

**MASTER OWNER PARTICIPATION AGREEMENT
AND
AGENCY FUNDING AGREEMENT
FUTURE DOWNTOWN REDEVELOPMENT PROJECTS**

Redevelopment Agency of the City of Sacramento
Merged Downtown Sacramento Redevelopment Project Area

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THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Agency"), and _____ ("Developer"), enter into this Master Owner Participation Agreement and Agency Funding Agreement ("Agreement"), as of March ____, 2008 ("Effective Date"). [For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 16.]

RECITALS

- A. Developer is the owner of (or may acquire) various parcels of real property within the Merged Downtown Sacramento Redevelopment Project Area, in the City of Sacramento, California. The Developer is proceeding with plans for the renovation and redevelopment of one or more of the properties it currently owns in the Redevelopment Project Area and with conceptual plans for the redevelopment of one or more properties which it may acquire within the Redevelopment Project Area in the future (each a "Property," and collectively, the "Properties"). As described in greater detail below, the redevelopment of the Properties are termed the "Projects." The Agency, as a material inducement to the Developer to continue with such planning and implementation of such Projects, desires to provide financial assistance to the Developer in such renovation and redevelopment work, as provided herein.
- B. This Agreement is made in accordance with the provisions of the Redevelopment Plan for participation by property owners in redevelopment of the Redevelopment Project Area (adopted in accordance with California Health & Safety Code Section 33339). The Agency is participating in this Agreement because this Agreement is consistent with, and furthers, the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Projects (as generally referred to in Section 2, below) will assist in the elimination of the following blighting influences: low property values and impaired investment; high vacancies and low lease rates; deficient buildings and un-reinforced masonry buildings; underutilized or obsolete properties. The Agency has also determined that the Projects will meet the following goals of the current Implementation Plan adopted for the Redevelopment Project Area: development of mixed use catalyst projects; increase downtown office, retail, and residential uses; and provide assistance to projects that contribute to the development of an active theater and entertainment district. The Projects will complement other uses in the Redevelopment Project Area and the Convention and Theater District.

- C. The City of Sacramento ("City") will receive net proceeds (collectively, the "Net Proceeds") from (a) the sale of the Sheraton Convention Center Hotel on J Street between 12th and 13th Streets, by the Sacramento Hotel Corporation pursuant to that certain Sheraton Grand Sacramento Hotel Purchase and Sale Agreement between the Hotel Corporation and CIM/J Street Hotel Sacramento, LLC, a California limited liability company, dated as of March ____, 2008, and (b) the sale of the Parking Garage on 13th Street between J and I Streets, by the City pursuant to that certain 13th and J Street Garage Agreement of Purchase and Sale between the City and CIM/J Street Hotel Sacramento, LLC, a California limited liability company, dated as of March ____, 2008. In aid and furtherance of the redevelopment of the Merged Sacramento Downtown Redevelopment Project Area, and as a material inducement to the Agency and Developer to enter into this Agreement, the City has pledged to pay and deposit with the Agency the cash sum equal to Fifty Percent (50%) of the Net Proceeds, which the Agency will budget and maintain in a separate line item account, the principal of which is pledged for use as provided in this Agreement.
- D. In order to accomplish such Agency goals and purpose, this Agreement provides that the Agency will provide financial assistance to the Developer for redevelopment of one or more of the Properties, in the manner and for the uses described in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

- 1. AGENCY FUNDING.** It is the intent of the Parties to enter into one or more future Owner Participation Agreements (OPAs) or Disposition and Development Agreements (DDAs) (collectively, these future OPAs and DDAs are termed the "Future Agreements") providing for the renovation and redevelopment of each Property to be undertaken by the Developer pursuant to this Agreement. Developer acknowledges and agrees that each of the Future Agreements is subject to the Community Redevelopment Law and other applicable laws and will require the Developer, among other things, (a) to restrict the use of the subject Property to the uses set forth in the Redevelopment Plan and applicable law, and (b) to devote the subject Property to certain retail, commercial, residential, or entertainment uses as approved by the City and Agency for a specified period of time. Developer further acknowledges and agrees that each of the Future Agreements shall include provisions common to Agency DDAs or OPAs, as applicable, including without limitation insurance and indemnity requirements and, if applicable, provisions regarding payment of prevailing wages and the Developer's related indemnifications. In order to facilitate the renovation and redevelopment by Developer, Agency agrees to provide funding for such renovation and redevelopment work, in the amount of Fifty Percent (50%) of Net Proceeds ("Agency Funding"). When the exact amount of the Net Proceeds is calculated following sale of the Hotel and Garage pursuant to the agreements referenced in Recital C, above, an amount equal to Fifty Percent (50%) of the Net Proceeds shall be stated in dollars as the principal amount in the Pledged Account, and

