5 years)</em></td>
<td>$42,600</td>
</tr>
<tr>
<td>Permits</td>
<td>$4,096</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$46,696</strong></td>
</tr>
</tbody>
</table>

*Funded by City of Stockton CDBG:* $38,842  
*Funded by Other Sources:* $38,842
EXHIBIT B
INSURANCE REQUIREMENTS

Before disbursement of funds BORROWER shall deliver to CITY certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during the term of this agreement.

1. Minimum Limits of Insurance

GENERAL LIABILITY insurance shall include Bodily Injury, Personal Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer's Liability Limits: $1,000,000 each Accident

2. General Conditions

During the term of this Agreement and without limiting BORROWER'S indemnification of the CITY, the BORROWER shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the BORROWER but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The CITY, their boards, officers, agents and employees shall be included as additional insured's by separate endorsement in all liability insurance policies except: Workers' Compensation/ Employer's Liability.

b. Insurance Requirements

All insurance required hereunder shall conform to CITY requirements established by charter, ordinance or policy and shall be filed with the City Risk Management Division for review.

c. Primary Insurance
Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on the CITY's insurance for contributions.

d. Admitted Carrier/Licensed California Broker

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the CITY.

e. 30-Day Notice

With respect to the interests of CITY such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the CITY by the carrier(s).

f. Prior Approval

Evidence of insurance shall be submitted to the City Risk Management Division and approved by the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. Severability of Interest

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

h. Renewal

Once the insurance has been approved by the CITY, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (g) above, must be submitted.

3. Worker's Compensation

By signing this Agreement, the BORROWER hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the BORROWER to comply with such provisions before commencing the performance of the work of this Agreement.
4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the BORROWER not related to this Agreement, the BORROWER shall give the CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in BORROWER’S best judgment may diminish the protection such insurance affords CITY. Further, BORROWER shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The CITY may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Risk Management Division, the CITY reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the CORPORATION thirty (30) days advance written notice of such change. If such change should result in substantial additional cost to BORROWER, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. Non-availability or non-affordability must be documented by a letter from BORROWER’S insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, BORROWER’S failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the CITY may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the CITY’s interests and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the BORROWER to the CITY upon demand or it may offset the cost of the premiums against any monies due to the BORROWER from the CITY.

7. **Underlying Insurance**

BORROWER shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect BORROWER’S and CITY’s interests and for ensuring that such persons comply with any applicable
insurance statutes. BORROWER is encouraged to seek professional advice in this regard.
EXHIBIT C

HUD REQUIREMENTS ASSOCIATED
WITH THE USE OF
COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) CFDA #14.218 FUNDS

I. RECORDKEEPING

A. BORROWER ("SUBRECIPIENT") shall establish and maintain sufficient
records in their original form to enable HUD to determine whether
SUBRECIPIENT has met the requirements of 24 CFR 570, Community
Development Block Grant Program. Records in their original form
pertaining to matters covered by Agreement shall, at all times, be retained
within the Stockton Area, unless authorization to remove them is granted
in writing by CITY.

B. At all reasonable times and following reasonable notice to the
SUBRECIPIENT, any duly authorized representative of the CITY or the
Auditor General of the State of California shall have access to and the
right to inspect, copy, audit and examine all such books, records,
accounts, reports, files and other documents of the Borrower until
completion of all close-out procedures and final settlement and conclusion
of all issues.

C. The SUBRECIPIENT shall furnish such statements, records, reports,
including litigation reports, data and other information as the CITY may
from time to time reasonably request.

D. The SUBRECIPIENT shall retain non-discrimination records on tenants
and applicants for tenancy for a least twenty-five (25) months following the
date the record was made. All other records that are required to be
retained under this section shall be retained for a period of three (3) years
after termination of Agreement and all other pending matters are closed.
"Pending Matters" include, but are not limited to, an audit, litigation, or
other actions involving records until such time as audit findings have been
resolved, whichever is later. CITY may, at its discretion, take possession
and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or
being assisted) with CDBG funds, including its location, the amount
of funds budgeted, obligated and expended for the activity and the
eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the SUBRECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by Subrecipient and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to SUBRECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that SUBRECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the SUBRECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and SUBRECIPIENT’S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:
a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the SUBRECIPIENT's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of SUBRECIPIENT's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the SUBRECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
II. REPORTS

A. Subrecipient shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on SUBRECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. SUBRECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If SUBRECIPIENT’s reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to SUBRECIPIENT, or to impose other sanctions, at CITY’s sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), SUBRECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by SUBRECIPIENT is to be returned to CITY or retained by SUBRECIPIENT. Where program income is to be retained by SUBRECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When SUBRECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, SUBRECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.
A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and SUBRECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

SUBRECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. SUBRECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report of document. SUBRECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY's environmental findings are based. SUBRECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised SUBRECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, SUBRECIPIENT shall make available for examination all of its records.
B. SUBRECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of SUBRECIPIENT's fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. SUBRECIPIENT's expending funds of $750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR, Part 200.

2. SUBRECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of SUBRECIPIENT's fiscal year, shall submit a copy of the report to CITY.

C. In the event SUBRECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for Subrecipient's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily.
2. Withholding or disallowing overhead costs
3. Suspending Federal awards until the audit is conducted; or
4. Terminating the Federal award

VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to SUBRECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

SUBRECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is
prohibited in the SUBRECIPIENT's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The SUBRECIPIENT's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,
2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A, B, C, D, E, and F.

XI. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. SUBRECPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, SUBRECPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by SUBRECPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246, as amended, and implementing regulations at 41 CFR Part 60, the Borrower, for itself and its successors and assigns, agrees that:

A. SUBRECPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap,
medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. SUBRECIPIENT shall send a notice to each labor union or representative of workers with which SUBRECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of SUBRECIPIENT's commitments under Executive Order 11246, as amended, of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. SUBRECIPIENT shall comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. SUBRECIPIENT shall furnish all information and reports required by Executive Order 11246, as amended, of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to SUBRECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
F. In the event of SUBRECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and SUBRECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246, as amended, of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. SUBRECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. SUBRECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read “During the performance of this Contract, SUBRECIPIENT agrees as follows:” and the term “SUBRECIPIENT” shall be changed to “Contractor.”

H. Except as provided in California Government Code Section 12940, et seq., SUBRECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

**XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS**

A. The work to be performed under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD
and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. SUBRECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. SUBRECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or SUBRECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. SUBRECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or SUBRECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject SUBRECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION
There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall SUBRECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

A. SUBRECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."
2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

SUBRECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. SUBRECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. SUBRECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning
requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. SUBRECIPIENT shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975, as amended.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


17. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, SUBRECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. SUBRECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST

No member, officer or employee of SUBRECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. SUBRECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.
B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) SUBRECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.

4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, SUBRECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD
requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligations, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. SUBRECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – SUBRECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. SUBRECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. SUBRECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.
F. SUBRECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER'S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the SUBRECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246, as amended,

SUBRECIPIENT shall comply with the full provisions of Executive Order 11246, as amended, in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246, as amended, non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antisdisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with Section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official

Date
Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);

2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2014, 2015, 2016, (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may
be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

**Excessive Force** -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

**Compliance With Anti-discrimination laws** -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

**Lead-Based Paint** -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

**Compliance with Laws** -- It will comply with applicable laws.

[Signature/Authorized Official]

5-10-16

[Date]

City Manager

Title
Specific HOME Certifications

The HOME participating jurisdiction certifies that:

Tenant Based Rental Assistance -- If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

Eligible Activities and Costs -- It is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

Appropriate Financial Assistance -- before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing.

Signature/Authorized Official

Date

City Manager
Title
ESG Certifications

The Emergency Solutions Grants Program Recipient certifies that:

**Major rehabilitation/conversion** – If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

**Essential Services and Operating Costs** – In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

**Renovation** – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

**Supportive Services** – The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal State, local, and private assistance available for such individuals.

**Matching Funds** – The jurisdiction will obtain matching amounts required under 24 CFR 576.201.

**Confidentiality** – The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

**Homeless Persons Involvement** – To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted under the program.

**Consolidated Plan** – All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan.
Discharge Policy - The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

[Signature]
Signature/Authorized Official

5-10-16
Date

City Manager
Title
APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
THE CITY OF STOCKTON

AND

SALVATION ARMY
A NON-PROFIT BENEFIT CORPORATION
BORROWER

LOAN AGREEMENT
($24,000 OF CDBG FUNDS)
LOAN AGREEMENT
($24,000---CDBG Funds)

This Loan Agreement ("Loan Agreement") is made as of April 17, 2019, by and between the City of Stockton, a municipal corporation ("CITY"), and the Salvation Army, a nonprofit organization ("BORROWER").

RECITALS

A. CITY has determined it necessary and appropriate to support the Salvation Army County in their effort to successfully administer service programs which provide after school activities to children in Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block Grant ("CDBG") loan in the amount of $24,000 to pay for gym flooring and improvements at the BORROWER’S facility located at 120 N. Airport Way, Stockton, California (the "PROJECT").

C. CITY believes that the allocation of these funds to assist in the gym improvement project will support low income children in Stockton, and fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the National Environmental Protection Act ("NEPA") and 24 C.F.R., Part 58 and has determined that the PROJECT will have no adverse effects.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, a deed of trust and a promissory note. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG LOAN, BORROWER and CITY hereby agree as follows:
ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.

1.1 "ANNIVERSARY DATE" is one year after the agreement date.

1.2 "BORROWER" is Salvation Army, a non-profit benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.3 "BUDGET" means that certain project budget containing sources and uses of funds for the project and attached as Exhibit "A," which is hereby incorporated into this Loan Agreement by this reference.


1.5 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $24,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.6 "CDBG NOTE" is that certain promissory note in the principal amount of $24,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.7 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.8 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER'S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.9 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG LOAN proceeds may be used as specified in 24 C.F.R. 570.201 (c) and in the Budget as specified in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by CITY.

1.10 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.11 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations; including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials,
asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.12 "HUD" means the United States Department of Housing and Urban Development.

1.13 "LOAN" means the CDBG LOAN.

1.14 "LOAN AGREEMENT" means this Loan Agreement entered into between CITY and BORROWER.

1.15 "LOAN DOCUMENTS" are collectively this LOAN AGREEMENT and the CDBG NOTE, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.16 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.17 "PROJECT" means the electrified security fence project at the Salvation Army at the BORROWER'S facility located at 120 N. Airport Way, Stockton, California (the "PROJECT")

1.18 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.19 "RECIPIENT" means the BORROWER.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG LOAN in the principal amount not to exceed $24,000 from CITY to BORROWER, the terms stated herein shall govern repayment of said principal.

2.2 SECURITY FOR REPAYMENT. BORROWER shall execute and deliver to CITY a promissory note ("CDBG Note") and deed of trust evidencing the terms of payment. To the maximum extent permitted by law, the Note and this Loan Agreement shall constitute a security agreement under the California Commercial Code. Upon request of CITY, the BORROWER shall execute and deliver to the CITY financing statements, pursuant to the applicable statutes, and any other documents or instruments as are required to convey to the CITY a valid perfected security interest in all equipment, accounts, and general tangibles, now owned or hereafter acquired by BORROWER. The BORROWER agrees to perform all acts the CITY may reasonably request so as to enable the CITY to maintain a valid perfected security interest in order to secure the repayment of the Note in accordance with its terms. CITY may file a copy of any financing statement in any jurisdiction as deemed appropriate from time to time in order to protect the security interest established hereby.
2.3 TERM OF LOAN. Unless sooner due pursuant to the CDBG Note, the term of the loan shall be for a period of ten (10) years at zero (0%) percent annual interest, commencing on the anniversary date. If project is not completed 30 days prior to the anniversary date, the term may be extended for one additional year.

2.4 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "A."

2.5 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $24,000 according to the following terms:

A. A forgivable loan in the amount of $24,000;
B. Interest rate shall be at a rate of 0%;
C. The term of the LOAN shall be for a maximum of ten (10) years, subject to the provisions of Section 2.3 of this AGREEMENT;
D. BORROWER shall execute a Promissory Note in favor of CITY evidencing the obligation of repayment of the loan funds pursuant to this AGREEMENT; and
E. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.6 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due, providing BORROWER fully complies with all specific terms and conditions as outlined in Article 2 of this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the renovation of the PROJECT in Stockton; and (2) provide shelter to single adults and families in accordance to their needs in the City of Stockton. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of $2,400.00 shall be due annually each anniversary date thereafter until fully paid.

