

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DOWNTOWN REBOUND PROGRAM

[DATE OF...] NOFA

DEVELOPMENT AGREEMENT

LOAN NUMBER: 00-DRP-_____

This Development Agreement, dated as of _____, 20____, (the "Development Agreement"), is made and entered into by and between _____, a California _____ (the "Borrower") and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

RECITALS:

- A. The Borrower is the owner of, or holder of a leasehold estate in, the real property located at _____, California (the "Property") more fully described in Exhibit A.
- B. The Borrower proposes to own, rehabilitate and operate on the Property a multi-unit rental housing development (the "Development"). The Development will consist of a total of _____ residential units, of which _____ Assisted Units are to be occupied and rented as set forth in the Regulatory Agreement described below. The Development shall be financed and regulated in accordance with the Downtown Rebound Program (the "DRP") established by chapter 18 of part 2 of division 31 of the Health and Safety Code (commencing with § 50898) (the "Act"), all as amended and in effect from time to time, and constructed in accordance with the work description, including the plans and specifications submitted by the Borrower to the Department, as described in Exhibit B, "Construction Description."
- C. The Development is to be financed in part by a loan from the Department in a principal amount not to exceed \$ _____ (_____ dollars) (the "Loan"). The Loan will be provided by the Department pursuant to and subject to the DRP Commitment Letter issued by the Department for the Development and dated _____, 20____ and accepted and agreed to in writing by Borrower or Borrower's successor. In consideration of the Department's commitment to make the Loan, the Borrower has entered into a Standard Agreement, dated _____, 20____, with the Department (the "Standard Agreement"). In consideration of the Loan, Borrower has entered or will enter into a Regulatory Agreement, dated as of the date hereof, with the Department (the "Regulatory Agreement") to be recorded as a lien against

the Property; and will execute a Promissory Note evidencing the Loan payable to the Department, in a form provided by the Department (the "Note"), which shall be secured by a Deed of Trust, Assignment of Rents, and Security Agreement, naming the Department as beneficiary and in a form provided by the Department (the "Deed of Trust"). The Commitment Letter, the Regulatory Agreement, the Note and the Deed of Trust, along with this Development Agreement, are collectively referred to herein as the "Loan Documents." In further consideration of the Loan, the Borrower has agreed to enter into this Development Agreement and to comply with the terms and conditions herein.

- D. The Borrower has received, or will receive, funds for the acquisition and/or rehabilitation of the Development from the entities identified in the chart entitled "Sources and Uses: Construction Period in Exhibit C, "Sources and Uses of Funds." All funds shall be used, and secured, in the manner specified in Exhibit C.
- E. Upon completion of the acquisition and/or rehabilitation of the Development, permanent financing of the Development shall be provided by the Loan and by the entities identified in the chart entitled "Sources and Uses: Permanent Financing" in Exhibit C and used, and secured, in the manner specified in Exhibit C.

NOW, THEREFORE, the parties hereto agree as follows:

GENERAL

1. Recitals. The foregoing recitals are part of this Development Agreement.
2. Definitions. Unless the context requires otherwise, the definitions set forth in section 50675.2 of the Act shall govern the meaning to the terms used herein. All reference herein to sections shall be references to sections of the Act, unless otherwise specified.
3. Work Description. The Borrower shall cause the development and construction of the Development to be performed in an expeditious and professional manner, in accordance with the work description, including, if applicable, the plans and specifications, and The Development Budget as set forth in Exhibit B.
4. Construction Schedule. The Borrower shall follow the Construction Schedule, including all pertinent events from transfer of ownership, if applicable, through and including occupancy, as set forth in Exhibit B.
5. Term. This Development Agreement shall be effective on the date set forth above and, except for the obligations contained in paragraph 28 hereof, shall terminate upon the third anniversary of the issuance of a valid Notice of Completion for the rehabilitation and construction work

described herein unless sooner terminated pursuant to paragraph 23 hereof.

6. Form of Documents. The form and substance of all documents, instruments and forms of evidence to be delivered to the Department under the terms of any of the Loan Documents, including, but not limited to, the Plans and Specifications and the documents evidencing or securing the sources of funds specified in Exhibit C, shall be subject to the Department's approval and shall not be modified, superseded or terminated in any material respect without the Department's prior written approval.

REPRESENTATIONS AND WARRANTIES

7. Representations and Warranties. Borrower represents and warrants to the Department as follows:
 - a. Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the Department are complete, true, and correct copies of the originals, as amended to the date of this Development Agreement.
 - b. Authority of Borrower. Borrower has full power and authority to execute and deliver this Development Agreement, the other Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Development Agreement, and to perform and observe the terms and provisions of all of the above.
 - c. Authority of Persons Executing Documents. The Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Development Agreement, have been or, when executed will be, 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 Development Agreement, the other Loan Documents and all documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Development Agreement, have been duly taken.
 - d. Valid Binding Agreements. The Loan Documents and all documents or instruments executed and delivered pursuant to or in connection with this Development 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.