shall be appended to this Agreement by an Addendum, initialed by both Parties. As referenced in Recital C, the City is providing the Agency Funding to the Agency in consideration for the Agency and Developer entering into this Agreement and carrying out the provisions of this Agreement. The Agency shall budget, and deposit and maintain, the Agency Funding in a separate line item account of the Agency (the "Pledged Account"), the principal of which shall be pledged solely for use in accordance with the terms of this Agreement and for the time specified in this Agreement, subject only to the requirement that Three Million Dollars (\$3,000,000) of the principal in the Pledged Account, shall be placed in a non-interest bearing sub-account and, shall be used only for such purposes as are consistent with the use of proceeds of the Agency's tax exempt tax allocation bonds. Subject to approval of Future Agreements, the Developer shall have the sole right, subject to the terms of this Agreement, to request funding from the Pledged Account for Projects to receive Agency Funding under Future Agreements, and shall be entitled to enforce by mandamus, injunctive relief or other appropriate remedy at law the Agency pledge of the amounts in the Pledged Account according to the terms of this Agreement, as provided in Section 10.3 of this Agreement. The Agency Funding shall be disbursed from the Pledged Account in the amounts provided for in, and in accordance with, the terms and conditions set forth in each applicable Future Agreement, as each may be later approved by the Agency pursuant to the process set forth in this Agreement. The Parties acknowledge that Developer would have no claim against the funds in the Pledged Account or the Net Proceeds of the sale, except as provided in this Agreement or the Purchase and Sale Agreements referenced in Recital C, above, or, as may be applicable, in any Future Agreement.

2. **PROJECT PRIORITIES AND SELECTION.** Developer shall propose Projects for proposed Future Agreements, which are in accordance with the terms of this Agreement, which meet the intent of this Agreement, which are located in the Merged Downtown Redevelopment Project Area, which qualify as redevelopment projects, and which meet the requirements of the Community Redevelopment Law and the Redevelopment Plan. The requirements for proposal and selection of Projects are set forth in Exhibit C ("Requirements"). The Agency shall consider each such proposed Project if and when Developer has provided the Project information as stated in the Requirements or otherwise provided Project information to Agency's satisfaction, provided that Developer has not then had a failure of condition with respect to such proposed Project which is not cured or in the process of cure. The Agency shall act in the independent exercise of its legislative authority in selecting any such proposed Projects for funding under this Agreement. Further, the Agency may consider proposed Projects that meet its goals and requirements for the Redevelopment Project Area in the order of priority stated in the Requirements. It is the intent of the Parties to work in collaboration to select each Project and to such end, the Parties shall meet as often as is reasonably necessary to develop potential Projects for consideration. The Parties shall reasonably cooperate in the development of such potential Project with full consideration of the provisions of Exhibit C.
3. **PROJECTS.** The Developer agrees to proceed with the planning and preparation for the proposed Projects on any one or more of the Properties it currently owns or may acquire

within the Redevelopment Project Area. For reference only, and not as constituting Agency approval of, or a Developer obligation to proceed with, any particular Project, and without limiting the Developer's ability to propose other Projects on Properties within the Redevelopment Project Area, the Parties have attached hereto as Exhibit A, a list of Projects the Developer currently envisions for study and development of Plans, subject to CEQA review and approval of Future Agreements as herein provided. The Developer shall work with the Agency to determine which of the Properties will be renovated and redeveloped, and the timing for any such Project, based on the Priorities established above.

The Agency shall have no obligation to disburse any part of the Agency Funding until a Future Agreement has been duly approved and executed by the Agency and Developer providing for the renovation or redevelopment of the Property subject to such Future Agreement, which sets forth the specific terms for the Agency Funding for such Project. The Agency will consider the Requirements set forth in Exhibit C with regard to the timing for review and approval of Projects. The Developer understands and agrees that approval of any Future Agreement and commencement of any Project on any of the Properties and disbursement of any Agency Funding for such Project shall be conditioned upon and subject to, among other things: (a) completion of any and all environmental review and documentation that may be required for such Project under CEQA, as further discussed in Section 5, below; and (b) the Agency and Developer approving and entering into one or more subsequent Future Agreement(s) outlining the terms and conditions for such Project, together with the amount of Agency Funding required to make such Project feasible.

4. **MILESTONE EVENTS SCHEDULE.** The Parties have established a schedule of Target Dates and Outside Dates for Completion for certain milestone events (each a "Milestone") as set forth in Exhibit B hereto. Failure of the Developer to achieve a Target Date shall not constitute a default or failure of condition under this Agreement. Failure of the Developer to meet an Outside Date (subject to extensions for Excused Delay) for a Milestone shall not constitute a default, but shall constitute a failure of condition which, if such Milestone is not met (subject to extensions for Excused Delay) within six (6) months after receipt by the Developer of written notice from the Agency of such failure, shall permit the Agency to terminate this Agreement as to any Properties or Projects for which a Future Agreement has not been approved as of the date of termination.
5. **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as lead agency shall prepare the environmental documentation and consider the environmental effects of each Project proposed by Developer, at Developer's expense, prior to considering action to approve the proposed DDA.
 - 5.1. Nothing in this Agreement shall be construed to limit the application of CEQA to any Project or to changes in any Project or to control the actions of Agency in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its respective

obligations under this Agreement. Agency shall not be liable, in any respect, to Developer or any third party beneficiary of this Agreement for their action or inaction in fulfilling their respective CEQA obligations.

