



**REPORT TO THE
REDEVELOPMENT AGENCY
AND CITY COUNCIL
of the City of Sacramento**

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**Staff Report
May 13, 2008**

**Honorable Chair and Members of the Board
Honorable Mayor and Members of the City Council**

Title: Railyards Owner Participation Agreements

Location/Council District: Sacramento Railyards, Council District 1

Recommendation:

Adopt the following **City Council Resolution** approving findings related to the use of redevelopment tax increment to finance Railyards infrastructure and public facilities as incorporated in the Owner Participation Agreement business terms for the Sacramento Railyards Project

Adopt the following **Redevelopment Agency Resolution** that: 1) determines that the action has been adequately considered by the Railyards Redevelopment Plan EIR and no further environmental review is required; 2) approves findings related to the use of redevelopment tax increment to finance Railyards infrastructure and public facilities; 3) approves the Railyards Master Owner Participation Agreement and the Railyards Initial Phase Infrastructure Owner Participation Agreement and authorizes the City Manager as the Agency's authorized designee to execute the two agreements; and 4) authorizes the Agency Interim Executive Director to amend the Agency budget as necessary to carry out the provisions of the two agreements.

Contact: Dave Harzoff, Economic Development Manager, 808-5385

Presenters: Dave Harzoff

Department: Economic Development

Division: Downtown

Organization No: 4451

Description/Analysis

Summary: On December 11, 2007 the City Council granted entitlements for the Railyards Specific Plan, approved a Development Agreement, and approved a set of City business terms with S. Thomas Enterprises of Sacramento, LLC (Thomas). The City Council sitting as the Agency Board also conceptually approved a set of Agency business terms with Thomas and directed that the business terms be incorporated into Owner Participation Agreements (OPA). The Master OPA establishes parameters for Agency redevelopment assistance throughout the Railyards property, including funding for affordable housing. The Initial Phase Infrastructure OPA commits up to \$50 million in tax increment (TI) as a reimbursement to Thomas for development of a specific set of infrastructure improvements and other important public facilities and Central Shops rehabilitation in the Initial Phase of the project.

Policy Considerations:

The recommended actions are consistent with the Railyards Specific Plan, the newly adopted Railyards Redevelopment Plan, the formerly applicable Amended Richards Boulevard Redevelopment Plan (amended to be renamed the River District Redevelopment Plan), and the newly adopted 2009-2013 Railyards Implementation Plan. Redevelopment of the Railyards Specific Plan area will eliminate blight within the Railyards Redevelopment Project Area by 1) eliminating environmental deficiencies in the Project Area; rehabilitating obsolete, aged and deteriorated buildings; replacing inadequate and non-public improvements and utilities and removing barriers to private investment and economic re-use of the site; and by 2) assisting with the redevelopment of an abandoned industrial site with a mix of uses including retail, office, historic, cultural and entertainment uses, and supporting substantial infill and transit-oriented housing development, including affordable housing; and by 3) the installation of needed backbone infrastructure and public facility improvements. The recommended actions also specifically support affordable housing as well as broadened provisions that establish all types of infill housing projects in the Railyards as priorities for the use of redevelopment funds. The list of qualified projects eligible for reimbursement has been expanded slightly from what the Agency Board conceptually approved last fall to include two additional buildings: the Car Machine Shop and the Planing Mill, as shown on Attachment 2. Car Shop No. 3 and the Paint Shop were already on the list the Board approved last fall.

Environmental Considerations: The proposed actions are consistent with the Railyards Specific Plan and the impacts of implementing the Specific Plan were evaluated in the Railyards Specific Plan Final Environmental Impact Report (RSP FEIR) which was certified and its Mitigation Monitoring Program approved by the City Council on December 11, 2007. The environmental impact analysis of the Railyards Redevelopment Plan and the Seventh Amendment to the Richards Boulevard Redevelopment Plan as set out in the Final Environmental Impact Report (Plan FEIR) and the corresponding Mitigation Monitoring Program (Plan MMP) was certified by the Agency on May 6, 2008. The Agency has reviewed,

considered and adopted the Plan FEIR and the Plan MMP documents prior to the adoption of the Railyards Redevelopment Plan and it provides adequate environmental analysis necessary to approve the recommended actions and no additional environmental review is necessary.

Rationale for Recommendation: The recommended actions in this report are necessary to advance the redevelopment of the Railyards by forming a public-private partnership with the developer that will produce substantial public benefits.