- e. No Breach of Law or Agreement. None of the execution or delivery of the Loan Documents or of any document or instrument executed and delivered, or to be executed or delivered, pursuant to this Development Agreement, or 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, 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 approved by the Department.

- f. Compliance With Laws; Consents and Approvals. The Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies having jurisdiction over either the Borrower, the Property or the Development 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. Except as specified in Exhibit B, all permits, consents, permissions and licenses required by any federal, state or local government or agency to which Borrower, the Property or the Development is subject, which may be necessary in relation to this Development Agreement or the acquisition, development, construction, or ownership of the Development, at, or prior to, the commencement of construction have been obtained, and none of such consents, permissions and licenses are subject to appeal or to conditions which have not been met.

- 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, the Property 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 acquire, construct or develop the Development or repay the Loan or impair the security to be given to the Department pursuant hereto.

- h. Title to Property. Upon recordation of the Regulatory Agreement, Borrower will have good and marketable title to the Property or a leasehold interest therein approved by the Department and there shall exist thereon or with respect thereto no mortgage, lien, pledge

or other encumbrance of any character whatsoever other than liens for current real property taxes and assessments not yet due and payable and liens in favor of the Borrower or approved in writing by the Department.

- i. Financial Statements. The financial statements of Borrower and any general partner of Borrower and other financial data and information furnished by Borrower to the Department fairly present the information contained therein. As of the date of this Development Agreement, there has not been any adverse, material change in the financial condition of Borrower or any general partner of Borrower from that shown by such financial statements and other data and information.
 - j. Adequacy of Financing. The amount of the funds to be provided by the Borrower in addition to the funds provided to Borrower from the sources specified in the chart entitled "Sources and Uses: Construction Period" in Exhibit C, is adequate to pay all costs incurred in connection with the acquisition or ground lease of the Property and the construction and development of the Development as set forth in the Development Budget, Exhibit B, and to enable Borrower to satisfy the covenants contained in this Development Agreement. The costs set forth in the two sources and uses charts in Exhibit C and the Development Budget in Exhibit B are the anticipated costs of acquiring and rehabilitating the Development.
 - k. Payment of Taxes. All federal, state, county and municipal taxes required to be paid by the Borrower or on account of the Property due and payable as of the date of this Development Agreement have been paid in full as of such date.
 - l. Availability of Utilities. All utilities necessary for the development and occupancy of the Development are available at or within the boundaries of the Property and all steps necessary to assure that such utility services will be available upon completion of the Development have been taken.
8. Repetition of Representations and Warranties. The representations and warranties made in paragraph 7 hereof shall also be deemed to be made de novo on the date Borrower executes the Note, and shall be true and correct as if made on that date.

CONSTRUCTION

9. Plans and Specifications.
- a. Upon demand by the Department, any material change in the work described in Exhibit B, including the approved plans and

specifications shall be submitted on a form acceptable to the Department, signed by Borrower and, if required by the Department, the Development architect and the general contractor, and accompanied by working drawings, an itemized cost statement and a written narrative of the proposed change. To the extent the Department determines that the proposed change shall result in increased cost of the Development, the Borrower shall provide satisfactory evidence that adequate funds are available for any such change.

- b. Within thirty (30) days after the filing of a notice of completion for the Development, Borrower shall provide to the Department, without cost, a copy of the final as-built plans and specifications, including actual changes to the work, for the completed Development.
10. Architect. For the performance of design and design supervision work on the Development, Borrower agrees to use the architect identified in Exhibit B (the "Architect"). Borrower shall notify the Department in writing of any successor to or substitute for the Architect.
 11. Contractors and Subcontractors. For the performance of any construction or rehabilitation work on the Development, Borrower agrees to use the general contractor identified in Exhibit B (the "Contractor"). Borrower shall notify the Department in writing of any successor to or substitute for the Contractor. The Borrower hereby certifies that the Contractor is appropriately licensed by, and in good standing with, the California Contractors' State License Board and agrees that the Borrower shall only contract with contractors, and shall ensure that the Contractor and any successor thereto shall only contract with subcontractors, which are so licensed.
 12. Construction Responsibilities. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and the Development, including, but not limited to, the quality and suitability of the Plans and Specifications and the equipment used in the construction or rehabilitation of the Development, the supervision of the work of construction or rehabilitation, the qualifications, financial condition and performance of all architects, engineers, contractors and subcontractors of any tier, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements.
 - 12A. Prevailing Wage Requirements. Pursuant to Health and Safety Code subparagraph 50898.2(c)(1)(E), Borrower shall ensure compliance with state Prevailing Wage Law, Labor Code 1770 *et seq.* for all work on the Development described in Exhibit B. Borrower will fulfill all relevant duties, responsibilities and obligations of an "awarding body" under the Prevailing Wage Law. Borrower shall provide the certificate described in Health and