5.2. Agency is not, and shall not be considered to be, obligated by this Agreement, or otherwise, to consider approval of a Future Agreement, or any other agreement, unless and until it has fully reviewed and considered the environmental impacts of the proposed Project which is the subject of the Future Agreement in accordance with CEQA. After CEQA review, Agency is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for the approval of the proposed Project or take any other action in support of the proposed Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the proposed Project or from imposing mitigation measures as a condition of any Project approval, which measures mitigate or avoid direct or indirect environmental effects of the proposed Project.

5.3. Following acceptance by the Agency of a full Proposal for a Project for consideration, as provided in Section 7, below, the Developer shall prepare and submit to the Agency for approval a project description to be used by the Agency to prepare the environmental documentation to the extent required by law for the proposed Project. Upon Agency request, Developer shall supply any additional data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents to the extent required by law for the proposed Project.

6. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** This Agreement is a financing document of the Agency and not a land use or planning document. This Agreement shall not be deemed an approval of any Project or Future Agreement, but merely a commitment by the Agency to provide the Agency Funding to the Developer upon satisfaction of all conditions set forth in this Agreement and in the Future Agreement(s) contemplated hereunder. The Future Agreement(s) to be entered into by the Agency and Developer shall require that the Developer comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. The Future Agreement(s) shall further provide that the Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of any Future Agreement and approvals given under this Agreement. Based upon such review, the Agency shall have the right to approve or reject the Plans for reasonable cause. Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications. Agency's approval of Plans is not an assurance of their adequacy or correctness. Agency approval rights will be reserved solely (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the Final Plans conform to the Preliminary Plans; and (c) to assure that any Agency funds which may be obligated under

this Agreement are used for Projects performed on Properties within the Redevelopment Project Area.

7. **SUBMISSION OF PROPOSAL.** As a condition precedent to the Agency negotiating for and entering into a Future Agreement for any Property, Developer must prepare and submit to Agency a full proposal ("Proposal") for the development of the applicable Property, which Proposal takes into consideration the Requirements set forth in Exhibit C. It is agreed and understood that Agency staff acceptance of a full Proposal as adequate for review, as evidenced by a letter to the Developer from the Agency's designated staff indicating such acceptance, is a prerequisite and preliminary step to further processing of any Project, and that the acceptance of a full Proposal under this Agreement for further processing and consideration is not intended to, and does not, in fact, compel or require the Agency to approve any proposed Project, or enter into a Future Agreement following completion of the CEQA and other review processes. The Developer shall include in each Proposal, without limitation, the following: (a) description of the Developer's development team, naming the principals of Developer, the architectural and design team (if identified), the general contractor (if identified), and the marketing team (if identified); (b) project conceptual design, including conceptual site plan and massing plan; (c) preliminary feasibility analysis; (d) proposed business terms; and (e) estimate of construction costs for project designs.

8. **NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer, for itself and its successors and assigns, agrees that the following provisions shall apply to, and be contained in, all contracts and sub-contracts entered into with respect to the Projects.
 - 8.1. **EMPLOYMENT.** Developer shall not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, ancestry or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

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

9. **DEVELOPMENT FINANCING.** Developer shall be responsible for and shall pay all costs of developing the Project and undertaking and completing any Project on any of the Properties, except as otherwise provided in this Agreement and the applicable Future Agreement. As will be specified in the Future Agreements as a condition precedent to Agency's obligation to provide the Agency Funding, for any Project, Developer shall provide the Agency with a Project budget, proposed sources and uses of funds, and evidence of sufficient funds (including Agency Funding) to meet all budget requirements. Except as expressly provided in this Agreement and the applicable Future Agreement, no Party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this Agreement or otherwise to make any contribution beyond its obligations stated in this Agreement and the applicable Future Agreement. Any Agency assistance may be reviewed for consistency with any Agency-adopted underwriting standards, policies, and funding requirements that may be applicable to the Agency Funding for a particular Project.

A proposed Project as financed under a Future Agreement may be subject, under the applicable provisions of the California Labor Code and determinations of the Department of Industrial Relations pursuant thereto, to the payment of prevailing wages, in whole or in part, for construction of the Project, depending upon sources and uses of Agency Funding. Determination of the applicability of prevailing wages will be considered for each proposed Project and appropriate provisions will be included in each Future Agreement. In any event, for each Future Agreement, Developer will have the opportunity to meet with Developer's legal counsel and may choose to request a determination from the Department of Industrial Relations. It is not the intention of the Parties that the Agency be an indemnitor for any obligation of the Developer for the payment of prevailing wages, unless the Agency, specifically and in its absolute discretion, agrees to accept such role in a Future Agreement regarding the applicability of prevailing wage requirements to a proposed Project.