2.7 NON-RECOUURSE OBLIGATION. The obligation to repay the LOAN is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.
ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default;

B. The undispursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY;

C. BORROWER has complied with all reporting requirements set forth in this Loan Agreement;

D. BORROWER has delivered a construction schedule satisfactory to CITY;

E. CITY has received a “Release of Funds” from HUD to the extent required for disbursement of the CDBG LOAN; and

F. BORROWER has delivered the original CDBG Note.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of new loan proceeds shall be $24,000, as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $24,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

3.4 PAYMENT OF CONTRACTOR(S). Upon disbursement of loan proceeds to the BORROWER, the BORROWER will directly pay the contractor, subcontractor, or vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The BORROWER shall provide CITY with a copy of each check and such other documentation reasonably requested to document use of the loan. The BORROWER shall apply all disbursements for the development of the PROJECT.
ARTICLE 4. PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 PREVAILING WAGES. To the extent required by the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT. BORROWER shall also comply with the provisions of Article 7 and Section 11.2, below.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CITY.

ARTICLE 5. DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as approved by the CITY.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days after the date of issuance of a notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and
D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable, and as provided in Article 7 and Section 11.2, below.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner of any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other documents related to expenditures from said Loan funds for not less than four years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have fifteen (15) calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, BORROWER shall
begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, and shall permit CITY to audit, examine, and make copies of such records. CITY may audit any conditions relating to this Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER'S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Loan Documents; (c) the transferee demonstrates to CITY'S sole satisfaction that it is capable of and intends to operate the PROJECT and the PROPERTY in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY'S security interest in the PROJECT and are in full compliance with all standards, including eligibility
requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.12 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CTY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim including any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT 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. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT, in the event that BORROWER refuses to do so.

5.13 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.14 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractor tested the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable federal, state or local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 C.F.R. 35, subsection “J.”

5.15 FEES, TAXES, AND OTHER LEVIES. BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate
proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.16 DAMAGE TO PROPERTY. If any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.17 RELOCATION. If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.18 UNAVOIDABLE DELAY IN PERFORMANCE. The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days after receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed one hundred twenty (120) days by the mutual written agreement of the CITY'S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER'S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Loan Agreement.
6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibit "C," which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor provided, CITY may withhold payments to BORROWER, may impose liquidated damages as herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.
ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Loan Agreement the insurance coverage specified in Exhibit “B” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “B” until the completion of the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY.

8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY, its officials, employees and agents shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN. The parties agree that the duty to defend and the duty to indemnify are separate and distinct obligations.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.
ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of the veracity of such knowledge to BORROWER'S reasonable satisfaction) that the PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by BORROWER of any occurrence or condition on the Property or on any real property located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. BORROWER shall comply and cause the PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the presence of any Hazardous Materials on or under the PROJECT or the PROPERTY, BORROWER shall immediately take or cause its tenant to immediately take, at no cost or expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to BORROWER'S right of contest below.
9.5 **RIGHT OF CONTEST.** BORROWER may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by BORROWER under the conditions of this Section 9.5.

9.6 **ENVIRONMENTAL INDEMNITY.** BORROWER shall defend, indemnify, and hold CITY from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, investigation costs and penalties, including all costs of administrative or legal proceedings and attorney's fees, that CITY may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Loan Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not BORROWER knew of same) of any Hazardous Materials occurring prior to or during BORROWER'S use of occupancy of the PROPERTY.

**ARTICLE 10. DEFAULT AND REMEDIES**

10.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. **Monetary.** (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. **Construction.** (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than fifteen (15) continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY.
or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for twenty (20) days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER’S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY’S request; (8) BORROWER’S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY’S prior written approval that are prohibited under this Loan Agreement; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;

F. Representations and Warranties. A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. Damage to PROPERTY. Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. Bankruptcy, Dissolution, and Insolvency. BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or sixty (60) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or sixty (60) days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;
I. **Cross Default Provision.** Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note; and

J. **Lead-Based Paint.** In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.14 above.

10.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than thirty (30) calendar days after the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 **CITY’S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the election of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver
deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

I. Pursue any other remedy allowed at law or in equity.

10.4 BORROWER'S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.

ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 HUD REQUIREMENTS. BORROWER shall remain responsible and accountable for the performance of the terms and conditions of this agreement, notwithstanding that BORROWER may employ consultants to perform any of its activities. BORROWER will be responsible for complying with federal program and funding requirements of the U.S. Department of Housing and Urban Development “HUD.” As a subrecipient of the CDBG funds, BORROWER agrees to comply with HUD requirements set forth in Exhibit “C” which is incorporated as a part of this Agreement.

11.3 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days after CITY’S request which clearly document BORROWER’S performance under each requirement of the Loan Documents.
11.4 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.5 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.6 TERMS OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.7 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

11.8 STATUTORY REFERENCES. All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.9 ATTORNEYS' FEES AND COSTS. In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.10 TIME. Time is of the essence in these Loan Documents.
11.11 CONSENTS AND APPROVALS. Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.12 NOTICES, DEMANDS AND COMMUNICATIONS. Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

CITY: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attn: City Manager

COPY TO: City of Stockton Economic Development Department
401 E. Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

BORROWER: Salvation Army
120 N. Airport Way
Stockton, CA 95205
Attn: Executive Director

11.13 BINDING UPON SUCCESSORS. All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY’S consent.

11.14 RELATIONSHIP OF PARTIES. The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.15 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.
11.16 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

11.17 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.18 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.19 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.20 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY's City Manager, or any person who shall have been designated in writing to the BORROWER by the CITY's City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY'S security; (c) modification of the interest rate applicable to the Loan resulting from amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.
IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement the day and first year hereinabove written.

APPROVED AS TO FORM:

By: ________________________________
    Borrower’s Counsel

SALVATION ARMY, a nonprofit benefit corporation

By: ________________________________
    Printed Name
    Title

ATTEST:

CITY OF STOCKTON, a municipal corporation

BY: ________________________________
    CHRISTIAN CLEGGE
    DEPUTY CITY MANAGER/INTERIM CITY CLERK

BY: ________________________________
    KURT WILSON
    CITY MANAGER

APPROVED AS TO FORM:

JOHN LUEBBERKE
CITY ATTORNEY

By: ________________________________
    ASSISTANT/DEPUTY CITY ATTORNEY
EXHIBIT A
Salvation Army
Project Budget

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EXHIBIT B
INSURANCE REQUIREMENTS

Before disbursal of funds BORROWER shall deliver to CITY certificate(s) of insurance including a separate endorsement, and shall maintain such coverage in full force and effect during the term of this agreement.

1. Minimum Limits of Insurance

GENERAL LIABILITY insurance shall include Bodily Injury, Personal Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit.

Other Insurance Provisions Pertaining to General Liability: The City of Stockton, its officers, officials, employees, and volunteers are to be named as an additional insured on a separate endorsement which must accompany the certificate of insurance.

Automobile Liability Limits: $1,000,000 combined single limit

Workers Compensation and Employer’s Liability Limits: $1,000,000 each Accident

2. General Conditions

During the term of this Agreement and without limiting BORROWER’S indemnification of the CITY, the BORROWER shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the BORROWER but not less than the amounts and types listed above covering its operations hereunder. All insurance shall be subject to the following conditions:

a. Additional Insured/Loss Payee

The CITY, their boards, officers, agents and employees shall be included as additional insured’s by separate endorsement in all liability insurance policies except: Workers’ Compensation/ Employer’s Liability.

b. Insurance Requirements

All insurance required hereunder shall conform to CITY requirements established by charter, ordinance or policy and shall be filed with the City Risk Management Division for review.

c. Primary Insurance
Such insurance shall be primary with respect to any insurance maintained by CITY and shall not call on the CITY's insurance for contributions.

d. Admitted Carrier/Licensed California Broker

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A+ or better California admitted insurance company and approved by the CITY.

e. 30-Day Notice

With respect to the interests of CITY such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the CITY by the carrier(s).

f. Prior Approval

Evidence of insurance shall be submitted to the City Risk Management Division and approved by the City Attorney prior to commencement of any work or tenancy under this Agreement.

g. Severability of Interest

Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whomever the claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

h. Renewal

Once the insurance has been approved by the CITY, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (g) above, must be submitted.

3. Worker's Compensation

By signing this Agreement, the BORROWER hereby certifies that it is aware of the provisions of Section 3700, et seq., of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the BORROWER to comply with such provisions before commencing the performance of the work of this Agreement.
4. **Aggregate Limits/Blanket Coverage**

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the BORROWER not related to this Agreement, the BORROWER shall give the CITY prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in BORROWER’S best judgment may diminish the protection such insurance affords CITY. Further, BORROWER shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The CITY may specify a minimum acceptable aggregate for each line of coverage required.

5. **Modification of Coverage**

Upon advice from the City Risk Management Division, the CITY reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the CORPORATION thirty (30) days advance written notice of such change. If such change should result in substantial additional cost to BORROWER, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

6. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. Non-availability or non-affordability must be documented by a letter from BORROWER’S insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, BORROWER’S failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the CITY may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the CITY’s interests and pay any and all premiums in connection therewith, and all monies so paid by the CITY shall be repaid by the BORROWER to the CITY upon demand or it may offset the cost of the premiums against any monies due to the BORROWER from the CITY.

7. **Underlying Insurance**

BORROWER shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect BORROWER’S and CITY’s interests and for ensuring that such persons comply with any applicable
insurance statutes. BORROWER is encouraged to seek professional advice in this regard.
EXHIBIT C

HUD REQUIREMENTS ASSOCIATED
WITH THE USE OF
COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) CFDA #14.218 FUNDS

I. RECORDKEEPING

A. BORROWER ("SUBRECIPIENT") shall establish and maintain sufficient records in their original form to enable HUD to determine whether SUBRECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY.

B. At all reasonable times and following reasonable notice to the SUBRECIPIENT, any duly authorized representative of the CITY or the Auditor General of the State of California shall have access to and the right to inspect, copy, audit and examine all such books, records, accounts, reports, files and other documents of the Borrower until completion of all close-out procedures and final settlement and conclusion of all issues.

C. The SUBRECIPIENT shall furnish such statements, records, reports, including litigation reports, data and other information as the CITY may from time to time reasonably request.

D. The SUBRECIPIENT shall retain non-discrimination records on tenants and applicants for tenancy for at least twenty-five (25) months following the date the record was made. All other records that are required to be retained under this section shall be retained for a period of three (3) years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records until such time as audit findings have been resolved, whichever is later. CITY may, at its discretion, take possession and retain said records.

E. At a minimum, the following records are needed:

1. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of funds budgeted, obligated and expended for the activity and the
eligibility provision. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

2. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 24 CFR 570.208. Such records shall include the following information:

a. The income characteristics of families and unrelated individuals in the service area.

b. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:

   (i). Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

   (ii). Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

   (iii). Data showing the size and annual income of the family of each person receiving the benefit.

c. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the SUBRECIPIENT shall provide:

   (i). A copy of a written agreement from each assisted business containing:

   (ii) A commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;
(iii) A listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

(iv) A description of actions to be taken by Subrecipient and business to ensure that low/mod income persons receive first consideration for these jobs.

(v) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

d. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

(i) Evidence that, in the absence of CDBG assistance, jobs would be lost;

(ii) For each business assisted, a listing by job title of permanent jobs retained;

(iii) For each retained job claimed to be held by a low/mod income person, information of the size and annual income of the person's family.

e. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area; and

(ii) A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

f. For each activity determined to meet a community development need having a particular urgency:

(i) Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
(ii). Certification that the activity was designed to address the urgent need;

(iii). Information on the timing of the development of the serious condition; and

(iv). Evidence confirming that other financial resources to alleviate the need were not available.

3. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to SUBRECIPIENT).

4. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that SUBRECIPIENT will not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the SUBRECIPIENT provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

   Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG-funded acquisition or improvement, and SUBRECIPIENT'S CDBG Program is reimbursed in this amount.

5. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:

   a. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

6. Where applicable, conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

7. Record of compliance with Fair Housing and Equal Opportunity requirements indicating:
a. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds.

b. Data on employment in each of the SUBRECIPIENT’s operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission’s EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.

8. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG-funded activities, together with the address and census tract of the housing units to which each displaced household relocated.

9. Documentation of actions undertaken to meet the requirements relative to the hiring and training of low-and moderate-income persons and the use of local businesses.

10. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women’s business enterprises as defined in Executive Order 12138, and the amount of the contract or subcontract, and documentation of SUBRECIPIENT’s affirmative steps to assure that minority business and women’s business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

11. Documentation of the affirmative action measures the SUBRECIPIENT has taken to overcome prior discrimination, where the courts or HUD have found that the SUBRECIPIENT has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
II. REPORTS

A. Subrecipient shall submit the following performance and/or evaluation report to City to facilitate mandated reporting to HUD:

1. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

2. An annual equal employment opportunity report (HUD/EEO-4) on SUBRECIPIENT employment, containing data as of June 30;

3. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

4. SUBRECIPIENT may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

5. If SUBRECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to SUBRECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), SUBRECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by SUBRECIPIENT is to be returned to CITY or retained by SUBRECIPIENT. Where program income is to be retained by SUBRECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When SUBRECIPIENT retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, SUBRECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.

IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.
A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and SUBRECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. REVERSION OF ASSETS

SUBRECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VI. ENVIRONMENTAL IMPACT REPORT

To the extent that environmental review under the California Environmental Quality Act is required with respect to activities under this Loan Agreement, the CITY shall review such report or document. SUBRECIPIENT shall provide all information, assistance, and cooperation necessary to prepare such report of document. SUBRECIPIENT warrants that it has not and shall not take any action which might have a material adverse environmental effect, limit the choices among competing environmental alternatives, or alter environmental premises upon which the CITY's environmental findings are based. SUBRECIPIENT agrees not to undertake any activity having a potential adverse environmental effect until such time as the CITY has advised SUBRECIPIENT that it has completed and necessary environmental assessment of the Project in accordance with the necessary National Environmental Protection Act.

VII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or City may deem necessary, SUBRECIPIENT shall make available for examination all of its records.
B. SUBRECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of SUBRECIPIENT’s fiscal year, an audit. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grant and this Agreement.

1. SUBRECIPIENT’s expending funds of $750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR, Part 200.

2. SUBRECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of SUBRECIPIENT’s fiscal year, shall submit a copy of the report to CITY.

C. In the event SUBRECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor’s assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and

5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for Subrecipient’s failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

1. Withholding a percentage of Federal awards until the audit is completed satisfactorily
2. Withholding or disallowing overhead costs
3. Suspending Federal awards until the audit is conducted; or
4. Terminating the Federal award

VIII. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

IX. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), subrecipient is subject to the same requirements applicable to SUBRECIPIENT, including the requirement of a written agreement set forth in 24 CFR 570.503.

X. DRUG-FREE WORKPLACE CERTIFICATE

SUBRECIPIENT will provide a drug-free workplace as mandated by the Drug-Free Workplace Act by:

A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is
prohibited in the SUBRECIPIENT’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The SUBRECIPIENT’s policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

D. Notifying the employee in the statement required by paragraph 1 that as a condition of employment under the grant the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer in writing of is or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

E. Notifying the CITY in writing, within ten calendar days after receiving notice under subparagraph D. (2.) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees much provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

F. Taking on the following actions, within 30 calendar days of receiving notice under subparagraph D. (2.), with respect to any employee who is so convicted:

1. taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or,
2. requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A,B,C,D,E, and F.

XI. NON-DISCRIMINATION

A. No person shall on the grounds of race, color, religion creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, familial status, pregnancy, childbirth or related medical condition, acquired immune deficiency syndrome (AIDS), acquired or perceived, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under this Project. For purposes of this Section, Title 24 Code of Federal Regulations Section 570.601(b) defines specific discriminatory actions which are prohibited and corrective action which shall be taken in situations as defined.

B. SUBRECIPIENT shall comply with the nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and CITY. In performing this Loan Agreement, SUBRECIPIENT shall not discriminate in its employment practices against any employee, or applicant for employment because of such person's race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT shall comply with the provisions of the City of Stockton M/W/DVBE Program requirement and Affirmative Marketing Policy. Any subcontract entered into by SUBRECIPIENT relating to this Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

XII. EQUAL OPPORTUNITY

Pursuant to Executive Order 11246, as amended, and implementing regulations at 41 CFR Part 60, the Borrower, for itself and its successors and assigns, agrees that:

A. SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap,
medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

C. SUBRECIPIENT shall send a notice to each labor union or representative of workers with which SUBRECIPIENT has a collective bargaining agreement or other contract or understanding, advising the labor union or worker's representative of SUBRECIPIENT's commitments under Executive Order 11246, as amended, of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. SUBRECIPIENT shall comply with all provisions of Executive Order 11246, as amended, of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. SUBRECIPIENT shall furnish all information and reports required by Executive Order 11246, as amended, of September 24, 1965, and by the rules, regulations, and orders of the Secretary of HUD pursuant thereto and will permit access to SUBRECIPIENT's books, records and accounts by the CITY, the Secretary of HUD, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
F. In the event of SUBRECIPIENT's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, following notice and an opportunity to cure as provided in below, this Loan Agreement may be canceled, terminated, or suspended in whole or in part and SUBRECIPIENT may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized by Executive Order 11246, as amended, of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

G. SUBRECIPIENT shall include the provisions of Paragraphs (1) through (6) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be. SUBRECIPIENT will take such action with respect to any construction contract, subcontract, or purchase order as the CITY or HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract, or purchase order, as required hereby, the first two lines of this subsection shall be changed to read "During the performance of this Contract, SUBRECIPIENT agrees as follows:" and the term "SUBRECIPIENT" shall be changed to "Contractor."

H. Except as provided in California Government Code Section 12940, et seq., SUBRECIPIENT shall not engage in the following prohibited employment practices: Refusal to hire or employ any person or refusal to select any person for any training program leading to employment, or to bar or to discharge such person from employment or from such training program leading to employment, or discriminate against such person in compensation or in terms, conditions or privileges of employment because of race, color, religion, creed, sex, sexual preference or orientation, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), acquired or perceived, familial status, pregnancy, childbirth or related medical condition.

XIII. EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS

A. The work to be performed under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD
and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. hereinafter referred to as "Section 3." Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income residents of the Project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the Project.

B. The parties to this Loan Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in Title 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Loan Agreement. The parties to this Loan Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. SUBRECIPIENT shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. SUBRECIPIENT shall include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or SUBRECIPIENT of, Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR Part 135. SUBRECIPIENT shall not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under Title 24 CFR Part 135 and will not subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. Compliance with the provisions of Section 3, the regulations set forth in Title 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Loan Agreement, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or SUBRECIPIENT for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject SUBRECIPIENT and its subcontractors, its successors, and assigns to those sanctions specified by this Loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by Title 24 CFR Part 135.

XIV. OBLIGATION TO REFRAIN FROM DISCRIMINATION

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There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS) acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any part thereof, nor shall SUBRECIPIENT or any person claiming under or through, 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, licenses, or vendees of the Project.

XV. FORM OF NONDISCRIMINATION AND NONSEGREGATION CLAUSES

A. SUBRECIPIENT shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The Grantee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, no shall the grantee himself/herself or any person claiming under or through him/her, 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, licenses or vendees of the land herein conveyed. The foregoing covenants shall run with the land."
2. In leases: "The lessee herein covenants by and for himself/herself, his/her heirs, executors, administrators and assigns, and all persons claiming under or through him/her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age, marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself/herself or any person claiming under or through him/her, 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 land herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference or orientation, gender identity, national origin, ancestry, physical handicap, medical condition, age marital status, mental condition, blindness or other physical disability, acquired immune deficiency (AIDS), acquired or perceived, familial status and handicap, pregnancy, childbirth or related medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself/herself or any person claiming under or through him/her, establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees, or licenses vendees of the land."

XVI. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

SUBRECIPIENT shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

XVII. LOCAL, STATE AND FEDERAL LAWS

A. SUBRECIPIENT shall carry out the Project in conformity with all applicable laws, including all applicable federal and state labor standards. SUBRECIPIENT shall be responsible for complying with all applicable City, County and State building codes, and planning and zoning
requirements, and shall take all necessary steps so that the development of the Site and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Loan Agreement shall be in conformity with applicable zoning and General Plan requirements, and that all applicable environmental mitigation measures and other requirements shall have been complied with.

B. **SUBRECIPIENT** shall carry out the administration of this Loan Agreement in conformity with all applicable laws, including, but not limited to the following applicable federal and state laws:


2. Section 109 of Title I of the Housing and Community Development Act of 1975, as amended.


11. Drug Free Workplace Act of 1988, P.L. 100-690, Title V, Subtitle D.


17. City and Other Governmental Agency Permits

C. Before commencement of any work on the Project, SUBRECIPIENT shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by the CITY or any other governmental agency. SUBRECIPIENT shall pay such fees as may be required in connection therewith.

D. The Project shall be developed in accordance with applicable State and local building codes or, in the absence of such codes, in accordance with a nationally recognized model building code.

XVIII. CONFLICT OF INTEREST

No member, officer or employee of SUBRECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. SUBRECIPIENT shall incorporate in all subcontracts provisions prohibiting such interest in accordance with 24 CFR 570.611 of the Regulations of the Department of Housing and Urban Development.

XIX. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

A. This Agreement is subject to the minority and women's business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.
B. In all CDBG services solicitation, CITY's Compliance Officer shall ensure that (whether by bid, RFP or RFQ) SUBRECIPIENT shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

1. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE's and WBE's.

2. Obtaining the Minority and Women's Business Enterprises Registry from the CITY's Contract Compliance Officer to ensure such contractors receive an invitation to bid.

3. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:

   (i). Any minority and women trade association publication;

   (ii). Any local newspaper;

   (iii). Any local minority paper;

   (iv). Daily construction trade paper; and

   (v). Local construction trade paper.

4. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.

XX. FEDERAL LABOR STANDARD

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, SUBRECIPIENT and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD
requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligations, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XXI. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

A. SUBRECIPIENT shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

B. Prevailing Wage/Davis Bacon Rates – SUBRECIPIENT will insure that the prime contractor to whom the contract is awarded and any subcontractor must pay the general prevailing wage rates or Davis Bacon wage rates, if applicable, as ascertained from time to time which shall be applicable to this project.

C. SUBRECIPIENT will insure that the contractor performing the work shall be responsible for obtaining a copy of the State wage rate or Davis-Bacon wage rate determination. The contractor shall be responsible for posting said wage rate at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds and state or local funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determination and State Prevailing Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the state or federal prevailing wage rates. In those projects where only federal funds are involved, as indicated by referenced to or the inclusion of the Federal Wage Determinations only, wages to be paid shall be federal prevailing wage rates.

D. If the Federal Wage Determination is modified between the date of project advertisement and ten (10) days prior to the bid opening date, a letter of clarification will be issued and will include the latest modification.

E. SUBRECIPIENT will insure that the contractor shall be responsible for coordinating the interviewing process of individual trades workers by designated CITY staff.
F. SUBRECIPIENT will insure that the contractor shall be responsible for submitting weekly payroll documentation to designated CITY staff.

XXII. WORKER’S COMPENSATION INSURANCE

In all operations connected with the work herein specified, the SUBRECIPIENT shall observe the provisions of Section 3700, et seq., of the Labor Code, which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code before commencing the performance of the work of this Agreement.

XXIII. EXECUTIVE ORDER 11246, as amended,

SUBRECIPIENT shall comply with the full provisions of Executive Order 11246, as amended, in all phases of contracting and employment involving Federally-assisted construction contracts and subcontracts. Executive Order 11246, as amended, non-discrimination and affirmative action relating to advertising, recruitment, employment and termination.

XXIV. HATCH ACT

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

**Affirmatively Further Fair Housing** — The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan** — It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Anti-Lobbying** — To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Authority of Jurisdiction** — The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

**Consistency with plan** — The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

**Section 3** — It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

Signature/Authorized Official: 8/9/17
Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation — It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan — Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan — It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds — It has complied with the following criteria:

1. **Maximum Feasible Priority.** With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available;

2. **Overall Benefit.** The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2016-2018 (a period specified by the grantee consisting of one, two, or three specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

3. **Special Assessments.** It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force — It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its
jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of 24 CFR Part 35, subparts A, B, J, K and R;

Compliance with Laws -- It will comply with applicable laws.

[Signature] /8/17
Signature/Authorized Official Date

[Title]
Deputy City Manager
Specific HOME Certifications

The HOME participating jurisdiction certifies that:

**Tenant Based Rental Assistance** — If the participating jurisdiction intends to provide tenant-based rental assistance:

The use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's consolidated plan for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing.

**Eligible Activities and Costs** — it is using and will use HOME funds for eligible activities and costs, as described in 24 CFR § 92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214.

**Appropriate Financial Assistance** — before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

**Signature/Authorized Official**  
Date

**Deputy City Manager**

Title
ESG Certifications

The Emergency Solutions Grants Program Recipient certifies that:

Major rehabilitation/conversion – If an emergency shelter's rehabilitation costs exceed 75 percent of the value of the building before rehabilitation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed rehabilitation. If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 10 years after the date the building is first occupied by a homeless individual or family after the completed conversion. In all other cases where ESG funds are used for renovation, the jurisdiction will maintain the building as a shelter for homeless individuals and families for a minimum of 3 years after the date the building is first occupied by a homeless individual or family after the completed renovation.