Safety Code subparagraph 50898.2(c)(1)(E), in a form provided by the Department. For the purposes of Prevailing Wage Law, all work on the Development as described in Exhibit B shall be considered "public works." Borrower shall include, or ensure the inclusion in, all contracts and subcontracts provisions requiring payment of the most recent wage rates issued by the Department of Industrial Relations and compliance with reporting and other obligations under Prevailing Wage Law. Borrower acknowledges that Health and Safety Code subparagraph 50898.2(c)(1)(E) limits the Department's prevailing wage obligation to receipt of the certificate described therein. Borrower agrees to assume all liability and responsibility for compliance with Prevailing Wage Law

13. Delay. Borrower shall promptly notify the Department in writing of any event causing delay or interruption of construction or rehabilitation work in excess of ten (10) working days, or the timely completion of construction or rehabilitation for a period of fifteen (15) working days beyond the scheduled completion date. The notice shall specify the particular work delayed and the cause and period of each delay.
14. Purchase of Materials Under Title Retention Agreement. Except for office equipment, material and supplies used in Borrower's operation of the Development, Borrower shall not purchase or install or permit to be purchased or installed any materials, equipment, fixtures or other part of the Development under any agreements or arrangements wherein the supplier or seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Development, unless authorized in writing by the Department.
15. Material Warranties. The Borrower shall procure from the Contractor all warranty documents, including warranties on appliances and on building components (such as the roof and siding), etc. and all service manuals and operating instructions pertaining to the Development. The Borrower shall furnish copies of all said documents, service manuals and operating instructions to the Department upon its request.
16. Inspections.
 - a. Authorized representatives and agents of the Department shall be permitted upon reasonable demand to inspect all work, materials, payrolls, personnel records, materials invoices and other relevant data pertaining to the Development, and shall have the right of entry and full access to the Property and the Development.
 - b. The Department shall not have any affirmative duty to make any inspection, to make any investigation, or to supervise or inform Borrower or any third party as to any aspect of the rehabilitation of the Development and shall not incur any liability for failing to do so. Any inspection, investigation or review undertaken by the

Department shall be solely to determine whether the Borrower is properly discharging its obligations to the Department and may not be relied upon by Borrower or any third party. Once having undertaken any such inspection, investigation or review, the Department shall not incur any liability for failing to do so properly or for failing to complete the same. The Department owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or rehabilitation of the Development.

- c. The fact that inspection, investigation or review of the design or construction of the Development may or may not have been made by the Department shall not relieve the Borrower or the Contractor of any obligation that they may otherwise have to inspect the Development or to otherwise comply with the terms of this Development Agreement.

DISBURSEMENT OF FUNDS

17. Conditions Precedent to Disbursement of Funds. The Department shall not be obligated to disburse the proceeds of the Loan to Borrower or take any other action under the Loan Documents unless all of the following conditions precedent are satisfied, or waived in writing by the Department at the time of such action:
 - a. there exists no Event of Default (as defined in Paragraph 22 hereof) hereunder or any default under any of the other Loan Documents, or event, omission or failure of Condition that would constitute such a default or Event of Default after notice or lapse of time, or both;
 - b. the Loan proceeds, together with all sums (if any) to be provided by Borrower, and all sums (if any) shown in the chart entitled "Sources and Uses: Permanent Financing" in Exhibit C to be provided by other sources, shall at all times be not less than the amount which the Department, in its sole judgment, determines necessary to: (i) pay all sums which may be payable under the Loan Documents during the term of this Development Agreement; (ii) enable the Borrower to perform and satisfy all of the covenants of the Borrower contained in this Development Agreement; provided that if the Department determines at any time that said funds are not sufficient for said purposes, the Borrower may satisfy this condition by depositing the amount of such deficiency in the account described in paragraph 20 hereof within seven (7) days of the Department's written demand or by providing evidence satisfactory to the Department that Borrower has obtained a binding commitment from another entity which will provide funds to

Borrower in such amounts and upon terms which are satisfactory to the Department;