Financial Considerations:

The recommended actions will commit the Agency to working with Thomas, or any successors in interest, on redeveloping the Railyards property. Approval of the OPAs commits up to \$50 million in net present value (2008\$'s) redevelopment tax increment funds to assist in funding the backbone infrastructure and important public and private facilities necessary to support the Initial Phase of development as identified in the Railyards Specific Plan and related entitlements. The estimated Phase 1 backbone infrastructure and facilities costs are \$290 million of which the funding in the OPAs will cover only a portion of the costs on a reimbursement basis. The remainder of the funding will come from the Developer, earmarked City and local funds or outside sources, such as private investors or other State and Federal funds. The financial feasibility (pro forma) analysis prepared by the City for the Railyards project indicated that the Developer can only profitably fund approximately \$49 million of the Phase 1 infrastructure costs. Despite the City's commitment of all of its funds that are reasonably available to the project, the project could not proceed without the Agency's and other financial assistance.

M/WBE Considerations/ Emerging Small Business Development (ESBD):

The recommended actions do not involve the purchase of goods or services.

Respectfully Submitted by: DAVE HARZOFF
Dave Harzoff
Economic Development Division Manager

Marty Hanneman
Marty Hanneman
Assistant City Manager

Recommendation Approved:

Ray Kerridge
Ray Kerridge
City Manager

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OPA Business Terms Summary**Master OPA**

1. Entire Railyards Development Project subject to Master OPA
2. Provides for subsequent OPAs including Initial Phase Infrastructure OPA that commits up to \$50 million in tax increment towards infrastructure cost reimbursement for the Initial Phase of development.
3. Remaining tax increment net of housing set aside, senior pass-through, and other funding obligations (Net TI) is available for qualified projects with the intent of expenditure within 3 years of receipt as follows:
 - First priority for Net TI is Agency affordable housing or other legal obligations
 - Next priorities for Net TI are public facilities financing, Developer-proposed housing projects, Central Shops rehabilitation, public parking facilities, and parks and open space, to the extent qualified for redevelopment funding, at Agency's discretion
4. Low and moderate affordable housing set aside funds generated by the Railyards project will first be used to assist the Developer in meeting its inclusionary housing ordinance obligations.
5. Rights to receive tax increment generated from the development of a particular parcel pass to the purchaser of the parcel unless they waive that right.
6. Requires accounting of availability of Net TI funds for projects. After 3 years of receipt if not spent for a designated project Agency regains full discretion as to use of funds.
7. All future projects subject to financial feasibility and necessary environmental analysis.
8. Default of other City and Agency agreements is a default of the Master OPA.