Essential Services and Operating Costs – In the case of assistance involving shelter operations or essential services related to street outreach or emergency shelter, the jurisdiction will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure, so long the jurisdiction serves the same type of persons (e.g., families with children, unaccompanied youth, disabled individuals, or victims of domestic violence) or persons in the same geographic area.

Renovation – Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary.

Supportive Services – The jurisdiction will assist homeless individuals in obtaining permanent housing, appropriate supportive services (including medical and mental health treatment, victim services, counseling, supervision, and other services essential for achieving independent living), and other Federal, State, local, and private assistance available for such individuals.

Matching Funds – The jurisdiction will obtain matching amounts required under 24 CFR 576.201.

Confidentiality – The jurisdiction has established and is implementing procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

Homeless Persons Involvement – To the maximum extent practicable, the jurisdiction will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, in providing services assisted under the ESG program, and in providing services for occupants of facilities assisted under the program.

Consolidated Plan – All activities the jurisdiction undertakes with assistance under ESG are consistent with the jurisdiction's consolidated plan.

Discharge Policy – The jurisdiction will establish and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from
publicly funded institutions or systems of care (such as health care facilities, mental health facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent this discharge from immediately resulting in homelessness for these persons.

Signature/Authorized Official

Deputy City Manager

Title

8/9/17

Date
APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
THE CITY OF STOCKTON

AND

ACLC, INC

A CALIFORNIA NON-PROFIT CORPORATION,

BORROWER

LOAN AGREEMENT

DATED:  November 26, 2002

$  $617,000  

LOAN AGREEMENT

($ 617,000 CDBG Funds)

This Loan Agreement (the "Loan Agreement") is made as of November 26, 2002, by and between the CITY OF STOCKTON, a municipal Corporation (the "CITY"), and ACLC, INC., A California Non-Profit Corporation (the "BORROWER").

RECATALS

A. CITY has determined it necessary and appropriate to retain and expand facilities addressing the child care needs of the community and to promote these services that are affordable to low-income families of the City of Stockton;

B. BORROWER is a non-profit organization and has applied to CITY for a Community Development Block ("CDBG") loan in the amount of $ 617,000 to pay for the construction of a new child care facility located at 9537 Kelley Drive, Stockton, California (the "PROJECT").

C. CITY believes that the construction of a child care facility, and the fulfillment of the terms of this AGREEMENT are in the best interest of the CITY and the health, safety, and welfare of its residents, and in accordance with the public purpose and provisions of the applicable State and Federal laws and requirements under which the said PROJECT has been undertaken and is being assisted.

D. The CITY has conducted an environmental assessment of the PROJECT pursuant to the California Environmental Quality Act ("CEQA"), the National Environmental Protection Act ("NEPA"), and 24 C.F.R. Part 58 of the CDBG regulations and has determined that the PROJECT will have no adverse effects pursuant to CEQA and CDBG regulations.

E. As a condition of the CDBG LOAN, BORROWER shall execute, among other things, a loan agreement, deed of trust, a promissory note, and regulatory agreement. These instruments are intended to secure repayment and performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of the CDBG Loan, BORROWER and CITY hereby agree as follows:

ARTICLE 1. DEFINITIONS

The following terms have the meanings and content set forth in this section wherever used in this Loan Agreement, attached Exhibits, or documents incorporated into this Loan Agreement by reference.
1.1 "BORROWER" is ACLC Inc., a California Non-Profit Corporation, and its authorized representatives, assigns, transferees, or successors-in-interest.

1.2 "BUDGET" means that certain operating budget containing sources and uses of funds for the period and attached as Exhibit "B," which is hereby incorporated into this Loan Agreement by this reference.


1.4 "CDBG LOAN" is the loan of CDBG funds in the principal amount of $617,000 by the City to the BORROWER pursuant to this Loan Agreement.

1.5 "CDBG NOTE" is that certain promissory note in the principal amount of $617,000 to be executed by BORROWER in favor of the City, evidencing all or any part of the CDBG Loan, as well as any amendments, modifications, or restatements thereof. The terms of the CDBG Note are incorporated into this Loan Agreement by this reference.

1.6 "CITY" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.7 "COMMENCEMENT OF CONSTRUCTION" means the time BORROWER or BORROWER’S construction contractor begins substantial physical construction work on the PROJECT at the PROPERTY, including site preparatory work or delivery of materials, beyond maintenance of the PROPERTY in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.8 "ELIGIBLE COSTS" means those PROJECT costs related to the development of the PROJECT for which CDBG Loan proceeds may be used as specified in 24 CFR 570.201 (c) and in the Budget as specified in the attached Exhibit "B," which is incorporated into this Loan Agreement by this reference, and any revisions to the Budget that are approved in writing by City of Stockton.

1.9 "ESCROW HOLDER" means the person or entity designated by the BORROWER and approved by the CITY to hold all loan proceeds and documents until receiving written instructions to record the documents and disburse the funds.

1.10 "HAZARDOUS MATERIALS" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standard.

1.11 "HUD" means the United States Department of Housing and Urban Development.

1.12 "LOAN" means the CDBG Loan.
1.13 "LOAN AGREEMENT" means this loan agreement entered into between CITY and BORROWER.

1.14 "LOAN DOCUMENTS" are collectively this Loan Agreement, Deed of Trust, the CDBG Note and Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.15 "PLANS AND SPECIFICATIONS" means the plans and specifications for the PROJECT as approved by the CITY.

1.16 "PROJECT" means the construction of a new child care facility operated by Head Start and owned by BORROWER.

1.17 "PROPERTY" consists of the real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Loan Agreement by this reference.

1.18 "RECIPIENT" means the BORROWER.

1.19 "REGULATORY AGREEMENT" means the agreement executed by BORROWER and CITY in a form satisfactory to CITY prior to or contemporaneously with the Loan which regulates the use of the PROJECT and stipulates, among other things, that PROJECT funds are to be used for the construction of a new child care facility to provide Child Care Services.

ARTICLE 2. TERMS OF LOAN

2.1 AMOUNT OF LOAN. CITY agrees to lend and BORROWER agrees to accept the CDBG Loan in the total principal amount not to exceed $617,000.

2.2 TERM OF LOAN. Unless sooner due pursuant to the CDBG Deed of Trust and Note, the term of the loan shall be for a period of thirty (30) years beginning upon the date of the issuance of the Certificate of Occupancy.

2.3 USE OF FUNDS. CDBG Loan proceeds may be used only for the Eligible Costs of the PROJECT as shown as Exhibit "B".

2.4 LOAN PROVISIONS. CITY agrees to provide BORROWER with the total of $617,000 according to the following terms:

   a. A forgivable loan in the amount of $617,000 to be foregivien in thirty equal installments of $20,566.67 beginning upon the date of issuance of the Certificate of Occupancy, subject to Section 2.5 of this agreement;

   b. Interest rate shall be at a rate of 0%;

   c. BORROWER shall execute a Promissory Note in favor of CITY to secure repayment of the loan funds pursuant to this AGREEMENT; and;
e. Prepayment of the outstanding loan balance shall be permitted under the terms of this AGREEMENT without penalty to the BORROWER.

2.5 REPAYMENT TERMS. CITY shall unconditionally waive and forgive each annual principal installment as they become due beginning upon the date of the issuance of the Certificate of Occupancy, providing BORROWER fully complies with all specific terms and conditions as outlined in this AGREEMENT. Additional compliance shall be the continuance of the BORROWER to: (1) complete the construction of the PROJECT in San Joaquin County; and (2) provide child care services for low-income residents living in the designated Kelley Drive Neighborhood. CITY shall determine compliance, in its sole discretion, no less than thirty (30) days prior to the due date of each annual installment and notify BORROWER, in writing, of its determination. Simple interest shall begin to accrue upon disbursement of loan funds. Unless otherwise forgiven, pursuant to compliance with the loan conditions described in this agreement, equal payments of \$20,566.67 shall be due annually each anniversary date thereafter until fully paid.

2.6 NON-RECOUPSE OBLIGATION. The obligation to repay the Loan is a non-recourse obligation of the BORROWER. Neither the BORROWER nor any other successor in interest shall have personal liability for repayment of the LOAN, in whole or in part. This limitation of liability is intended to apply only to the obligation to repay the LOAN and is not intended to relieve BORROWER of liability for, inter alia, (1) fraud or willful misrepresentation; (2) failure to pay taxes, assessments or other charges; (3) the misapplication of any proceeds of insurance policies or condemnation awards; (4) BORROWER'S indemnification obligations; (5) legal costs associated with enforcement of any LOAN Document; (6) breach of BORROWER'S warranties and representations.

ARTICLE 3. LOAN DISBURSEMENT

3.1 CONDITIONS PRECEDENT TO DISBURSEMENT. CITY shall not be obligated to make any disbursements of LOAN proceeds or take any other action under the Loan Documents (other than signing the Loan Documents) unless the following conditions are satisfied:

A. There exists no Event of Default as provided in Article 10, nor any act, failure, omission or condition that would constitute an Event of Default.

B. The undisbursed Loan proceeds, together with other financing for PROJECT for which BORROWER has received funds or firm commitments for funds, are not less than the amount which CITY determines is necessary to pay for development of the PROJECT and satisfy all of the covenants contained in the Loan Documents. If CITY determines that said funds are not sufficient for said purposes, BORROWER may satisfy this condition by depositing the amount of the deficiency with CITY.

D. BORROWER has complied with all reporting requirements set forth in this Loan Agreement.

E. BORROWER has delivered a construction schedule satisfactory to CITY;

F. CITY has received a "Release of Funds" from HUD to the extent required for disbursement of the CDBG Loan; and
G. BORROWER has delivered the original CDBG Deed of Trust, Note and the Regulatory Agreement on the Property subject only to the encumbrances set forth in Section 4.5 of this Loan Agreement.

3.2 DISBURSEMENT OF LOAN PROCEEDS. Disbursement of Loan proceeds for the PROJECT shall be made directly from the CITY. The request for disbursement shall be made to CITY at least fifteen business days prior to the date disbursement is needed by BORROWER.

3.3 AMOUNT OF DISBURSEMENT. Disbursement of loan proceeds shall be $617,000 as shown in the Budget. CITY’S obligations shall in no event exceed the Loan amount specified in this Loan Agreement. Any costs above $617,000 necessary for the completion of the PROJECT shall be the sole responsibility of BORROWER.

ARTICLE 4 – PREDEVELOPMENT

4.1 FINANCING. BORROWER shall promptly inform CITY of any changes in the amount, terms, and/or sources of financing or funding for the PROJECT.

4.2 CONTRACTS AND SUBCONTRACTS. All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and CITY.

4.3 WAGES. To the extent required by State Law and/or the Federal Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the BORROWER shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT.

4.4 PLANS AND SPECIFICATIONS. Before commencement of construction, BORROWER shall submit to CITY, for its review and approval, the final plans and specifications for development of the PROJECT (the “Plans and Specifications”). BORROWER shall develop the PROJECT in full conformance with the Plans and Specifications and any modifications thereto approved by CTY.

4.5 TITLE AND TITLE INSURANCE. Borrower warrants that it will acquire and shall maintain good and marketable title to the PROPERTY, excepting only such defects, liens, encumbrances, and exceptions as are approved in writing by CITY, and containing such endorsements as CITY may require.

ARTICLE 5 – DEVELOPMENT OF PROJECT

5.1 CONFIGURATION OF THE PROJECT. BORROWER shall develop the PROJECT in accordance with the Plans and Specifications as construction of a new child care facility.

5.2 COMMENCEMENT OF CONSTRUCTION. BORROWER shall begin construction of the PROJECT no later than thirty (30) days from the date of issuance of a
notice to proceed for the PROJECT. BORROWER shall not commence construction until CITY has issued a written notice to proceed. CITY shall issue a notice to proceed when all predevelopment requirements have been met, including, but not limited to:

A. Submission and approval by CITY of the Plans and Specifications and the construction contract;

B. Submission and approval by CITY of certificates for all insurance under this Loan Agreement;

C. Submission and approval by CITY of all the necessary permits and licenses required to begin development and construction of the PROJECT; and

D. CITY shall be deemed to have issued such a notice if it fails to respond within fifteen (15) days after receipt of written notice from BORROWER that all predevelopment requirements have been met.

5.3 COMPLETION OF CONSTRUCTION. Following commencement of construction, BORROWER shall diligently prosecute construction of the PROJECT to completion as evidenced by the recording of the Certificate of Project Completion.

5.4 SCHEDULING AND EXTENSION OF TIME. It shall be the responsibility of BORROWER to coordinate and schedule the work to be performed so that commencement and completion of construction will take place in accordance with the provisions of this Loan Agreement. CITY may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to BORROWER to enable BORROWER to complete the work shall not constitute a waiver of any other rights CITY has under the Loan Documents.