10. DEVELOPER COVENANTS; AGENCY PLEDGE.

- 10.1. **USE COVENANTS.** Developer covenants that each Project it proposes to undertake using Agency Funding will be used strictly in accordance with the provisions of the Redevelopment Plan, and such other covenants as may be required in the applicable Future Agreement.
- 10.2. **NONDISCRIMINATION.** Developer covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that it shall not discriminate on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease or rental or in the use or occupancy of the Properties and the Project.

10.3. **PLEDGE OF MONIES IN PLEDGED ACCOUNT.** The obligations of the Agency under this Agreement to provide Agency Funding from the monies in the Pledged Account for Projects pursuant to the terms of the Future Agreements for such Projects shall constitute, for the duration of this Agreement, a contractual obligation and indebtedness of the Agency and are secured by a first lien and irrevocable pledge of such monies in the Pledged Account for such purposes, for the benefit of the Developer, to the fullest extent permitted by law, and the Developer may enforce such pledge and the obligations of the Agency under this Agreement to provide Agency Funding by mandamus, suit, action, or proceeding to compel the Agency and its members, officers, agencies and employees to perform the obligations of the Agency hereunder with respect to monies in the Pledged Account, and by suit, action or proceeding in equity to enjoin any acts or disbursements from the Pledged Account which may be in violation of the obligations or pledge of the Agency or the rights of the Developer under this Agreement.

Notwithstanding the foregoing, the Agency from time to time, with not less than ten (10) days prior written notice to the Developer, may substitute cash monies in the Pledged Account with other cash monies, on a dollar for dollar basis, provided that such substitution of cash funds in the Pledged Account will not diminish the amount of the total funds in the Pledged Account and will not subject any such funds in the Pledged Account to limitations for expenditures or disbursements which are not expressly authorized by this Agreement.

11. **DEFAULTS AND REMEDIES.** Except as otherwise provided in Section 4 of this Agreement, if either Party defaults in its obligations under this Agreement, the defaulting Party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other Party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting Party, provided that the defaulting Party shall promptly begin and diligently pursue such cure to completion). If the defaulting Party does not promptly begin and diligently cure the default within a reasonable time, the other Party may, but is not obligated to, institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting Party. Subject to any extension of time permitted by this Agreement, a failure or delay by a Party to perform any term or provision of this Agreement constitutes a default of this Agreement, except as otherwise provided in Section 4 of this Agreement.

11.1. **OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default by Developer under this Section 11, Agency's sole remedy therefor shall be termination of this Agreement. Upon the occurrence of any default by Agency, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the Developer shall have the right to institute such actions as it may deem desirable to remedy a default of this Agreement as allowed under this Agreement, at law or in equity, but in any event

Agency shall not be compelled to pay damages, except from and to the extent of the remaining balance of the Agency Funding. Such Agency obligation shall be subject to claims filing requirements, but only to the extent such requirements are lawfully applicable.

- 11.2. **NON-LIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.
- 11.3. **ATTORNEY'S FEES AND RELATED COSTS.** If an action is commenced between the Parties, the prevailing Party in that action shall be entitled to recover from the non-prevailing Party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "Prevailing Party" shall include without limitation, the Party who receives performance from the other Party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the Party who receives any award for relief through arbitration; or the Party determined to be the prevailing Party by a court of law. In any event, the prevailing Party shall mean the Party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such Party, unless the judgment, ruling or award is more favorable to both Parties than their last firm offers of settlement, respectively. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

12. **GENERAL PROVISIONS**

- 12.1. **ESTOPPEL CERTIFICATE.** Any Party may, at any time, request in writing of any other Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, describing the nature and extent of any such defaults. A Party receiving such a request shall execute and return such certificate to the requesting Party, or give a detailed written response explaining why it will not do so, within ten (10) days following its receipt. The Deputy City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.
- 12.2. **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing has been made available by the City to the Agency to enable the Agency Funding

provided for hereunder and make the development of the Properties possible. Developer shall not assign Developer's interests or obligations under this Agreement for any purpose; provided however, that Developer may (a) assign the Developer's rights and obligations under a Future Agreement to a single-purpose entity in which Developer or a member or affiliate of the Developer is a party and has a controlling interest, or (b) assign the Developer's rights to propose a Project and negotiate a Future Agreement to a single-purpose entity in which Developer or a member or affiliate of the Developer is a party and has a controlling interest. The transfer or assignment, pursuant to this Section, shall require the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer with respect to the interest assigned. With respect to this provision, the Developer and the Parties signing this Agreement on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision.

12.3. **PERMITTED TRANSFERS.** Notwithstanding the foregoing, the following transfers are contemplated by the Developer and the Agency with respect to individual Projects, and the Agency's consent by the Executive Director of the Agency to such transfers shall not be unreasonably withheld or delayed and shall be evidenced in Future Agreements, as applicable:

- a. A transfer of a Property or Project or any portion of a Property or a Project to a member of the Developer or to a wholly owned affiliate of the Developer or of a member of the Developer; and
- b. A transfer or an interest in a Property or a Project or any portion of a Property or Project to a third party investor or lender, provided that: the Developer or a transferee under subsection a., above, retains a substantial interest in, and control of the Property or Project as a managing owner.