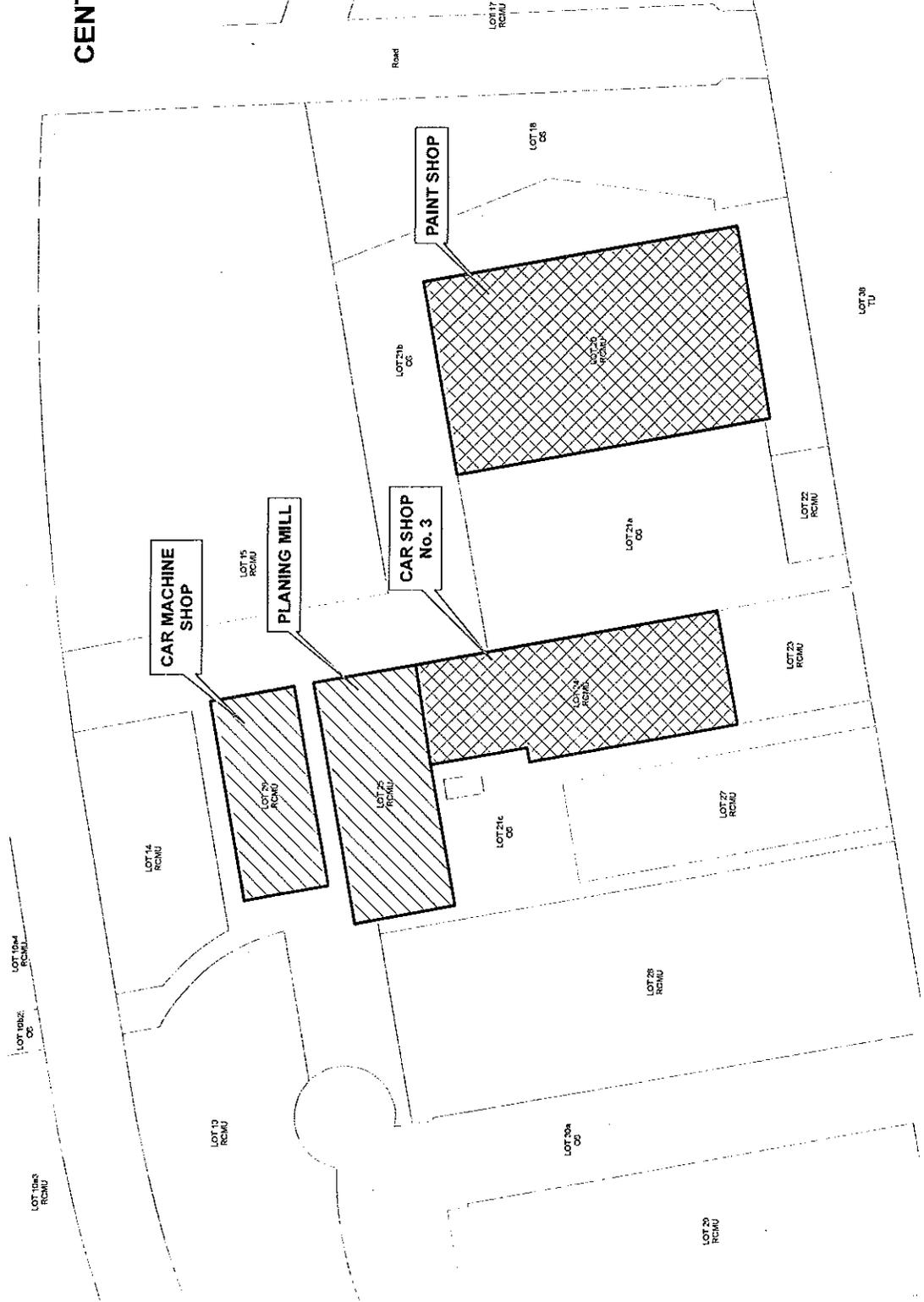
Initial Phase Infrastructure OPA

9. Up to \$50 million in Net TI available for reimbursement for infrastructure, public facilities, and building rehabilitation on the qualified list in the Initial Phase of the project.
10. Reimbursement obligation balance increases at a 6% compounded annual rate
11. Agency reimbursement obligation limited to actual Net TI received from development within Initial Phase boundaries.
12. Developer has 10 years from track relocation (similar to Development Agreement) to vest rights to receive the reimbursement and all rights to reimbursement under this OPA terminate after 15 years from the effective date of the OPA.

Location of Car Machine Shop and Planing Mill
Being Added to Qualified List of Reimbursable Improvements

CENTRAL SHOPS AREA

April 29 2008



NOTE



RESOLUTION NO. 2008- ____

Adopted by the Sacramento City Council

**APPROVING FINDINGS RELATED TO THE
AGENCY'S OWNER PARTICIPATION AGREEMENTS FOR
THE SACRAMENTO RAILYARDS PROJECT**

BACKGROUND

- A. On December 11, 2007, the City of Sacramento ("City") entered into a Development Agreement, with S. Thomas Enterprises of Sacramento, LLC ("Developer") in furtherance of the Railyards Specific Plan, which Specific Plan and related entitlements specifies the required public facility and infrastructure improvements necessary for implementation of the Specific Plan and the Railyards Specific Plan Public Facilities Financing Plan. The Financing Plan sets forth the estimated costs of those public facility and infrastructure improvements and identifies potential funding sources for those improvements.
- B. As part of the evaluation of the Sacramento Railyards Project, a Pro Forma Analysis was prepared to assess the capacity of the Developer and the Sacramento Railyards Project to incur the costs for the required public facility and infrastructure improvements. This Analysis demonstrated that the Developer can only pay up to \$49 million towards the \$290 million estimated costs for the public facilities and infrastructure necessary to develop Phase 1. There is a projected cumulative financial feasibility gap for the private development in all phases of the Project of approximately \$860 million under current market conditions, exclusive of infrastructure costs. The City has made commitments to the Project of public funding for certain Railyards public facility and infrastructure improvements in an approximate amount of \$150 million.
- C. The Redevelopment Agency of the City of Sacramento ("Agency") is considering approval of a Master Owner Participation Agreement and Initial Phase Infrastructure Owner Participation Agreement ("OPA") with the Developer. The Initial Phase OPA would make available for such unfunded public facilities and infrastructure improvements, up to approximately \$50 million in tax increment revenues, increased annually at the rate of six percent on the undisbursed balance.
- D. On December 11, 2007, the City adopted the Final Environmental Impact Report for the Railyards Specific Plan and the Mitigation Monitoring Program, which analyzed

the impacts of the development of the Railyards Specific Plan project, including the public facility and infrastructure improvements that would be funded by the actions contemplated by the Agency.