- c. the Borrower has authorized, executed and delivered or, if applicable, delivered to the Department, all Loan Documents, other documents, instruments, policies (including, without limitation, the Title Policy described in paragraph 18 hereof), and forms of evidence or other materials (including, without limitation, the Plans and Specifications) required under the terms of this Development Agreement or any of the other Loan Documents, all in form and substance satisfactory to the Department;
 - d. the Deed of Trust and Regulatory Agreement shall have been recorded in the Office of the County Recorder for the county in which the Property is located;
 - e. Borrower shall have furnished to the Department an ALTA survey of the Property as may be requested or required by the Department or the issuer of the Title Policy described in paragraph 18, on which survey there shall be indicated all buildings, structures, and improvements located on or over the Property, all easements, utilities, public and private streets, roads, rights of ways, alleys and other privileges for ingress to and egress from the Property;
 - f. receipt by the Department of a fully completed and executed Request for Funds in the form required pursuant to paragraph 19 requesting funds in accordance with Development Budget in Exhibit B.;
 - g. approval by the Department of the implementation of Borrower's Relocation Plan as specified in paragraph 31;
 - h. receipt by the Department of evidence satisfactory to the Department that the proceeds of the loans set forth in the chart entitled "Sources and Uses: Permanent Financing" in Exhibit C either have been disbursed, shall be disbursed on the date of disbursement of loan funds, or shall be disbursed upon the happening of events which are acceptable to the Department; and
 - i. the conditions and provisions of Exhibit F (Special Conditions) which constitute pre-disbursement conditions, if any, have been satisfied or met; provided that in the event of any conflict or inconsistency between the provisions of this paragraph 17 and the provisions of Exhibit F, the provisions of Exhibit F shall prevail with respect to such conflict or inconsistency.
18. Title Insurance. Borrower shall procure from a title insurer acceptable to the Department a 1990 (or later version acceptable to the Department) LP-10 ALTA Lender's Policy of Title Insurance (the "Title Policy"), with any

endorsement the Department may require, insuring the Department of the validity and the priority of the lien of the Deed of Trust upon the Property and Development, in the principal amount of the Loan, subject only to matters of record approved by the Department in writing. During the term of the Loan, Borrower shall procure and deliver to the Department, within five (5) working days of the Department's request, other endorsements to the Title Policy as the Department may reasonably require.

19. Methods and Conditions of Payment. The Department agrees to provide to or on behalf of the Borrower, Loan funds in the amount, and in accordance with the terms of this Development Agreement. All amounts paid to Borrower hereunder shall be considered advanced under the Note and secured by the Deed of Trust. Requests for disbursement of Loan funds for payment of or reimbursement for eligible costs must be in the form or forms set forth in Exhibit D, "Request for Funds" or such other form as may be approved by the Department.
20. Account. At the direction of the Department, Loan funds shall be deposited into an escrow or other account to be disbursed in accordance with instructions issued by the Department. Any and all interest earned on such advanced funds held in an escrow account shall be remitted to the Department.
21. Eligible Uses of Funds.
 - a. Prior to the disbursement of Loan funds, the Borrower shall deliver to the Department, at the Department's discretion, either (i) a cost audit performed by an independent certified public accountant or (ii) a certificate of the Borrower, which evidences that the Borrower has incurred, or will incur, costs within the eligible categories of costs specified below which are attributable to (A) the Assisted Units, (B) that portion of the common areas used primarily by residential tenants which shall be in direct proportion to the ratio between the gross floor area of the Assisted Units and the gross floor area of all residential units (the "Proportionate Common Area"), and (C) that portion of other items, such as roofs, that cannot specifically be allocated to Assisted Units, non-Assisted Units, or commercial space, which shall be in direct proportion to the ratio between the gross floor area of the Assisted Units plus the gross floor area of the Proportionate Common Areas and the total gross floor area of the Development. Such costs shall be in an amount equal to or greater than the amount of the Loan. If such costs are less than the amount of the Loan specified herein, the Department shall, at its discretion, either reduce the amount of the Loan to the amount of such costs or terminate this Development Agreement along with any obligation to provide the Loan.

- b. Borrower shall assure that Loan proceeds shall be used only to pay or reimburse costs within the following eligible categories of costs: (i) land acquisition; (ii) rehabilitation of residential units; (iii) land lease payments; (iv) construction work; (v) off site improvements related to the Development, such as sewers, utilities and streets; (vi) on-site improvements related to the Development; (vii) architectural, appraisal, engineering, legal and other consulting costs and fees which are directly related to the planning and execution of the Development and which are incurred through third-party contracts; (viii) authorized administrative expenses; (ix) costs for initial marketing of Assisted Units; (x) carrying costs during construction, including insurance, construction financing fees and interest, and taxes; (xi) building permits and state and local fees; (xii) required initial operating reserve balances; (xiii) escrow, title insurance, recording and other related costs; (xiv) costs for items intended to assure the completion of construction, such as contractor bond premiums; and (xv) environmental hazard reports, surveys and investigations.
- c. In addition, costs, to be eligible, must be reasonable and necessary for successful completion of the Development.