12.4. **FUTURE AGREEMENTS GOVERN.** The terms of Future Agreements shall govern assignment and transfers with respect to the Properties and Projects which are subject to such Future Agreements.

13. **DOCUMENT INTERPRETATION.** This Agreement shall be interpreted in accordance with the following rules:

13.1. **INTEGRATED DOCUMENTS; SEVERABILITY.** This Agreement including the incorporated documents integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the Parties with respect to its subject matter. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect, and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

- 13.2. **CONFLICTING PROVISIONS.** If conflicts are discovered in the provisions of this Agreement and any Future Agreement entered into in furtherance of this Agreement, the Future Agreement shall control according to its terms.
- 13.3. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this Agreement must be in writing and signed by Agency or Developer, as applicable, and all amendments to this Agreement must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.
- 13.4. **CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this Agreement are for the convenience of the Parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.
- 13.5. **DRAFTER.** This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.
- 13.6. **TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this Agreement.
- 13.7. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with California law.
- 13.8. **EXECUTIVE DIRECTOR AUTHORITY.** The Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency as to matters of administration and interpretation of this Agreement and the reviews, consents and approvals required by the Agency under this Agreement, except for matters expressly required in this Agreement to be acted upon by the Agency Governing Board of the City Council.
14. **NOTICES.** All notices to be given under this Agreement shall be in writing and sent to the following addresses by one or more of the following methods:
 - 14.1. Addresses for notices are as follows:

14.1.1. Agency: Redevelopment Agency of the City of Sacramento, Economic Development Department, 1030 Fifteenth Street, Sacramento, CA 95814, Attention: Leslie Fritzsche; a copy of all notices to Agency shall be sent to: Agency Counsel, Redevelopment Agency of the City of Sacramento, 630 I Street, Third Floor, Sacramento, CA 95814, Attention: Dana Phillips.

14.1.2. Developer: _____.

14.2. Notices may be delivered by one of the following methods:

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

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

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

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

15. **SUCCESSORS.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, successors, and assigns.

16. **DEFINITIONS.**

16.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this Agreement includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency. The Downtown Development Group, a division of the

City of Sacramento Economic Development Department, also provides staffing for the Agency for the Merged Downtown Redevelopment Project Area.

- 16.2. "Agency Funding" is the funding provided by the Agency under this Agreement to Developer for the Project.
- 16.3. "Agreement" is this Agency Funding Agreement between Agency and Developer, including all documents incorporated in this Agreement by reference.
- 16.4. "CEQA" is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.
- 16.5. "City" is the City of Sacramento, a political subdivision of the State of California.
- 16.6. "Commencement of Construction", as used in Exhibit B, shall mean commencement of construction of permanent physical improvements pursuant to a building permit and shall not include preliminary work, with or without a permit, such as site preparation, demolition, grading or remediation or removal of hazardous substances above or below ground.
- 16.7. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.
- 16.8. "Developer" is _____, and any successor or assign permitted under Section 12.2 or 12.3 of this Agreement, or any successor or assign approved by the Agency with respect to a Project. Notwithstanding any other provision of this Agreement, Developer may assign this Agreement to a single purpose entity in which Developer or David S. Taylor has a substantial interest and is the managing member, the general partner or the controlling shareholder; provided (i) that the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this Agreement and all agreements related to this Agreement, and (iii) that the entity has been approved in writing, in advance, by the City's Economic Development Director. The principal office of the Developer is located at _____.
- 16.9. "Effective Date" is the date on which the governing board of the Agency has approved this Agreement as evidenced by resolution thereof and as then set forth in the introductory paragraph to this Agreement.
- 16.10. "Excused Delay" shall mean a delay in the performance of any obligation under this Agreement when such delay is due to unforeseeable causes beyond the delayed Party's control and without its fault or negligence. Unforeseeable causes shall include, but not be limited to, acts of God, acts of the public enemy, acts of

the federal government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of the occurrence of any Excused Delay, the time or times for performance of such obligations of the Agency and Developer shall be extended for the period of the Excused Delay.

