

**CALHOME LOAN AGREEMENT BETWEEN**

**THE CITY OF STOCKTON**

**AND**

**JERRY RUFF**

**DATED: \_\_\_\_\_**

**(\$110,000.00- CALHOME Funds)**

## CALHOME LOAN FOR OWNER-OCCUPIED REHABILITATION

### LOAN AGREEMENT (\$110,000.00 - CalHome Funds)

This Agreement (the "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_ 2016, by and between the City of Stockton (the "**CITY**"), a municipal corporation, and Jerry Ruff, ("the **BORROWER**").

### RECITALS

A. **CITY** wishes to promote the preservation of owner-occupied housing in the Stockton community and to provide an opportunity for persons and families of low-income to improve their home to a decent, safe and sanitary condition.

B. **CITY** has received CalHome funds from the State of California, Department of Housing & Community Development. The CalHome program was established by SB1656 (Alarcon), which created chapter 6 (commencing with Section 50650) and added to Part 2 of Division 31 of the Health and Safety Code.

C. **BORROWER** wishes to receive from **CITY** and **CITY** wishes to extend to **BORROWER** CalHome funds to support rehabilitation of property located at 27 West Churchill Street, Stockton, CA hereinafter referred to as the "**PROPERTY**."

D. As a condition of receiving the CalHome 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 affordability and habitability 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 CalHome 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 **"ASSISTED UNIT"** means the owner-occupied housing unit which is assisted with CalHome funds as designated by **BORROWER**.

1.3 **"CALHOME NOTE"** (the **NOTE**) is that certain promissory note in the principal amount of One Hundred Ten Thousand Dollars and 00/100 (\$110,000.00) to be executed by **BORROWER** in favor of the **CITY**, evidencing all or any part of the CalHome 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.

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

1.5 **"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.

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

1.7 **"DEED OF TRUST"** is that 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.

1.8 **"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.

1.9 **"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.

1.10 **"PROPERTY"** consists of the rehabilitation of real property located at 27 West Churchill Street, Stockton, California, and more particularly described in the attached **Exhibit "A"**, which is incorporated into this Agreement by this reference.

1.11 **“PROJECT”** is the rehabilitation of the residential structure located on the Property.

## **ARTICLE 2. TERMS OF ASSISTANCE**

2.1 **ASSISTANCE.** The **CITY** agrees to provide the CalHome 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 CalHome 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 CalHome assistance in total amount not to exceed One Hundred Ten Thousand Dollars and 00/100 (\$110,000.00) 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 CalHome funds loaned to **BORROWER** for the rehabilitation of the **PROJECT** shall be subject to an interest rate of one (1%) percent simple interest.

2.4 **TERM.** The term for owner-occupied rehabilitation loans shall be a maximum of 30 years; or upon refinance or sale of the **PROPERTY**; or when no longer owner-occupied.

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

## **ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF CALHOME PROCEEDS.** Disbursement of all CalHome 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**.

3.2 **TITLE AND TITLE INSURANCE.** **BORROWER** warrants that it will acquire and shall maintain good and marketable title to the **PROJECT**. **CITY** shall obtain a Policy of title insurance naming **CITY** as the insured with liability not less than the principal amount of the assistance, issued by an insurer satisfactory to **CITY**, excepting only such defects, liens, encumbrances, and exceptions as are approved in writing by **CITY** and contained in Exhibit “B”.

#### **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 and housing codes as they apply to a single-family dwelling by contract as well as to **BORROWER'S** requirements. At a minimum, **CONTRACTOR** shall perform all rehabilitation by contract. The **CONTRACTOR** shall require that: (a) all work performed shall at a minimum meet or exceed HUD's Housing Quality Standards and (b) perform all rehabilitation work as contained in the scope of work.

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 and sale of the home shall not constitute a waiver of any other rights of **CITY** under the Agreement.

4.4 **QUALITY OF WORK.** **CONTRACTOR** shall rehabilitate the dwelling 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 and housing codes, including but not limited to meeting the HUD's Housing 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 882.109, to the extent applicable.

4.5 **ADDITIONS OR CHANGES IN WORK.** **CITY** shall be notified in a timely manner of 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 CalHome 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**.

4.7 **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, upon the request of CalHome, any and all information and documentation which involves the **PROJECT** and cooperate with **BORROWER** in the rehabilitation of the **PROJECT**.

4.8 **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.

4.9 **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**.

4.10 **TRANSFER OF PROPERTY.** The CalHome loan is not assumable nor can the **LOAN** be subordinated, therefore, **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**. 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**.

4.11 **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**.

4.12 **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.

4.13 **LEAD-BASED PAINT.** If evaluation for the presence of lead-based paint is required under Federal, State or Local regulation, the **CITY** shall ensure the testing of 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, and the dwelling is vacant, occupancy of the dwelling unit affected by this **AGREEMENT** shall not occur until such time as a lead-based paint clearance is obtained.

4.14 **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.

4.15 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance identified in Exhibit "B" 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 commencing 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.

4.16 **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. Times of performance under this 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** and **BORROWER**.

## **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 or any contractor or subcontractor of Corporation 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** (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 **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.

**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 **BORROWERS** 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 knew of same) of any Hazardous Materials occurring prior to or during **BORROWER'S** 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 CalHome funds for costs other than eligible CalHome 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; (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 CalHome 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'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 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; and

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; and

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 CalHome 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 Deed of Trust in the Event of Default by **BORROWER**.

9.4 **BORROWER'S 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 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 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:**

\_\_\_\_\_  
JERRY RUFF

**CITY:**

CITY OF STOCKTON, a municipal corporation

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

LAURIE MONTES  
DEPUTY CITY MANAGER

APPROVED AS TO FORM:

JOHN M. LUEBBERKE, CITY ATTORNEY

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

DEPUTY CITY ATTORNEY

ATTEST

\_\_\_\_\_  
BONNIE PAIGE  
CITY CLERK OF THE CITY OF  
STOCKTON

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**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:**

**Lot Eighty (80), as shown upon Map of Tract 234, Subdivisions of San Joaquin County, "Amended Map of Unit No. 4, College View, Filed for Record March 15, 1950 in Book of Maps Vol. 13, Page 57, San Joaquin County Records.**

**APN: 115-113-16**



**EXHIBIT "B"**

**PERMITTED ENCUMBRANCES**

1. Property Taxes, including any assessments collected with taxes, for the fiscal year **2016-2017**, a lien not yet due and payable.
2. Said land lies within the boundaries of the Flood Protection Restoration Assessment District, established under the guidelines of the San Joaquin Area Flood Control Agency Resolution of Intention SJAFCOA No. 95-0026.
3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5, (commencing with Section 75) to the Revenue and Taxation Code of the State of California.
4. Easements as shown or delineated on the filed map, and incidents thereto.
5. Covenants, Conditions and Restrictions in an instrument recorded in Official Records, any amendments and/or modifications thereto which in part provide that a violation thereof shall not defeat or render invalid the lien of any first mortgage or Deed of Trust made in good faith and for value.

NOTE: Section 12956.2 of the Government Code provides the following: If this document contains any restrictions on race, color, religion, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive language pursuant to subdivision (c) of Section 12956.1 of the Government Code.