DEFAULTS, REMEDIES AND ENFORCEMENT

- 22. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder following notice to the Borrower by the Department, specifying (1) the applicable event, (2) the action required to prevent such event becoming an Event of Default, and (3) a date, which shall be not less than thirty (30) days after the date the notice is mailed to Borrower, by which such action must be taken:
 - a. Monetary. (i) Borrower's failure to pay when due any sums payable under the Note or any of the other Loan Documents; (ii) Borrower's failure to deposit any of Borrower's funds as and when required under this Development Agreement; (iii) the occurrence of an event of default under the terms of any of the loans or grants received from the financing sources specified in the sources and uses charts in Exhibit C; (iv) Borrower's failure or inability to secure anticipated financing from parties other than the Department as specified in Exhibit C, regardless of fault of the Borrower; or (v) Borrower's failure to use or apply Loan funds in the manner specified by, or consistent with the purposes of, this Development Agreement.
 - b. Construction; Use. (i) Borrower's failure to remedy any material deviation in the work of construction from the Plans and Specifications that occurred without the Department's approval or defective workmanship or materials in, or use of defective workmanship or materials in constructing, the Development, in

each case to the Department's satisfaction, within ten (10) days of the Department's written demand to do so; (ii) the cessation of construction of the Development prior to completion for a continuous period of more than fifteen (15) days (unless caused by war, rebellion, insurrection, strike, lockout, boycott or act of God, or other event beyond the Borrower's control as determined in the sole discretion of the Department); (iii) the prohibition, enjoining or delaying (in any manner) the construction of, or the prohibition or enjoining (in any manner) the leasing of, any unit in the Development in accordance with the Loan Documents for a continuous period of more than thirty (30) days; or (iv) the curtailment in availability to the Development for a continuous period of more than thirty (30) days of utilities or other public services necessary for construction or the full occupancy and utilization of the Development.

- c. Liens; Attachment; Condemnation. The (i) filing of any claim or lien against the Property or the Development, or any part thereof and the continuance of the claim for lien for twenty (20) days after Borrower receives actual notice thereof without discharge, satisfaction or provision for payment being made to the satisfaction of the Department; (ii) condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material portion of the Property or the Development, such materiality to be determined by the Department in its sole and absolute discretion or; (iii) sequestration or attachment of, assignment by Borrower for the benefit of its creditors of, or any levy or execution upon, the Property, the Development, other collateral provided by Borrower under any of the Loan Documents, monies in either of the account established pursuant to paragraph 21 hereof or the account established as required in the Regulatory Agreement for the deposit of operating income, or substantial portion of the other assets of Borrower, which is not released, expunged or dismissed prior to the earlier of sixty (60) days after sequestration, attachment or execution or the sale of the assets affected thereby.
- d. Performance of Obligations. Borrower's default under any of the other Loan Documents, Borrower's default under any ground lease of the Property, or Borrower's failure to perform its obligations under this Development Agreement and, in each case, the expiration of any time provided for the remedy of such failure.
- e. Representations and Warranties. (i) Any of Borrower's representations or warranties in any of the Loan Documents or any statements, certificates or schedules furnished by Borrower to the Department, shall prove to have been untrue in any material respect when made or deemed to have been made pursuant to paragraph 8 or the Borrower shall have concealed any material fact

from the Department; (ii) any of the Borrower's representations or warranties in any of the Loan Documents or any statement, certificates or schedules furnished by Borrower to the Department, other than representations, warranties, statements and certificates as to the financial condition of Borrower or any other person, shall cease to be true and shall remain untrue for fifteen (15) days after notice of such change to Borrower by the Department; or (iii) any material adverse change in the financial condition of Borrower or any other person or entity obligated in any manner to the Department under the Loan Documents from the financial condition represented to the Department as of the date of this Development Agreement.

- f. Voluntary Bankruptcy; Insolvency; Dissolution. Borrower's or any general partner of Borrower's (i) filing of a petition for relief under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) filing any pleading in any involuntary proceeding under any state or federal law regarding bankruptcy, reorganization or other relief to debtors which admits the jurisdiction of the court or the petition's material allegations regarding the Borrower's insolvency; (iii) making a general assignment for the benefit of creditors; (iv) applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower, any general partner of Borrower or any of their respective properties; (v) inability or admission in writing of its inability to pay its debts as they are due; or (vi) death, if an individual, or the filing by or against Borrower or any general partner of Borrower of a petition seeking the liquidation or dissolution of Borrower or any general partner of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower or any general partner of Borrower.

- (g) Involuntary Bankruptcy. Borrower's or any general partner of Borrower's failure to effect a full dismissal of any involuntary (i) petition under any state or federal law regarding bankruptcy, reorganization or other relief to debtors; (ii) proceeding for the appointment of a receiver, trustee or liquidator of Borrower or any general partner of Borrower or all or a material part of the assets of the Borrower or any general partner of Borrower, or (iii) petition or proceeding under other state or federal law regarding bankruptcy, reorganization or other relief to debtors that is filed against Borrower or any general partner of Borrower or in any way restrains or limits Borrower or any general partner of Borrower or the Department regarding the Loan, the Property or the Development, in any event prior to the earlier of the entry of any order granting relief sought in the involuntary petition or proceeding, or sixty (60) days after the date of filing of the petition or beginning of the proceeding.