5.5 QUALITY OF WORK. BORROWER shall construct the PROJECT and shall employ building materials of a quality suitable for the requirements of the PROJECT. BORROWER shall develop the PROJECT in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes, including but not limited to meeting the HUD quality standards set out in 24 C.F.R. Part 882.109 and the cost-effective and energy conservation and effectiveness standards in 24 C.F.R. Part 39, to the extent applicable.

5.6 ADDITIONS OR CHANGES IN WORK. City must be notified in a timely manner or any changes in the work required to be performed under this Loan Agreement, including any additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by CITY must be obtained by BORROWER before any changes, additions, or deletions in work for the PROJECT resulting in any material change in building materials or equipment, specifications, or the structural or architectural design or appearance of the PROJECT provided for in the Plans and Specifications. Consent to any additions, changes, or deletions to the work shall not relieve or release BORROWER from any other obligations in the Loan Documents, or relieve or release BORROWER or its surety from any surety bond.

5.7 RECORDS. BORROWER shall be accountable to CITY for all funds disbursed to BORROWER pursuant to the Loan Documents. BORROWER agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from Loan funds, and to keep all invoices, receipts, and other
documents related to expenditures from said Loan funds for not less than three years after completion of the PROJECT as evidenced by the recording of a Certificate of Project Completion. Records must be kept accurate and current. CITY shall notify BORROWER of any records it deems insufficient. BORROWER shall have 15 calendar days from the date of said notice to correct any deficiency in the records specified by CITY in said notice, or, if more than 15 days shall be reasonably necessary to correct the deficiency, BORROWER shall begin to correct the deficiency within 15 days and correct the deficiency as soon as reasonably possible.

BORROWER shall promptly comply with all the requirements or conditions of the Loan Documents relating to notices, extensions, and other events required to be reported or requested. BORROWER shall promptly supply, upon the reasonable request of CITY, any and all information and documentation which involves the PROJECT and cooperate with CITY in the development of the PROJECT.

5.8 INSPECTIONS. BORROWER shall permit and facilitate, and require its contractors to permit and facilitate, observation and inspection at the job site by CITY and by public authorities during reasonable business hours for the purpose of determining compliance with this Loan Agreement.

5.9 AUDITS. BORROWER shall submit to CITY annual audited Financial Statements by June 1 of each calendar year. BORROWER 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 these Loan Documents, 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 Loan at the expense of the party requesting such audit, unless such audit shows a significant discrepancy in information reported by BORROWER to CITY in which case BORROWER shall bear the cost of such audit.

5.10 CONSTRUCTION RESPONSIBILITIES. BORROWER shall be solely responsible for all aspects of BORROWER’S conduct in connection with the PROJECT including, but not limited to, the quality and suitability of the Plans and Specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by CITY with reference to the PROJECT is solely for the purpose of determining whether BORROWER is properly discharging its obligations to CITY, and should not be relied upon by BORROWER or by any third parties as a warranty or representation by CITY as to the quality of the design or construction of the PROJECT.

5.11 ENCUMBRANCE OF PROPERTY. BORROWER shall not engage in any financing or any other transaction creating any security interest or other encumbrance or lien upon the PROPERTY, whether by express agreement or operation of law, or allow any encumbrances or liens to be made or attached to the PROPERTY.

5.12 SUBORDINATION. This Loan Agreement shall be subordinated in priority only to the liens and encumbrances approved by the CITY in the REGULATORY AGREEMENT or otherwise in writing by the CITY.

5.13 TRANSFER OF PROJECT OR PROPERTY. BORROWER has not made or created, and shall not, prior to the completion of the PROJECT as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment,
conveyance, lease, (other than to residential tenants and a child care operator) or other transfer of this Loan Agreement, the PROJECT, or the PROPERTY, without the prior written consent of CITY. CITY shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) BORROWER is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of BORROWER imposed by the Regulatory Agreement and the other Loan Documents; (c) the transferee demonstrates to CITY’S sole satisfaction that it is capable of and intends to own and operate the PROJECT and the PROPERTY in full compliance with the Regulatory Agreement and the other Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize CITY’S security interest in the PROPERTY and the PROJECT and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the PROJECT and the Loan.

5.14 MECHANICS LIENS AND STOP NOTICES. If any claim of lien is filed against the PROPERTY or any stop notice affecting the LOAN is served on CITY or any other third party in connection with the PROJECT, BORROWER shall, within 20 days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release or such lien or stop notice by delivering to CITY a surety bond in sufficient form and amount, or provide CITY with other assurance satisfactory to CITY that the claim of lien or stop notice will be paid or discharged.

If BORROWER fails to discharge, bond or otherwise satisfy CITY with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, CITY may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at BORROWER’S expense. Alternatively, CITY may require BORROWER to immediately deposit with CITY the amount necessary to satisfy such lien or claim any costs, pending resolution thereof. CITY may use such deposit to satisfy any claim or lien that is adversely determined against BORROWER.

BORROWER shall file a valid notice of cessation or notice of completion upon cessation of construction on the PROJECT for a continuous period of 30 days or more, and take all other reasonable steps to forestall the assertion of claims of lien against the PROPERTY. BORROWER authorizes CITY, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that CITY reasonably deems necessary or desirable to protect its interest in the PROJECT and PROPERTY, in the event that BORROWER refuses to do so.

5.15 BARRIERS TO THE DISABLED. The PROJECT shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

5.16 LEAD-BASED PAINT. If evaluation for the presence of lead-based paint is required under Federal, State, or Local regulation, the BORROWER shall ensure that the contractor tests the paint for lead based paint, and maintains records which confirm that the contractors tests the paint for lead based paint, and maintains records which confirm that the disposal of lead based paint is appropriate and that defective paint debris is treated and disposed of in accordance with applicable Federal, State or Local requirements. In the event that lead-based paint is determined to be present on the site, occupancy of the dwelling unit affected by this AGREEMENT shall not occur until such time as a lead-based paint clearance is obtained. Failure to obtain the clearance, if required, will constitute a default of the loan under Section 10.1 (J). BORROWER further acknowledges receipt of 24 CFR35, subsection "J".
5.17 **CERTIFICATE OF PROJECT COMPLETION.** Upon completion of development of the PROJECT, BORROWER shall submit a certification from the architect for the PROJECT stating that the improvements to the PROPERTY have been made in accordance with the Plans and Specifications. Upon (1) submission of this architect's certification, (2) a determination of final PROJECT costs, (3) a determination by CITY that BORROWER has completed the PROJECT in full conformance with industry standards and the Plans and Specifications, (4) a determination by CITY that BORROWER has satisfied all of BORROWER'S development obligations under this Loan Agreement, and (5) completion of an independent audit of the PROJECT, CITY shall furnish, within 30 calendar days of a written request by BORROWER, a Certificate of Project Completion for the Project. The Certificate shall be in recordable form acceptable to CITY. If CITY fails to provide the Certificate within the specified time, it shall provide BORROWER with a written statement indicating in what respects BORROWER has failed to complete construction of the PROJECT in conformance with this Loan Agreement or is otherwise in violation of the terms of the Loan Documents, and what measures BORROWER will need to take or what standards it will need to meet in order to obtain the Certificate. If CITY does not provide a Certificate or such a written statement within said thirty (30) days, the Certificate shall be deemed to be issued. If and when BORROWER has taken the specified measure or met the specified standards, and is not otherwise in violation under the Loan Documents, CITY shall deliver the Certificate of Project Completion to BORROWER.

5.18 **FEES, TAXES, AND OTHER LEVIES.** BORROWER shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the property or the PROJECT and shall pay such charges prior to delinquency. However, BORROWER shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by CITY, BORROWER deposits with CITY any funds or other forms of assurance CITY in good faith from time to time determines appropriate to protect CITY from the consequences of the contest being unsuccessful.

5.19 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance identified in Exhibit "E" or otherwise approved by CITY and subject to Article 8.5 of the Loan Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, BORROWER shall, at its cost and expense diligently undertake to repair or restore said buildings and improvements consistent with the original Plans and Specifications for the PROJECT. Such work or repair shall commence within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, BORROWER shall make up the deficiency.

5.20 **RELOCATION.** If and to the extent that development of the PROJECT results in the permanent displacement of residential tenants, homeowners, or businesses, BORROWER shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits. BORROWER shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5.21 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of the Loan Documents by either party shall be extended for a period equal to
the period of any delay directly affecting the PROJECT or this Loan Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Loan Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming the extension is sent to the other party within ten (10) calendar days from the date the affected party learns of the commencement of the cause and the resulting delay and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the Project must be completed no later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding. Time of performance under this Loan Agreement may also be extended for any cause for a period of time not to cumulatively exceed 120 days by the mutual written agreement of the CITY’S City Manager and BORROWER.

ARTICLE 6. PROJECT OPERATION

6.1 OPERATION OF PROJECT. BORROWER and BORROWER’S agents shall operate and manage the PROJECT after completion in full conformance with the terms of the Regulatory Agreement.

6.2 NONDISCRIMINATION. BORROWER shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of any part of the PROJECT or PROPERTY on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. BORROWER shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 7. EMPLOYMENT

7.1 EQUAL EMPLOYMENT OPPORTUNITY. BORROWER and any contractors, subcontractors, and professional service providers for the PROJECT shall comply with requirements concerning equal employment opportunity as set forth in Exhibits “C” and “D,” which are hereby incorporated into this Loan Agreement by this reference, and shall incorporate such provisions in all construction contracts, professional services contracts, and subcontracts for work on the PROJECT.

7.2 ENFORCEMENT OF EMPLOYMENT REQUIREMENTS. In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by BORROWER or by any contractor or subcontractor employed on the PROJECT, CITY, in addition to other rights and remedies afforded by this Loan Agreement or applicable law, may: (1) demand that any non-complying party comply with these requirements; (2) withhold disbursement of Loan proceeds to BORROWER or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the non-complying party in the form of a forfeiture of up to one thousand ($1,000) or one percent (1%) of the contract, whichever is less, the amount of such forfeiture to be determined solely by CITY; and/or (4) pursue any
lawful administrative or court remedy to enforce these requirements. Any non-complying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within the 10 days and completely correct the non-compliance in the shortest time as reasonably possible thereafter.

BORROWER 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. During the construction of the Project the BORROWER shall or shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for Claims, losses, liabilities, damages (direct or consequential), compensation, fines penalties, causes of action, administrative and judicial proceedings and orders, judgments, remedial action or requirements, enforcement actions of any kind, and all costs and expenses incurred therewith (including but not limited to attorney’s fees and costs) or other amounts arising out of the failure or alleged failure of any person or entity (including BORROWER, contractor and subcontractors) to pay prevailing wages or comply with the other applicable provisions and implementing regulations in connection with construction of the Project or any other work undertaken or in connection with the Property.

BORROWER shall monitor and cooperate with CITY in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that BORROWER fails to monitor or enforce the requirements against any contractor or subcontractor, CITY may withhold payments to BORROWER, may impose liquidated damages herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare an Event of Default (as defined in Article 10 below) and pursue any of the other remedies available under this Loan Agreement.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 INSURANCE COVERAGE. BORROWER shall cause to have in full force and effect during the term of the Regulatory Agreement the insurance coverage specified in Exhibit “C” to this Loan Agreement, which is hereby incorporated into this Loan Agreement by this reference. In addition, BORROWER shall ensure that the general contractor and subcontractors for the Project maintain the insurance coverage specified in Exhibit “C” until the issuance of a permanent certificate of occupancy for the PROJECT or such other shorter time as CITY approves in writing.

8.2 INSURANCE ADVANCES. In the event BORROWER fails to maintain the full insurance coverage required by this Loan Agreement, CITY, after at least seven (7) business days prior written notice to BORROWER, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by CITY, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of BORROWER to CITY and shall be secured by the Deed of Trust.
8.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. CITY shall not be personally liable to BORROWER for any obligation created under the terms of these Loan Documents except in the case of actual fraud or willful misconduct by such person.

8.4 INDEMNITY. Except for the sole negligence of CITY, BORROWER undertakes and agrees to defend, indemnify, and hold harmless CITY from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Loan Agreement on the part of the BORROWER or any contractor or subcontractor of BORROWER, whether or not contributed to by an act or omission of the CITY. BORROWER shall pay immediately upon CITY'S demand any amounts owing under this indemnity. The duty of BORROWER to indemnify includes the duty to defend CITY or, at CITY'S choosing, to pay CITY'S reasonable costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the PROJECT or the PROPERTY. BORROWER'S duty to indemnify CITY shall survive the term of this LOAN and the reconveyance of the Deed of Trust.