- 16.11. "Future Agreement" is the future one or more Owner Participation Agreement(s) and/or Disposition and Development Agreement(s) to be entered into by the Agency and Developer setting out the terms and conditions for the Project to be undertaken and completed on any one or more of the Properties, utilizing the Agency Funding. Future Agreements shall govern all terms of the Projects to which they apply and the terms of this Agreement (except for Agency Funding, as applicable) shall not apply to future Projects.
- 16.12. "Requirements" shall mean those Requirements for Individual Project Review for the proposal and selection of Projects for Agency Funding, as set forth in Exhibit C to this Agreement.
- 16.13. "JKL Corridor" means the area generally fronting along or bordering J Street, K Street and L Street, between 3rd Street and 16th Street, in the City of Sacramento.
- 16.14. "Net Proceeds" shall mean funds disbursed to the Hotel Corporation from the sale of the Hotel, and thereafter to the City from the sale of the Garage, after payments of all costs associated with defeasance and repayment of the Series A and Series B Bonds, and payment of all costs of escrow as provided in the funding disbursement or closing instructions of the parties under the Hotel Purchase and Sale Agreement and the Garage Purchase and Sale Agreement referenced in Recital C of this Agreement.
- 16.15. "Parties" or "Party" shall mean, collectively or individually, as appropriate, the Agency and/or the Developer.
- 16.16. "Plans" shall mean the plans, drawings and related document prepared by the Developer for the Project.
- 16.17. "Pledged Account" is the separate line item budget account which the Agency will maintain for the Agency Funding, pledged for use as provided in this Agreement.
- 16.18. "Project" or "Projects" means, individually or collectively, as appropriate, the future renovation and redevelopment of one or more commercial, residential, or retail buildings within the Merged Downtown Redevelopment Project Area, which may include, at the option of the Developer, any one or more of the Projects listed in Exhibit A hereto. Any Project to be undertaken hereunder shall

be undertaken only in accordance with an approved Future Agreement. Project may include any proposed Project, as the context may indicate.

- 16.19. "Property" or "Properties" means, individually or collectively, as appropriate, the real property sites owned or which may be acquired by the Developer within the Redevelopment Project Area, which the Developer intends to renovate and redevelop utilizing the Agency Funding. The Property includes all improvements contained within such real property.
- 16.20. "Proposal" means each proposal to be prepared and submitted by the Developer for the development of each Property, as provided for in Section 7 of this Agreement, which Proposal meets the objectives of the Parties, and which is to be considered and approved by the Agency as provided in Section 7 of this Agreement.
- 16.21. "Redevelopment Plan" is the redevelopment plan for the Redevelopment Project Area (as it may be amended from time to time) as adopted by the City Council of the City on June 17, 1986, by City Ordinance Nos. 86-064, 86-065, 86-066 and 86-067, Fourth Series. A copy of the Redevelopment Plan as initially adopted was recorded on July 29, 1986, in the Official Records of the County of Sacramento, in Book 86-07-29, beginning at pages 1633, 1738, 1690 and 1787, respectively.
- 16.22. "Redevelopment Project Area" is the Merged Downtown Redevelopment Project Area, as defined in the Redevelopment Plan.
- 16.23. "Target Date", as used in Exhibit B, shall mean the date the Parties will exercise reasonable best efforts to achieve under normal circumstances, recognizing that the dates are just targets that the Parties may not be able to achieve due to the circumstances and complexities of any particular Project, as further defined in Section 4.

THE PARTIES HAVE EXECUTED THIS AGREEMENT in Sacramento, California as of the date first written above.

DEVELOPER : _____

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____

By: _____

Its: _____

Approved as to form:

Approved as to form:

Agency Counsel

Developer Counsel

EXHIBIT A

LIST OF POTENTIAL PROJECTS

The Developer has identified the following Properties as potential Projects for study and development of Plans for redevelopment, subject to CEQA review and approval of Future Agreements as herein provided. This list is not intended as all inclusive and the Developer may propose other projects that meet the Agency priorities. The amount of Agency Funding for each Project will be determined based on the financial analysis of the Project as approved by the Agency.

1. Property Location: 1012-1022 K Street

Project during the planning process will consist of rehabilitation of existing or construction of new buildings to provide space for Active Retail, with potentially office or residential uses on top floors. Ground floor tenants must be approved by the Agency and are expected to include restaurant, retail, and/or entertainment venues. It is too early in the process to fully define the Project; the actual uses will be determined during the planning process, and the following objectives will be considered:

- Retail tenants which are expected to bring activity to this block on evenings and weekends.
- Ground floor uses that are destination oriented, activate K Street, and further the goal of creating an entertainment district on this portion of the K Street Mall.
- Uses in these buildings that create foot traffic and a vibrancy that supports the current neighboring entertainment uses such as the Crest Theater, Pyramid Brewery, the IMAX Theater, and the Cosmopolitan Cabaret.

2. Property Location: 920-930 K Street

Located on the southwest corner of 10th and K Streets, the site may be redeveloped to include transient and/or residential occupancy over some combination of ground floor restaurant, entertainment, and retail uses. Actual components will be determined by the Developer and the Agency during the planning process, and the following objectives will be considered:

- Restaurant, retail, and entertainment uses which are expected to be active and provide energy to the corner of 10th and K Streets.
- Any hotel component would be of a quality and type that is affordable to and appeals to a younger business person.
- Potential for penthouse residences or condos, if feasible and market demand exists.

- Buildings of high quality architecture and urban design.

3. Property Location: 601 Capitol Mall

Potential Scope of Redevelopment: Principal improvements would include approximately 410,000 gross sq.ft. of residential and retail space (not including 110,000 gross sq.ft. of parking); 175-270 for-sale residential units; approximately 260 parking stalls; and not less than 5,000 sq.ft. and up to approximately 11,700 sq.ft. of retail space on the ground level.