- (h) General. Borrower's breach of any condition, covenant, warranty, promise or representation contained in this Development Agreement not otherwise resulting in an Event of Default hereunder and the continuance of such breach for a period of thirty (30) days after written notice thereof to Borrower.
23. Remedies upon an Event of Default. Upon the happening of an Event of Default the Department's obligation to disburse proceeds of the Loan shall terminate and the Department shall have the right to terminate this Development Agreement. Additionally, the Department may, at its option, call all sums advanced under the Note and all interest accrued thereon which remains unpaid, immediately due and payable, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notice or demand of any kind or character. Upon the occurrence of an Event of Default the Department may also, in addition to all other rights and remedies available to the Department hereunder or under the Loan Documents or applicable law, at its option, seek an order for specific performance in any court of competent jurisdiction or may apply to any such court for the appointment of a receiver to take over and operate the Development in accordance with the terms of the Loan Documents, or for such other relief as may be appropriate.
24. Right to Advance or Post Funds. Where disputes have arisen which, in the good faith opinion of the Department, may endanger fulfillment of any condition precedent or covenant herein or result in lien claims against the Property or the Development, the Department may agree to advance funds for the account of Borrower without prejudice to Borrower's rights, if any, to recover said funds from the party to whom paid. Such agreement or agreements may take the form, which the Department, in its discretion, deems proper. All sums paid or agreed to be paid pursuant to such undertaking shall be for the account of Borrower, and Borrower agrees to reimburse the Department for any such payments made upon demand therefore with interest at the rate of ten (10%) percent per annum, or such lower rate of interest as may be approved by the Department, from the date of payment until date of reimbursement. Nothing in this or any other section of this Development Agreement shall be construed to require the Department to advance monies over and above the amount of the Loan, though the Department may, at its option advance such amounts.
25. 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 an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner not prejudicial to the Department or the rights of the Department hereunder. Upon demand by the Department, Borrower shall make suitable provision by deposit of funds with the Department or by bond or by title insurance or other assurance satisfactory to the Department for the possibility that the contest will be unsuccessful. Such provision shall be made five (5) days after demand

therefore, and, if made by deposit of funds with the Department, the amount so deposited shall be disbursed in accordance with the resolution of the contest either to Borrower or the adverse claimant.

26. Rights Cumulative, No Waiver. All the Department's rights and remedies provided in the Loan Documents, granted by law or otherwise, are cumulative and may be exercised by the Department at any time. No waiver shall be implied from any failure of the Department to take, or any delay by the Department in taking, action concerning any Event of Default or failure of condition under the Loan Documents, or from any previous waiver of any similar or unrelated Event of Default or failure of condition. Any waiver or approval under any of the Loan Documents must be in writing and shall be limited to its specific terms.
27. Attorneys' Fees; Enforcement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe or defend any provision of any of the Loan Documents, or as a consequence of any Event of Default hereunder or default under any other Loan Document, with or without the filing of any legal action or proceeding, Borrower shall pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the state in connection therewith, together with interest thereon from the date of such demand at the rate of ten percent (10%) per annum.

INDEMNIFICATION

28. Indemnification and Waiver.
 - a. Indemnification. Borrower agrees to indemnify the Department and its agents, employees and officers against, and holds the Department and its agents, employees and officers harmless from, any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name, kind and description, which the Department may incur as a direct or indirect consequence of: (i) the making of the Loan to the Borrower, except for violations of banking laws or regulations by the Department; (ii) Borrower's failure to perform any obligations as and when required by this Development Agreement or any of the Loan Documents; (iii) any failure at any time of any of Borrower's representations or warranties to be true and correct; (iv) any act or omission by Borrower, any contractor, subcontractor, material supplier, engineer, architect or other person or entity with respect to the Property or Development; or (v) the presence of hazardous substances (as defined in the Standard Agreement) at the Development or on the Property. Borrower shall pay immediately upon the Department's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of ten percent (10%) per annum. The duty of the Borrower to indemnify and hold harmless

includes the duties to defend as set forth in section 2778 of the Civil Code. Borrower shall indemnify and hold harmless the Department and its agents, officers and employees as set forth herein regardless of the existence or degree of fault or negligence whether active or passive, primary or secondary on the part of the Department or the Borrower or their respective agents, officers, employees, contractors or subcontractors; provided, however, that Borrower's duty to indemnify and hold harmless hereunder shall not extend to liability arising from gross negligence or willful misconduct of the Department. Borrower's duty to indemnify the Department shall survive the term of this Development Agreement, the release and cancellation of the Note and the reconveyance or partial reconveyance of the Deed of Trust.