8.5 USE OF INSURANCE PROCEEDS; CONDEMNATION. In the event of any fire or other casualty to any real property securing the Loan in whole or in part, or eminent domain proceedings resulting in condemnation of such property or any part thereof, such event shall not constitute a default under the Loan Documents and the BORROWER shall have the right to rebuild the affected property, and to use all available insurance or condemnation proceeds to that end, provided that: (a) the available proceeds, together with any funds supplied by BORROWER from other sources, are sufficient to rebuild the affected property in a manner that provides adequate security to the CITY for repayment of the Loan; and (b) no material default then exists under any Loan Documents other than defaults which are a result of a fire or other casualty or condemnation.

ARTICLE 9. HAZARDOUS MATERIALS

9.1 REPRESENTATIONS AND WARRANTIES. After reasonable investigation and inquiry, and based on a Phase I environmental assessment, BORROWER hereby represents and warrants to the best of its knowledge as of the date of this Loan Agreement and except as previously disclosed and acknowledged in writing by CITY or as disclosed by the reports based on environmental audit(s) performed on the PROPERTY and submitted to CITY, that (a) the PROPERTY is not and has not been a site for the use, generation, manufacture, transportation, storage, or disposal of Hazardous Materials; (b) the PROPERTY is in compliance with all applicable environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions ("Hazardous Materials Laws"); (c) there are no claims or actions pending or threatened with respect to the PROPERTY by any governmental entity or agency or any other person relating to Hazardous Materials; and (d) there has been no release or threatened release of any Hazardous Materials on, under, or near the PROPERTY (including in the soil, surface water, or groundwater under the PROPERTY) or any other occurrences or conditions on the PROPERTY or on any other real property that could cause the PROPERTY or any part thereof to be classified as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

9.2 NOTIFICATION TO CITY. BORROWER shall immediately notify CITY in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the PROPERTY requiring notice to be given to any governmental entity or agency
under Hazardous Materials Laws; (b) any knowledge by BORROWER (after verification of
the veracity of such knowledge to BORROWER’S reasonable satisfaction) that the
PROPERTY does not comply with any Hazardous Materials Laws; (c) the receipt by
BORROWER of written notice of any Hazardous Materials claims; and (d) the discovery by
BORROWER of any occurrence or condition on the Property or on any real property
located within 2,000 feet of the PROPERTY that could cause the PROPERTY or any part
thereof to be designated as a "hazardous waste property" or as a "border zone property"
under California Health and Safety Code Sections 25220, et seq., or regulations adopted
therewith.

9.3 USE AND OPERATION OF PROJECT OR PROPERTY. Neither
BORROWER, nor any agent, employee, or contractor of BORROWER, nor any authorized
user of the PROJECT or the PROPERTY shall use the PROJECT or the PROPERTY or
allow the PROJECT or PROPERTY to be used for the generation, manufacture, storage,
disposal, or release of Hazardous Materials. BORROWER shall comply and cause the
PROJECT and the PROPERTY to comply with Hazardous Materials Laws.

9.4 REMEDIAL ACTIONS. If BORROWER has actual knowledge of the
presence of any Hazardous Materials on or under the PROJECT or the PROPERTY,
BORROWER shall immediately take or cause its tenant to immediately take, at no cost or
expense to CITY, all handling, treatment, removal, storage, decontamination, cleanup,
transport, disposal or other remedial action, if any, required by any Hazardous Materials
Laws or by any orders or requests of any governmental entity or agency or any judgement,
consent decree, settlement or compromise with respect to any Hazardous Materials claims.
The foregoing, however, shall be subject to BORROWER’S right of contest below.

9.5 RIGHT OF CONTEST. BORROWER may contest in good faith any claim,
demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based
on a material question of law or fact raised by BORROWER in good faith, (b) BORROWER
promptly commences and thereafter diligently pursues the contest, (c) the contest will not
materially impair the taking of any remedial action with respect to such claim, demand, levy
or assessment, and (d) if requested by CITY, BORROWER deposits with CITY any funds
or other forms of assurance CITY in good faith from time to time determines appropriate to
protect CITY from the consequences of the contest being unsuccessful and any remedial
action then reasonably necessary. No Event of Default shall be deemed to exist with
respect to any claim, demand, levy or attachment being contested by BORROWER under
the conditions of this Section 9.5.

9.6 ENVIRONMENTAL INDEMNITY. BORROWER shall defend, indemnify, and
hold CITY from and harmless against any claims demands, administrative actions,
litigation, liabilities, losses, damages, response costs, investigation costs and penalties,
including all costs of administrative or legal proceedings and attorney’s fees, that CITY may
directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any
representation, warranty, agreement, or covenant contained in this Loan Agreement with
respect to Hazardous Materials, or as a consequence of any use, generation, manufacture,
storage, release, or disposal (whether or not BORROWER knew of same) of any
Hazardous Materials occurring prior to or during BORROWER’S use of occupancy of the
PROPERTY.

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ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall, upon giving of applicable notice and expiration of applicable cure period, constitute an "Event of Default" under this Loan Agreement:

A. Monetary. (1) BORROWER'S failure to pay when due any sums payable under the CDBG Note or any advances made under this Loan Agreement; (2) BORROWER'S use of Loan proceeds for costs other than Eligible Costs, or for uses inconsistent with other terms and restrictions in the Loan Documents; (3) BORROWER'S failure to obtain and maintain the insurance coverage required under this Loan Agreement; (4) BORROWER'S failure to make any other payment or assessment due under the Loan Documents;

B. Construction. (1) BORROWER'S substantial deviation in the work of construction specified in the Plans and Specifications submitted to CITY, without CITY'S prior written consent; (2) BORROWER'S use of defective or unauthorized materials or defective workmanship in constructing the PROJECT; (3) BORROWER'S failure to commence or complete construction, without proper justification under the unavoidable delay provision of this Loan Agreement, according to the construction schedule specified in this Loan Agreement; (4) the cessation of construction prior to completion of the PROJECT for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition of BORROWER or the PROJECT that gives CITY reasonable cause to believe that the PROJECT cannot be constructed by the scheduled completion date according to the terms of this Loan Agreement; (6) the filing of any claim of lien against the PROJECT or the PROPERTY or service on CITY of any stop notice relating to the Loan and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Loan Agreement; (7) BORROWER'S failure to remedy any deficiencies in record keeping or failure to provide records to CITY upon CITY'S request; (8) BORROWER'S failure to substantially comply with any federal, state, or local laws or applicable CITY restrictions governing construction, including but not limited to provisions of this Loan Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials;

C. Operation. (1) discrimination by BORROWER on the basis of characteristics prohibited by this Loan Agreement or applicable law; (2) the imposition of any encumbrances or liens on the PROJECT or the PROPERTY without CITY'S prior written approval that are prohibited under this Loan Agreement or that have the effect of reducing the priority of or invalidating the Deed of Trust; (3) any material adverse change in the condition of BORROWER or the PROJECT or permanent financing or funding for the PROJECT that gives CITY reasonable cause to believe that the services cannot be operated according to the terms of the Loan Documents or the Regulatory Agreement;

D. General Performance of Loan Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed in the Loan Documents;

E. General Performance of Other Obligations. Any substantial or continuous breach by BORROWER of any material obligations on BORROWER imposed by any other agreements with respect to the financing, development, or operation of the PROJECT or the PROPERTY, whether or not CITY is a party to such agreement;
F. **Representations and Warranties.** A determination by CITY that any of BORROWER’S representations or warranties made in the Loan Documents, any statements made to CITY by BORROWER, or any certificates, documents, or schedules supplied to CITY by BORROWER were untrue in any material respect when made, or that BORROWER concealed from or failed to disclose a material fact from CITY;

G. **Damage to PROPERTY.** Material damage or destruction to the PROPERTY of the PROJECT by fire or other casualty, if BORROWER does not take steps to reconstruct the PROJECT to the extent required by the Loan Documents;

H. **Bankruptcy, Dissolution, and Insolvency.** BORROWER’S or any corporation controlling BORROWER’S (1) filing, voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due;

I. **Cross Default Provision.** Any default in payment or any other terms of any other approved security interest shall constitute a default under the CDBG Note of Loan Documents; and

J. **Lead-Based Paint.** In the event BORROWER allows occupancy of dwelling unit before lead-based paint clearance is obtained, if required, pursuant to Section 5.16 above.

10.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** There shall be no notice or cure periods for Events of Defaults which are monetary. For Events of Default which are not exclusively monetary, CITY shall give written notice to BORROWER of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken.

10.3 **CITY’S REMEDIES.** Upon the happening of an Event of Default by BORROWER and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), CITY’S obligation to disburse Loan proceeds shall terminate, and CITY may also, in addition to other rights and remedies permitted by the Loan Documents or applicable law, proceed with any or all of the following remedies in any order or combination CITY may choose in its sole discretion:

A. Terminate this Loan Agreement, in which event the entire principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY including administrative costs, shall immediately become due and payable at the option of the CITY;

B. Bring an action in equitable relief (1) seeking the specific performance by BORROWER of the terms and conditions of the Loan Documents, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;
C. Accelerate the Loan, and demand immediate full payment of the principal amount outstanding under the CDBG Note, as well as any other monies advanced to BORROWER by CITY;

D. Enter the PROPERTY and take any actions necessary in its judgment to complete construction of the PROJECT, including without limitation (1) making changes in the Plans and Specifications or other work or materials with respect to the PROJECT, (2) entering into, modifying, or terminating any contractual arrangements (subject to CITY’S right at any time to discontinue work without liability), and (3) taking any remedial actions with respect to Hazardous Materials that CITY deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy;

E. Seek appointment from a court of competent jurisdiction of a receiver with the authority to complete construction as needed to preserve CITY’S interest in seeing the PROJECT developed in a timely manner (including the authority to take any remedial actions with respect to Hazardous Materials that CITY or the receiver deems necessary to comply with Hazardous Materials Laws or to render the PROPERTY suitable for occupancy);

F. Order immediate stoppage of construction and demand that any condition leading to the Event of Default be corrected before construction may continue;

G. Disburse from Loan proceeds any amount necessary to cure any monetary Event of Default;

H. Enter upon, take possession of, and manage the PROPERTY, either in person, by agent, or by a receiver appointed by a court, and collect rents and other amounts specified in the assignment of rents in the Deed of Trust and apply them to operate the PROPERTY or to pay off the Loan or any advances made under the Loan Documents, as provided for by the Deed of Trust;

I. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

J. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; and

K. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding CITY from proceeding with a non-judicial foreclosure under the power of sale contained in the Deed of Trust in the Event of Default by BORROWER.

10.4 BORROWER’S REMEDIES. Upon the fault or failure of CITY to meet any of its obligations under the Loan Documents, BORROWER may:

A. Demand payment from CITY of any sums due BORROWER;

B. Bring an action in equitable relief seeking the specific performance by CITY of the terms and conditions of the Loan Documents; and

C. Pursue any other remedy allowed at law or in equity.
ARTICLE 11. GENERAL PROVISIONS

11.1 BORROWER'S WARRANTIES. BORROWER represents and warrants (1) that it has access to professional advice and support to the extent necessary to enable BORROWER to fully comply with the terms of the Loan Documents, and to otherwise carry out the PROJECT, (2) that it is duly organized, validly existing and in good standing under the laws of the State of California, (3) that it has the full power and authority to undertake the PROJECT and to execute the Loan Documents, (4) that the persons executing and delivering the Loan Documents are authorized to execute and deliver such documents on behalf of BORROWER, and (5) that BORROWER will perform the necessary predevelopment tasks to enable construction of the PROJECT to begin within thirty (30) days from the date of the construction loan closing.

11.2 PROJECT MONITORING AND EVALUATION. Except as otherwise provided for in this Loan Agreement, BORROWER shall maintain and submit records to CITY within ten (10) business days of CITY'S request which clearly document BORROWER'S performance under each requirement of the Loan Documents.

11.3 CONFLICTS OF INTEREST. BORROWER shall exercise due diligence to ensure that (1) the Mayor, City Manager, or any member of the City Council of the City of Stockton, or anyone related within the third degree to these parties, or (2) any member, officer, employee, or agent of CITY, or any immediate family member of such person, who, with respect to the PROJECT, exercises any functions or responsibilities during his/her tenure or who is in a position to participate in a decision making process or gain inside information, has not obtained or will not obtain an interest in any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

BORROWER warrants, represents, and agrees to exercise due diligence to ensure, that no member, officer, director, or employee of BORROWER who, with respect to the PROJECT, (1) exercises any functions or responsibilities for CITY, (2) is in a position to participate in CITY'S decision making process, or (3) is in a position to gain inside information, has obtained or will obtain a personal or financial interest or benefit from this PROJECT, or any contract, subcontract or agreement with respect thereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For purposes of this paragraph only, "personal or financial interest or benefit" shall not include salaries or other related administrative or personnel costs.