4. Property Location: 830 K Street

Potential Scope of Redevelopment: Principal improvements would include approximately 22,800 net sq.ft. of either residential or office space (2nd and 3rd levels), and 10,195 net sq.ft. of retail space (ground level).

EXHIBIT B

MILESTONE EVENTS SCHEDULE

Action	Target Date	Outside Date for Completion
<p><u>Notes:</u></p> <p>(a) All necessary actions by the Parties prerequisite to a Milestone Event are assumed as requirements though not specifically stated in every case.</p> <p>(b) Following approval and execution of a Project OPA, the schedule of performance governing the Project shall be that schedule in the Project OPA.</p>		
<p>1. Developer shall submit proposal to Agency for first project ("First Project") and submit the information required under Section 3, including demonstrated funding gap.</p>	<p>Not later than 150 days from the Effective Date of this Agreement.</p>	<p>Add 120 days.</p>
<p>2. Agency's Executive Director transmits letter to Developer indicating acceptance of a full Proposal for review..</p>	<p>Within ten days of Agency's receipt of Developer's Proposal.</p>	<p>As soon thereafter as reasonably feasible.</p>
<p>3. Parties commence negotiation of project-specific OPA ("Project OPA") for First Project.</p>	<p>Within fifteen business days of Developer's receipt of Agency's letter of acceptance.</p>	<p>As soon thereafter as reasonably feasible.</p>

Action	Target Date	Outside Date for Completion
4. Return to Agency for approval of Project OPA for First Project.	Not later than 60 days after receipt by Agency of Developer's proposal, plus such additional time as may be required for completion of environmental review documents and preparation of Agency staff reports and scheduling of public meetings.	Add 60 days.
5. Submit application for entitlements.	Within the times set forth in the Project OPA.	Same.
6. Construction Commences.	Within the time set forth in the Project OPA.	Same.
7. Developer shall submit proposal to Agency for second project ("Second Project") and submit the information required under Section 3, including demonstrated funding gap.	Not later than 150 days from commencement of construction of First Project.	Add 120 days.
8. Agency's Executive Director transmits letter to Developer indicating acceptance of a full Proposal for review for Second Project.	Within ten days of Agency's receipt of Developer's Proposal for Second Project.	As soon thereafter as reasonably feasible.

Action	Target Date	Outside Date for Completion
9. Return to Agency for approval of Project OPA for Second Project.	Not later than 60 days after receipt by Developer of Agency's acceptance of Developer's Proposal, plus such additional time as may be required for completion of environmental review documents and preparation of Agency staff reports and scheduling of public meetings.	Add 60 days.
10. Developer shall submit proposal to Agency for each subsequent project (each a "Subsequent Project") and submit the information required under Section 3, including demonstrated funding gap.	For each Subsequent Project, not later than 150 days from commencement of construction of last approved Project.	Add 120 days.
11. Agency's Executive Director transmits letter to Developer indicating acceptance of a full Proposal for review for each Subsequent Project.	Within ten days of Agency's receipt of Developer's Proposal for each Subsequent Project.	As soon thereafter as reasonably feasible.

Action	Target Date	Outside Date for Completion
12. Return to Agency for approval of Project OPA for each Subsequent Project.	For each Subsequent Project, not later than 90 days after receipt by Developer of Agency's acceptance of Developer's proposal, plus such additional time as may be required for completion of environmental review documents and preparation of Agency staff reports and scheduling of public meetings.	Add 90 days.

Exhibit C
Project Selection Criteria

1. General Criteria for Approval of a Project for Negotiation of an OPA or DDA

Agency staff shall consider the following criteria for approval of a project for commencement of negotiation of an owner participation agreement or disposition and development agreement for recommendation to the governing board.

- a. Each proposal must do one or more of the following:
 - Contribute to achieving the vision of adopted 5-year Redevelopment Implementation Strategy;
 - Remove blight or contribute to the elimination of blight;
 - Leverage significant private investment or investment of state or federal funds;
 - Spur additional private investment in the vicinity;
 - Contribute to City revenues;
 - Creates significant new permanent jobs;
 - Otherwise meet a redevelopment purpose;
 - Be constructed with attention to quality design and materials.

b. In approving a proposed project for recommendation to the governing board, staff shall consider the following priorities in ranking proposals, and staff may reject a proposal for failing to reasonably meet any of the priorities:

- 1). First Priority (in no particular order) will be Projects that:
 - Focus on ground floor uses that are destination-oriented, supportive of an entertainment district, and provide active uses of K Street; or
 - Complete outstanding projects contemplated by the Exclusive Right to Negotiate Agreement between the Agency and the developer of the 10th & K Street project; or
 - Further the redevelopment efforts on K Street; or