- b. Waiver and Release. The Borrower waives any and all rights to any types of express or implied indemnity against the Department or its agents, officers or employees.
- c. Waiver. The Borrower expressly waives the protections of section 1542 of the Civil Code in relation to subparagraphs a. and b. above. Said section 1542 provides as follows: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

MISCELLANEOUS

- 29. Further Assurances. At the Department's request and at Borrower's expense, Borrower shall execute, acknowledge and deliver any other instrument and perform any other act necessary, desirable or proper (as determined by the Department) to carry out the purpose of the Loan Documents or to perfect and preserve any liens created by the Loan Documents.
- 30. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated herein, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.
- 31. Displacement and Relocation. If the acquisition or rehabilitation of the Development will result in the temporary or permanent displacement of

tenants, the Borrower shall comply with all requirements of California relocation law, including the preparation and implementation of a tenant relocation plan, if applicable. The relocation plan shall be subject to the approval of the Department. Borrower shall be solely responsible for all costs of relocation benefits and assistance.

32. Amendments and Additional Agreements. This Agreement shall not be altered or amended except in writing executed by all parties. The Borrower agrees that any other agreements entered into by the Borrower relating to the performance of this Agreement shall be subject to the written approval of the Department.
33. Books and Records. Borrower shall maintain complete books of accounts and other records for the Development and for the use of the Loan proceeds and operating income; including, but not limited to, records of preliminary notices, lien releases, invoices and receipts, and certificates of insurance pertaining to the contractor and each subcontractor; and the same shall be available for inspection and copying by the Department upon reasonable notice to Borrower.
34. No Third Parties Benefited. No person other than the Department and Borrower, and their permitted successors and assigns or, in the case of the Regulatory Agreement, the tenants of the Development to the extent specified therein, shall have any right of action under any of the Loan Documents.
35. Authority to File Notices. Borrower irrevocably appoints and authorizes the Department, as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and record, on either of them, in the Department's or Borrower's name, any notices, instruments or documents that the Department deems appropriate to protect the Department's interest under any of the Loan Documents.
36. Actions. The Department may commence, appear in or defend any action or proceeding purporting to affect the Property, Development, Loan Documents or the rights, duties or liabilities of Borrower or the Department under the Loan Documents. In exercising this right, the Department may incur or incur and pay reasonable costs and expenses including, without limit, attorney's fees and court costs and Borrower agrees to pay all such expenses so incurred and reimburse the Department for any expenses so paid.
37. Relationship of Parties. The relationship of Borrower and the Department under the Loan Documents is, and shall at all times remain, solely that of borrower and lender. The Department neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property or the Development, except as expressly provided in the Loan Documents.

38. Assignment of Loan Documents. Borrower shall not assign Borrower's interest, of any portion thereof, under any of the Loan Documents, or in any monies due or to become due thereunder, without the Department's prior written consent. Any such assignment made without the Department's consent shall be void. Borrower recognizes that this is not an ordinary commercial loan and that the Department would not make the Loan except in reliance on Borrower's expertise and reputation, the Department's knowledge of Borrower, and the Department's understanding that this Development Agreement is more in the nature of an agreement involving personal services than a standard loan where the Department would rely on security which already exists. In this instance, the work funded has not been performed at the time of Loan approval and the Department is relying on Borrower's expertise and prior experience to rehabilitate the Development in accordance with the terms of the Loan Documents.
39. Restrictions on Transfer of Property, Project and Interest in Borrower. Borrower shall not assign, sell, transfer or convey any interest in the Borrower, the Property, or the Development, including, without limitation, any general partnership interest in the Borrower, without the Department's prior written consent. Borrower shall promptly notify the Department of such transfers and shall provide the Department with any documents respecting such transfer as the Department may reasonably request. Provided however that Borrower, if Borrower is a limited partnership, may sell, assign, transfer or convey limited partnership interests without the prior approval of the Department.
40. Signs. During the construction period, the Department may require Borrower to place on the Property signs stating that the Department is providing financing for the Development.
41. Department's Agents. The Department may designate an agent or independent contractor to exercise any of the Department's rights under the Loan Documents. Any reference to the Department in any of the Loan Documents shall include the Department's agents, employees or independent contractors.
42. Severability. If any provision of the Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from the Loan Documents and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of the Loan Documents.
43. Heirs, Successors and Assigns. The terms of the Loan Documents shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties; provided however, that this paragraph does not waive the provisions of paragraph 39.
44. Time. Time is of the essence of each term of the Loan Documents.