11.4 POLITICAL ACTIVITY. None of the funds, materials, property or services contributed by CITY or BORROWER under this Loan Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

11.5 TERM OF THIS AGREEMENT. The Loan Documents shall commence on the date set forth above and remain in full force and effect throughout the term of this Loan.

11.6 GOVERNING LAW. The Loan Documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.
11.7 **STATUTORY REFERENCES.** All references in the Loan Documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

11.8 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Loan Documents, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

11.9 **TIME.** Time is of the essence in these Loan Documents.

11.10 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of CITY or BORROWER required under the Loan Documents shall not be unreasonably withheld. Any approval required under the Loan Documents shall be in writing and executed by an authorized representative of the party granting the approval.

11.11 **NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between BORROWER and CITY shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by a commercial delivery service which provides a signed receipt for delivery or delivered personally, to BORROWER and CITY as follows:

**CITY:**
City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attn: City Manager

**COPY TO:**
Housing & Redevelopment Department  
22 E. Weber Street Room 350  
Stockton, Ca. 95202  
Attn: Director

**BORROWER:**
ACLC, Inc.  
Attn: Executive Director  
42 N. Sutter, Suite 406  
Stockton, Ca. 95202

11.12 **BINDING UPON SUCCESSORS.** All provisions of these Loan Documents shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties; provided, however, that this Section does not waive any prohibition on assignment of this Loan Agreement by BORROWER without CITY'S consent.

11.13 **RELATIONSHIP OF PARTIES.** The relationship of BORROWER and CITY for this PROJECT under this Loan Agreement is and at all times shall remain solely that of
a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. CITY neither undertakes nor assumes any responsibility or duty to BORROWER (except as provided for herein) or any third party with respect to the PROJECT, the PROPERTY, or the LOAN. Except as CITY may specify in writing, BORROWER shall have no authority to act as an agent of CITY or to bind CITY to any obligation.

11.14 ASSIGNMENT AND ASSUMPTION. BORROWER shall not assign any of its interests under this Loan Agreement or the Loan Documents to any other party, except in connection with a transfer of the PROJECT or the PROPERTY which is specifically permitted under the terms of the Loan Documents, without the prior written consent of CITY. Any unauthorized assignment shall be void.

11.15 WAIVER. Any waiver by CITY of any obligation in these Loan Documents must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of BORROWER or to pursue any remedy allowed under the Loan Documents or applicable law. Any extension of time granted to BORROWER to perform any obligation under the Loan Documents shall not operate as a waiver or release from any of its obligations under the Loan Documents. Consent by CITY to any act or omission by BORROWER shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY’S written consent to future waivers.

11.16 INTEGRATION. This Loan Agreement and the other Loan Documents, including exhibits, executed by BORROWER for the PROJECT or the PROPERTY, contain the entire agreement of the parties and supersede any and all prior negotiations.

11.17 OTHER AGREEMENTS. BORROWER represents that it has not entered into any agreements that are inconsistent with the terms of the Loan Documents. BORROWER shall not enter into any agreements that are inconsistent with the terms of the Loan Documents without an express waiver by CITY in writing.

11.18 AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to the Loan Documents must be in writing, and shall be made only if executed by both BORROWER and CITY.

11.19 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, directions, consent, request, or other action by the CITY is required or permitted under this Loan Agreement, such action may be given, made, or taken by the CITY’S City Manager, or any person who shall have been designated in writing to BORROWER by the CITY’S City Manager, without further approval by the City Council. Any such action shall be in writing. Notwithstanding this provision, the City Council shall consider and approve (a) any extension of the scheduled maturity date of the Loan; (b) increases in the original principal amount of the Loan except for increases resulting from advances made by CITY, following written notice to BORROWER, for payment of taxes or insurance or other costs or charges in order to preserve and protect CITY’S security; (c) modification of the interest rate applicable to the Loan resulting from
amendment or modification of the Loan Documents after the date of this Loan Agreement; or (d) changes in the amortization of the Loan.

11.20 NO THIRD-PARTY BENEFICIARIES. All of the provisions of the Loan Documents are intended to bind and benefit only the CITY and the BORROWER, and their respective permitted successors and assigns. It is not intended that any provisions of this Loan Agreement benefit, and shall not be construed that any provisions of this Loan Agreement benefit nor shall said agreement be enforceable by any tenant, prospective tenant, creditor, contractor, or other third party.

11.21 SEVERABILITY. Every provision of this Loan Agreement is intended to be severable. If any provision of this Loan Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11.22 AUTHORITY TO EXECUTE. The undersigned represent and warrant they are each authorized by the parties to execute this Loan Agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Loan Agreement as of the date first above written.

APPROVED AS TO FORM:

By: ____________________________
   
BORROWER's Counsel

APPROVED AS TO FORM: Office of the City Attorney

By: ____________________________
   
Assistant City Attorney

BORROWER: ACLC, INC., A California non-profit organization

By: ____________________________
   
CEO

CITY: City of Stockton, a municipal corporation

By: ____________________________
   
Mark Lewis, Esq.
   City Manager

ATTEST: ____________________________
   
Katherine Gong Meissner
   City Clerk of the City of Stockton

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EXHIBIT “A”

That certain real property situated in the State of California of San Joaquin, City of Stockton, described as follows:

Lot 734 as shown upon map entitled Tract No. 1515 Colonial Estates North Unit No 16 filed for record May 22, 1979 in Book of Maps and Plats, Book 24, Page 60, San Joaquin County Records.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without the right of surface entry.
EMERALD POINTE
DAY CARE FACILITY
COMBINED DEVELOPMENT BUDGET

PREDEVELOPMENT

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<td>ARCHITECTURAL / ENGIN DESIGN/SURVEY</td>
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SUB-TOTAL                                      | $29,500|

DEVELOPMENT

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<td>CONSTRUCTION CONTINGENCY</td>
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SUB-TOTAL                                                  | $587,500|

TOTAL                                                      | $617,000|

Exhibit “B”
EXHIBIT “C”

INSURANCE REQUIREMENTS

As a precondition to making the Loan, Borrower shall obtain the following insurance coverage, and shall maintain such coverage in full force and effect during construction of the Project: comprehensive general liability insurance policy affording coverage for bodily injury, and property damage in the combined single limit of One Million Dollars ($1,000,000.00). Before Loan disbursement and issuance of a notice to proceed, Borrower shall deliver to Lender certificate(s) of insurance, or a binder followed within 30 days by a certificate of insurance, evidencing the required coverage.

1. General Conditions

   During the term of this Agreement and without limiting the Borrower’s indemnification of the City, the Borrower shall provide and maintain at its own expense insurance having the limits customarily carried and actually arranged by the Borrower but not less than the amounts and types listed below covering its operations hereunder. All insurance shall be subject to the following conditions:

   a. Additional Insured/Loss Payee

      The City, their boards, officers, agents and employees shall be included as additional insured’s by separate endorsement in all liability insurance policies except: Workers’ Compensation/Employer’s Liability and second-party Legal Liability coverages (such as Fire Legal) and Owners and Contractors Protective Liability, in which latter case the City shall be the named insured. The City shall be named loss payee as its interest may appear in all required property, fidelity or surety coverages.

   b. Insurance Requirements

      All insurance required hereunder shall conform to City requirements established by charter, ordinance or policy and shall be filed with the City Finance Department for review.

      During the period of construction, Borrower must obtain or cause to be obtained a builder’s risk or equivalent policy covering damage or loss up to the value of labor and materials and naming the City as loss payee as its interest may
appear. After completion of the Project, Borrower must cause to be issued a physical damage insurance policy covering the replacement value of the property as mutually agreed between Borrower and insurer with a lender's loss payable endorsement listing the City and Borrower as the loss payees as their interests may appear. This policy must remain in effect throughout the term of the Loan.

c. **Primary Insurance**

Such insurance shall be primary with respect to any insurance maintained by City and shall not call on the City's insurance for contributions.

d. **Admitted Carrier/Licensed California Broker**

Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in California with an A.M. best rating of at least A:VII and approved by the City.

e. **30-Day Notice**

With respect to the interests of City such insurance shall not be canceled, or materially reduced in coverage or limits, or non-renewed except after thirty (30) days written notice by receipted delivery (e.g. certified mail-return receipt, courier or telegram) has been given to the City by the carrier(s).

f. **Prior Approval**

Evidence of insurance shall be submitted to and approved by the City Attorney and the City Finance Department prior to commencement of any work or tenancy under this Agreement.

g. **Acceptable Evidence**

The appropriate City special endorsement forms are the preferred forms of evidence of insurance. Alternatively, Borrower may submit two (2) certified copies of the full policy or other evidence acceptable to the City Attorney containing language that complies with subparagraphs (a) through (f) above. With respect to liability insurance, either a signed copy of the policy declaration page or a letter from Borrower's insurance broker certifying coverage, together with a 30-day cancellation notice endorsement in favor of the city and Agency as specified in subparagraph "e" of this section will satisfy this requirement.

h. **Severability of Interest**

Except with respect to the insurance company's limits of liability,
each liability insurance policy shall apply separately to each insured against whomever claim or suit is brought. The inclusion of any person or organization, as an insured, shall not affect any right which such person or organization would have as a claimant if not so included.

i. **Renewal**

Once the insurance has been approved by the City, evidence of renewal of an expiring policy may be submitted on a manually signed certificate of insurance. If the policy or carrier has changed, however, new evidence as specified in paragraphs (a) through (h) above, must be submitted.

j. **Proceeds**

All proceeds of insurance with respect to loss or damage to the Project during the term of the Loan shall be payable, under the provisions of the policy of insurance, jointly to the Borrower, the construction lender(s) and the City, and said proceeds shall constitute a trust fund to be used for the restoration, repair or rebuilding of the Project in accordance with plans and specifications approved in writing by the City. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, such proceeds shall be applied first to repay the construction lenders, second to repay the Loan, and third to repay the Acquisition Loan to Borrower from the City. In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, the Borrower shall have the right to rebuild the Project, and to use manner that provides adequate security to the City for repayment of the Loan or if such proceeds are insufficient then the Borrower shall have funded any deficiency, (b) the City shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the City for repayment of the remaining balance of the Loan.

2. **Worker’s Compensation**

By signing this Agreement, the Borrower hereby certifies that it is aware of the provisions of Section 3700, *et seq.*, of the Labor Code which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of that code, and that it will comply and require the Borrower to comply with such provisions before commencing the performance of the work of this Agreement.

3. **Aggregate Limits/Blanket Coverage**
If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancy of the Borrower not related to this Agreement, the Borrower shall give the City prompt, written notice of any incident, occurrence, claim, settlement or judgment against such insurance which in Borrower’s best judgment may diminish the protection such insurance affords City. Further, Borrower shall immediately take all reasonable and available steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. The City may specify a minimum acceptable aggregate for each line of coverage required.

4. **Modification of Coverage**

Upon advice from the City Finance Department, the City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required hereunder by giving the Borrower forty-five (45) days advance written notice of such change. If such change should result in substantial additional cost to Borrower, the City agrees to negotiate additional compensation proportional to the increased benefit to the City.

5. **Failure to Procure Insurance**

The required coverages and limits are subject to availability on the open market at reasonable cost as determined by the City. Non-availability or non-affordability must be documented by a letter from Borrower’s insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, Borrower’s failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which the City may immediately suspend or terminate this Agreement or, at either of their discretion, procure or renew such insurance to protect the City’s interests and pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Borrower to the City upon demand or it may offset the cost of the premiums against any monies due to the Borrower from the City.

6. **Underlying Insurance**

Borrower shall be responsible for requiring indemnification and insurances it deems appropriate from its employees receiving mileage allowance and from its consultants, agents and subcontractors, if any, to protect Borrower’s and City’s interests and for ensuring that such persons comply with any applicable insurance statutes. Borrower is encouraged to seek professional advice in this regard.
EXHIBIT "D"

HUD RECIPIENT AND SUBRECIPIENT REQUIREMENTS
ASSOCIATED WITH THE USE OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

I. RECORDKEEPING

RECIPIENT shall establish and maintain sufficient records in their original form to enable HUD to determine whether RECIPIENT has met the requirements of 24 CFR 570, Community Development Block Grant Program. Such records shall be retained for a period of three years after termination of Agreement and all other pending matters are closed. "Pending Matters" include, but are not limited to, an audit, litigation, or other actions involving records. CITY may, at its discretion, take possession and retain said records. Records in their original form pertaining to matters covered by Agreement shall, at all times, be retained within the Stockton Area, unless authorization to remove them is granted in writing by CITY. At a minimum, the following records are needed:

A. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location, the amount of CDBG funds budgeted, obligated and expended for the activity and the eligibility provision.

B. Records demonstrating that each activity undertaken meets one of the mandated national objectives, set forth in 570.208. Such records shall include the following information:

1. For each activity determined to benefit low and moderate income persons, the income limits applied, and the point in time when the benefit was determined.