- Include a quality hotel product along the “JKL Corridor”, as defined in Section 16.13 of the Master Owner Participation Agreement and Agency Funding Agreement (Master OPA), which hotel is comparable to _____ or other similar hotel product; or
 - Have a residential component within the JKL Corridor; or
 - In the JKL Corridor, further the goals of the Implementation Plan for the Redevelopment Plan.
- 2) Second Priority (in no particular order) will be Projects that may not fall into the category of First Priority, but are Projects that:
- Attract significant new private investment on- and off-site; or
 - Maximize the public return on public investment through increased public uses and community amenities and increase taxes; or
 - Further the goals of the Implementation Plan for the Redevelopment Plan; or
 - Achieve multiple redevelopment goals; or
 - Take advantage of an existing asset or investment; or
 - Appeal to a large group of users; or
 - Contribute significantly to the aesthetic environment; or
 - Employ smart growth principles and infill development strategies.

2. Submission of Proposal for Negotiation of an OPA or DDA

a. The following information must be submitted prior to negotiation of an owner participation agreement or disposition and development agreement.

- Development Team Identification and Experience. The following are not required for principals of the development team, except for principals of the development team other than the principals of Developer under the Master OPA.
- Provide the name, address, and telephone numbers of the development team..
- Identify the name and type of legal entity with whom the Agency would contract (e.g., individual, corporation, partnership, joint venture, other). If the legal entity with which the Agency would contract is different than the parent corporation, please indicate the relationship and degree of control and whether

the parent corporation will guarantee performance or provide some other such guaranty.

- Identify and describe any relationship the development team may have with subsidiaries, joint ventures partners or others who are significant to the project development.
- Identify the principal person within the development team authorized to negotiate on its behalf (“Key Negotiator”), and the level of authority that the Key Negotiator possesses.
- If a development team other than the principals of Developer under the Master OPA will have primary financial responsibility for proposed project, copies of any annual reports, financial rating reports, or other documents indicating the financial condition of the development team must be provided. The Agency will, to the extent of its ability under the law, endeavor to keep all financial data in strict confidence and return it to the developer upon completion of the review process.

b. Development Proposal and Financing Plan

1) Development Proposal and Design

- Provide a description of the proposed project including identification of the proposed mix of uses and how they meet the development objectives outlined for the Project Site.
- The project design must comply with the Redevelopment Plan and meet or exceed the City’s adopted Design Guidelines. Any additional assumptions made by the developer should be clearly stated in the submitted reports.
- The project design should contain sufficient detail to show the scale, scope, size, and mix of project elements. The following required drawings must be at a scale and level of detail necessary to accurately and reliably estimate the cost of project development and operation. The project design must give verifiable detail on project materials and construction quality, which may be satisfied by reference to other buildings and their components
- Include, at a minimum, the following design information in schematic form:
 1. Site Plan;
 2. Elevations; and
 3. Floor plan.

2) Preliminary Financing Plan and Business Offer

The purpose of the preliminary financial plan is to demonstrate the feasibility of project financing and the feasibility of the proposed project upon completion. The financial plan must include:

- A proposed preliminary financing plan, based on and including development and operating pro forma budgets. The preliminary financing plan should include the proposed terms of acquisition, if relevant, and the plan to finance the development.
- All assumptions used in preparing the financing plan. An adequate plan will identify the amount and sources of equity, construction financing, and permanent financing, and will include letters of interest or commitment from equity partners and lenders, if any. A tenant leasing plan including proposed rents and the type and quality of tenants should also be included.
- Agency funding must be justified as necessary gap financing or as the cost of public amenities included in the project.

3) Proposed Development Schedule

- Include a preliminary schedule for development of the proposed project which addresses, at a minimum, preparation of plans, projected plan approval dates, commencement of construction, construction milestones, and completion of construction. It should provide for development in a logical and expeditious manner.

c. Property Control

If the development team represents that it has legal control of the property (or a substantial portion of the property) where the project would be located, the copies of the following must be provided to the extent they exist for the project:

- Property deeds;
- Copies of executed and enforceable real property sales contracts;
- Copies of executed and enforceable real property option agreements;
- Evidence that property has been purchased or is under contract to be purchased at a price not substantially greater than market value; and

- If Development Team is a partnership, evidence that the Key Negotiator has the legal authority to commit the subject property to the proposed development project.

Submittal Review Process

Once a complete proposal has been submitted, the following process will apply:

- Within 10 days of determination that the submittal is complete, staff will consider which of the following directions is appropriate:
 1. Commence negotiations on the project; or
 2. Reject proposal because the project does not meet established criteria, lack of development team experience, lack of available funding or staff resources, excessive subsidy request or determination that the project is not of sufficient priority.

A letter indicating the staff's position will be sent to the Development Team. If the determination is to reject the proposal, the letter will contain the reasons for the rejection, and the Development Team will have a reasonable opportunity to revise and resubmit the proposal to address the reasons for rejection.

Note: Project design and quality is a material reason for Agency's participation in a project and significant changes in design and quality during the negotiation process, irrespective of their nature, may be grounds for Agency staff to withdraw or condition its recommendations concerning the project.