45. Headings. All headings appearing in any of the Loan Documents are for convenience only and shall be disregarded in construing the Loan Documents.
46. Governing Law. The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of California, except to the extent preempted by federal laws. Borrower and all persons and entities in any manner obligated to the Department under the Loan Documents consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.
47. Integration; Interpretation. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated herein and supersede all prior negotiations. No Loan Document shall be modified except by written instrument executed by all the parties thereto. Any reference in any of the Loan Documents to the Property or Development shall include all or any parts of the Property or Development. Any reference to the Loan Documents in any of the Loan Documents includes any amendments, renewals or extensions approved by the Department. Any reference in this Development Agreement to the Loan Documents shall include all or any of the provisions of this Development Agreement and the Loan Documents unless otherwise specified.
48. Joint and Several Liability. The liability of all persons and entities that are in any manner obligated under any of the Loan Documents shall be joint and several.
49. Incorporation. The following Exhibits, all attached hereto, are hereby incorporated into and made a part of this Agreement.

Exhibit A	Legal Description
Exhibit B	Construction Description
Exhibit C	Sources and Uses of Funds
Exhibit D	Disbursement Request Certifications
Exhibit E	Nondiscrimination Clause
Exhibit F	Special Conditions

IN WITNESS HEREOF, the parties agree to and execute this Development Agreement as of the date first above stated.

DEPARTMENT

Department of Housing and
Community Development,
an agency of the State of California

Mailing Address:
Multifamily Housing Program
P.O. Box 952054

Sacramento, CA 94252-2054

By: _____
[Manager's name]
Program Manager
Multifamily Housing Program

Principal Place of Business:
Multifamily Housing Program
1800 Third Street, Room 390-5
Sacramento, CA 95814

BORROWER

By: _____
[Original Signature]

Borrower's Address:

Name: _____
Title: _____
Date: _____

EXHIBIT A TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION

EXHIBIT B TO DEVELOPMENT AGREEMENT

CONSTRUCTION DESCRIPTION

I. Construction Schedule

Commencement of Construction

Certificate of Occupancy

Occupancy by Eligible Households

II. Description of Work, including Plans and Specifications

Borrower shall perform, or cause to be performed, the rehabilitation and/or construction work described below, subject to, if applicable, the plans and specifications dated _____, 20__, last revised on the date specified thereon (attach additional sheets if necessary).

III. Contractor

IV. Architect

V. Development Budget.

EXHIBIT C TO DEVELOPMENT AGREEMENT

SOURCES AND USES OF FUNDS

I. **Sources and Uses: Construction Period**

II. **Sources and Uses: Permanent Financing**

EXHIBIT D TO DEVELOPMENT AGREEMENT

Request for Funds Form

STATE OF CALIFORNIA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

MULTIFAMILY HOUSING PROGRAM

ACQUISITION/REHABILITATION NOFA 1999

HCD 846 (New 09/2000)

REQUEST FOR FUNDS NUMBER

1. BORROWER _____

2. PAYEE _____

3. ADDRESS (Street) _____ (City) _____ (State) _____ (Zip Code) _____

4. CONTRACT NUMBER _____ 5. PROJECT _____

6. APPROVED LOAN AMOUNT \$	AMOUNT PER THIS REQUEST \$	TOTAL AMOUNT PREVIOUSLY APPROVED \$	BALANCE \$
-------------------------------	-------------------------------	--	---------------

7. USE OF FUNDS REQUESTED	AMOUNT
A. PERMANENT FINANCING	\$
B. ACQUISITION COSTS	\$
C. CONSTRUCTION COSTS	\$
D. DEVELOPMENT COSTS	\$
E. CARRYING CHARGES	\$
F. OTHER:	\$

8. DRAW CHECK IN TOTAL AMOUNT OF: \$ _____

9. CERTIFICATION: I/We, the undersigned, do hereby certify that (1) the funds requested above will be used only in accordance with the above-numbered State Standard Agreement and the Development Agreement entered into pursuant to this Standard Agreement, and only for eligible costs, as specified in the MHP Acquisition/Rehabilitation NOFA 1999; and (2) the Borrower and the project are in full compliance with the Standard Agreement, the Development Agreement, and all other agreements by and between the Borrower and the Department of Housing and Community Development entered into pursuant to the Standard Agreement.

BORROWER'S SIGNATURE ?	DATE SIGNED
---------------------------	-------------

TYPED NAME AND TITLE
?

DO NOT WRITE BELOW THIS LINE

the work performed for which this request for disbursement is presented is in accordance with all provisions of _____
Contract Number _____
 between _____ the Department of Housing and Community Development, and is
 provided for payment.

RAM MANAGER'S SIGNATURE ?	SIGNED
------------------------------	--------

EXHIBIT E TO DEVELOPMENT AGREEMENT

NONDISCRIMINATION CLAUSE

Nondiscrimination Clause

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, age, pregnancy, childbirth, or related medical condition nor shall the contractor and its subcontractors unlawfully deny family and medical care leave or pregnancy disability leave. Contractor and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, subdivisions (a)-(f), set forth in the California Code of Regulations, title 2, section 8101 et seq. are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

EXHIBIT 'F' TO DEVELOPMENT AGREEMENT

Special Conditions