2. For each activity determined to benefit low and moderate income persons based on the area served by the activity:

   a. The boundaries of the service area; and,
   b. The income characteristics of families and unrelated individuals in the service area.

3. For each activity determined to benefit low and moderate income persons because the activity involves a facility or service designed for use by a limited clientele consisting exclusively or predominantly of low and moderate income persons:
a. Documentation establishing that the facility or service is designed for, and used by, senior citizens, handicapped persons, battered spouses, abused children, the homeless, illiterate persons, or migrant farm workers (presumptive low/mod benefit);

b. Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used predominantly by low and moderate income persons; or

c. Data showing the size and annual income of the family of each person receiving the benefit.

4. For each activity determined to benefit low and moderate income persons based on the creation of jobs, the recipient shall provide:

a. A copy of a written agreement from each assisted business containing:

   (1) a commitment by the business that it will make at least 51 percent of the jobs available to low and moderate income persons, and will provide training for any of these jobs requiring special skills or education;

   (2) a listing by job title of the permanent jobs to be created, which jobs require special skills or education, and which jobs are part-time, if any, and,

   (3) description of actions to be taken by RECIPIENT and business to ensure that low/mod income persons receive first consideration for these jobs.

   (4) A listing by job title of the permanent jobs filled, and which jobs of those were available to low/mod income persons, and a listing of low/mod income persons interviewed for a particular job; and which low and moderate income persons were hired.

5. For each activity determined to benefit low and moderate income persons based on the retention of jobs:

   a. Evidence that, in the absence of CDBG assistance, jobs would be lost;

   b. For each business assisted, a listing by job title of permanent jobs retained;
c. For each retained job claimed to be held by a low/mod income persons, information of the size and annual income of the person’s family.

6. For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:
   a. The boundaries of the area; and
   b. A description of the conditions which qualified the area at the time of its designation in sufficient detail to demonstrate how the area met the slum and/or blight criteria.

7. For each activity determined to meet a community development need having a particular urgency:
   a. Documentation concerning the nature and degree of seriousness of the condition, requiring assistance;
   b. Certification that the CDBG activity was designed to address the urgent need;
   c. Information on the timing of the development of the serious condition; and
   d. Evidence confirming that other financial resources to alleviate the need were not available.

C. Records which demonstrate that an eligibility determination was made as prescribed in 24 CFR 570.201 (Determination made by CITY and provided to RECIPIENT).

D. Records related to real property acquired or improved in whole or in part using CDBG funds in excess of $25,000; Certification that a subrecipient may not change the use, or planned use, of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, for five years after the closeout of the grant, unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change, and either; the new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or Property is disposed of in a manner which results in the amount of the current fair market value of the CDBG funded acquisition or improvement, and RECIPIENT’s CDBG Program is reimbursed in this amount.

E. Record of agreements with subrecipients indicating, at a minimum, the requirements of this agreement, and the following:
1. In accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

2. Where applicable conditions prescribed in 24 CFR 570.200 (j) for the use of funds by religious organizations.

II. REPORTS

RECIPIENT shall submit the following performance and/or evaluation report to CITY to facilitate mandated reporting to HUD:

A. A calendar quarterly report of progress and accomplishments for all funded activities, to include a quantitative list of activity beneficiary type(s);

B. An annual equal employment opportunity report (HUD/EEO-4) on recipient employment, containing data as of June 30;

C. A semiannual Minority Business Enterprise Report by March 30, indicating contract and subcontract activity during the first half of the fiscal year and, by September 30, a report on such activity during the second half of the year.

D. RECIPIENTS may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities.

E. If RECIPIENT's reports or other documentation are not submitted as required, CITY reserves the right to withhold payment to RECIPIENT, or to impose other sanctions, at CITY's sole discretion.

III. PROGRAM INCOME

Pursuant to 24 CFR 570.504 (c), RECIPIENT shall inform CITY of any program income generated by expenditure of CDBG funds. Program income earned by RECIPIENT is to be returned to CITY or retained by RECIPIENT. Where program income is to be retained by RECIPIENT, program income may be used only for eligible activities, subject to all applicable requirements governing the use of CDBG funds. When the subrecipient retains program income, program income shall be substantially disbursed before additional drawdowns of grant funds are made for the same activity. Upon close-out or change in status, RECIPIENT shall return to CITY all program income on hand and received subsequent to close out or change in status.
IV. ADMINISTRATION

As the primary general-purpose local government unit under the Housing and Community Development Act of 1974, as amended, it shall be the responsibility of CITY to apply for grants, to administer all funds received, and to undertake or assist in undertaking essential community development and housing assistance activities.

A. CITY shall maintain records in accordance with applicable statutes and regulations and with approved accounting procedures, and said records shall be available for public inspection at all times.

B. CITY and RECIPIENT shall take all required actions necessary to comply with:

1. Section 104(b) of title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws, and;


V. UNIFORM ADMINISTRATIVE REQUIREMENTS

RECIPIENT shall comply with applicable uniform administrative requirements, as described in 24 CFR 570.502 and the City of Stockton’s certification required by Section 104 (b) of Title I the Housing and Community Development Act of 1974, as amended including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of Title I of the Housing and Community Development Act of 1975, and other applicable laws.

VI. REVERSION OF ASSETS

RECIPIENT and any of its subrecipients shall, at the expiration of the CDBG grant, transfer to CITY any CDBG funds on hand at the time of expiration, and any accounts receivable attributable to the use of CDBG funds.

VII. ENVIRONMENTAL STANDARDS

Prior to the commencement of each CDBG-funded activity, RECIPIENT will complete all mandated environmental reviews in compliance with 24 CFR Part 58, Environmental Review Procedures for Community Development Block Grants. CITY will determine the required environmental review procedure to be completed for each activity, and provide technical assistance to facilitate compliance.
VIII. AUDITS

A. At any time during normal business hours and as often as the Grantor, the U.S. Comptroller General, Auditor General of the State of California or CITY may deem necessary, RECIPIENT shall make available for examination all of its records.

B. RECIPIENT shall conduct or have conducted on an annual basis and within six (6) months after the close of RECIPIENT’s fiscal year, an audit.

C. The audit is to be conducted annually on an organization-wide basis to test the fiscal integrity of financial transactions as well as compliance with the terms and conditions of the Federal grant and this Agreement.
   1. RECIPIENTS receiving funds from two or more sources shall annually subcontract with a qualified independent auditor.
   2. RECIPIENTS receiving funds solely from CITY shall annually subcontract with a qualified independent auditor, unless notified in writing by the Housing and Redevelopment Department that an auditor will be provided.
   3. RECIPIENT, no later than fifteen (15) days of receipt of the final audit report and within six (6) months after the close of RECIPIENT'S fiscal year, shall submit three (3) copies of the report to the Housing and Redevelopment Department.

C. In the event RECIPIENT has only Performance Based or Fixed Unit Price Contracts, a written request may be made to CITY for permission to have an annual audit performed using alternative audit requirements.

The alternative audit requirements of CITY require an audit that shall result in the following reports from the independent auditor:

1. Report on the Schedule of Federal Financial Assistance (Grant funds earned through contract performance);

2. Report on internal controls (accounting and Administrative) that were evaluated, the scope of the auditor's assessment work and any significant weaknesses found;

3. Opinion on compliance with contract provisions and specific requirements applicable to Federal financial assistance;

4. Report on compliance with general requirements applicable to Federal financial assistance; and
5. Schedule of findings and questioned costs.

D. CITY reserves the right to impose any or all of the following sanctions for RECIPIENT's failure to comply with the requirements of the Single Audit Act and the provisions of this Agreement.

E. Depending on the particular use of CDBG funds, For Profit Recipients only may request in writing a waiver of audit requirements described herein.

IX. EQUIPMENT RECORDS

Non-expendable personal property (herein referred to as "EQUIPMENT") acquired pursuant to this Agreement, shall be properly maintained and accounted for as set forth below.

A. A record shall be maintained and forwarded to CITY for each item of EQUIPMENT acquired for the program upon receipt of EQUIPMENT. EQUIPMENT is non-expendable property which is not consumed or does not lose its identity by being incorporated into another item of EQUIPMENT which costs $100 or more per unit, or is expected to have a useful life of one (1) year or more. A grouping of like items, such as chairs, with an aggregate cost in excess of $100 shall also be controlled and accounted for as EQUIPMENT even though the cost of a single item is less than $100. The record shall include:

1. description of the item of equipment, including model and serial number, if applicable;
2. date of acquisition;
3. the acquisition cost or assigned value to the program; and,
4. source of acquisition.

X. SUBRECIPIENT AGREEMENT

Pursuant to 24 CFR 570.501 (b), RECIPIENT is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in 24 CFR 570.502.

XI. DRUG-FREE WORKPLACE CERTIFICATE

RECIPIENT will certify to CITY that it provides a drug-free workplace as mandated by the Drug-Free Workplace Act.

XII. NON-DISCRIMINATION
RECIPIENT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, religion, sex, national origin, ancestry, physical or mental handicap, or age, as more specifically set forth in Section 570.602 of said HUD Regulations which require compliance with Section 109 of the Act.

XIII. CIVIL RIGHTS COVENANT

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) and related HUD Regulations, including the regulations under 24 CFR, Part 1. Further, pursuant to Executive Order 11063 in the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under the Agreement, Developer shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that Authority and the United State are beneficiaries of and entitled to enforce such covenant. RECIPIENT, in undertaking its obligation under this Agreement, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

XIV. COMPLIANCE REQUIREMENTS FOR CDBG FUNDS

Developers shall use monies received pursuant to this Agreement in conformity with the applicable provisions of Volume 24, Code of Federal Regulations, Part 570, issued by the Department of Housing and Urban Development of the United States.

No funds paid by Authority hereunder shall be used directly or indirectly by RECIPIENT for any political activity whatsoever.

XV. CONFLICT OF INTEREST

No member, officer or employee of RECIPIENT or its designees or agents who exercises any function of responsibility with respect to the Project during his tenure or for one (1) year thereafter shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Developer shall incorporate in all subcontracts provisions prohibiting such interest pursuant to the purpose of Section 570.611 of the aforesaid Regulations of the Department of Housing and Urban Development attached hereto, marked Part 2, Exhibit A, and made a part hereof.
XVI. MINORITY/WOMEN'S BUSINESS ENTERPRISES REQUIREMENTS

This Agreement is subject to the minority and women’s business enterprises ("MBE/WBE") requirements set forth in Executive Order 12432, Executive Order 11625, and Executive Order 12138, and all other applicable Federal, State and local laws, regulations and policies relating to equal employment and contract opportunities, including laws hereinafter enacted.

In all CDBG services solicitation, the City’s Compliance Officer shall ensure that (whether by bid, RFP or RFQ) recipient shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

A. Attend a pre-bid meeting outlining Contract Compliance/Affirmative Action for MBE’s and WBE’s.

B. Obtaining the Minority and Women’s Business Enterprises Registry from the City’s Contract Compliance Officer to ensure such contractors receive an invitation to bid.

C. Advertising the invitation to bid or to submit proposals from minority and women subcontractors/suppliers in Stockton in a newspaper of general circulation. This advertisement must be published at least two (2) weeks prior to the bid opening. Advertisements can be placed with any of the following:
   1. Any minority and women trade association publication;
   2. Any local newspaper;
   3. Any local minority paper;
   4. Daily construction paper; and
   5. Local construction paper.

D. Reviewing the telephone directory or professional organization membership lists and documenting direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid. Document by summary your efforts to encourage minority- and women-owned firms to bid the project. This summary could include a list of those minority firms and women businesses who did not respond and a log of telephone calls to follow up initial solicitation.
XVII. FEDERAL LABOR STANDARDS

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, CORPORATION and all subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement agree to comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen. If wage rates higher than those required under such regulations are imposed by State or local law, nothing hereunder is intended to relieve CORPORATION of its obligations, if any, to require payment of the higher rates. CORPORATION shall cause or require to be inserted in full in all such contracts subject to such regulations, provisions meeting the requirements of the Federal Labor Standards Provision. No award of the contracts covered under this section of this Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulation of the Department of Labor to receive an award of such contract.

XVIII. Executive Order 11246

CORPORATION shall comply with the full provisions of Executive Order 11246 in all phases of contracting and employment involving Federally assisted construction contracts and subcontracts. Executive Order 11246 requires non-discrimination and affirmative action related to advertising, recruitment, employment and termination.
EXHIBIT "E"

PERMITTED ENCUMBRANCES


2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

3. Taxes and Assessments of the San Joaquin Area Flood Control Agency Floor Protection Restoration Assessment District, all assessments levied thereunder are collected with the county taxes.