- E. On May 6, 2008, the Agency approved the Railyards Redevelopment Plan and the Seventh Amendment to the Richards Boulevard Redevelopment Plan (renamed as the River District Redevelopment Plan and Project Area). On this date by separate action the the City passed for publication and held the first reading of the ordinance to approve the Railyards Redevelopment Plan, amend the Richards Boulevard Redevelopment Plan and establish the Railyards Project Area. On May 13, 2008 the City Council held the second reading and approved the ordinance. The Agency and City took these actions after certification and consideration of the Final Environmental Impact Report for the Railyards Redevelopment Plan and the Seventh Amendment to the Richards Boulevard Redevelopment Plan and approving the corresponding Mitigation Monitoring Program.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The foregoing findings are true and correct and hereby approved.

Section 2. Pursuant to Section 33445 of the Health and Safety Code of the State of California, the City Council finds that:

a. The implementation of the public facility and infrastructure improvements specified in the Railyards Specific Plan will benefit the Railyards Redevelopment Project Area, which encompasses a former portion of the Richards Boulevard Redevelopment Project Area, by improving inadequate infrastructure and by constructing and installing public facilities and infrastructure required for redevelopment within the Railyards. Some of the backbone infrastructure improvements within the Railyards Project Area and required for the implementation of the Railyards Specific Plan will also benefit the River District Redevelopment Project Area;

b. Based on the Railyards Specific Plan Public Facilities Financing Plan, the cost of the public facilities and infrastructure improvements required for redevelopment of the Railyards by implementation of the Railyards Specific Plan will exceed the available public and private funding sources, and there is no other reasonable means of financing the public facilities and infrastructure improvements available to the community except for redevelopment area tax increment proceeds; and

c. The use of redevelopment tax increment proceeds for the Railyards public facilities and infrastructure improvements will result in the elimination of blighting influences resulting from inadequate, under capacity, and dilapidated infrastructure within the Railyards Redevelopment Project Area. The public facilities and infrastructure improvements set out in the Railyards Specific Plan are consistent with the Implementation Plan for the Railyards Redevelopment Plan as well as for the former Richards Boulevard Redevelopment Plan, now renamed the River District Redevelopment Plan, both adopted pursuant to Health and Safety Code Section 33490.

Section 3. The preceding statements are findings of the City Council on behalf of the City, and do not predispose the action of the Redevelopment Agency of the City of Sacramento, acting in its independent discretion as a separate and public entity, in considering the use of tax increment funds for the Railyards project.

RESOLUTION NO. 2008 -

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

SACRAMENTO RAILYARDS PROJECT: APPROVAL OF MASTER OWNER PARTICIPATION AGREEMENT AND INITIAL PHASE INFRASTRUCTURE OWNER PARTICIPATION AGREEMENT ALLOCATING FUTURE TAX INCREMENT FUNDS, AND RELATED DOCUMENTS, WITH S. THOMAS ENTERPRISES OF SACRAMENTO, LLC; RELATED BUDGET ACTION

BACKGROUND

- A. S. Thomas Enterprises of Sacramento, LLC (“Developer”) and the City of Sacramento (“City”) have entered into a Development Agreement, dated December 11, 2007, in furtherance of the Railyards Specific Plan and related entitlements, including an amendment to the Richards Boulevard Area Plan. The Railyards Specific Plan area encompasses approximately 240 acres of which the Developer owns the majority (the “Property”). The Railyards Specific Plan and related entitlements specifies how the Property may be developed and establishes the Sacramento Railyards Project.
- B. As part of the City’s evaluation of the Sacramento Railyards Project, a Pro Forma Analysis was prepared to assess the capacity of the Developer and the Sacramento Railyards Project to incur the costs for the required public facility and infrastructure improvements. This Analysis demonstrated that the Developer can only pay up to \$49 million towards the \$290 million estimated costs for the public facilities and infrastructure necessary to develop Phase 1, and there is a projected cumulative financial feasibility gap under current market conditions for the private development in all phases of the Project of approximately \$860 million, exclusive of infrastructure costs. The City has made commitments of public funding for certain Railyards public facility and infrastructure improvements in an approximate amount of \$150 million.
- C. The Sacramento Railyards Project which is the subject of this resolution is located within the newly created Railyards Redevelopment Project Area (“Railyards Project Area”), which encompasses a former portion of the Richards Boulevard Redevelopment Project Area, which, as amended is now renamed the River District Redevelopment Project Area.
- D. Developer and Agency desire to enter into the Master Owner Participation

Agreement ("Master OPA") and the Initial Phase Infrastructure Owner Participation Agreement ("Initial Phase OPA") to establish the framework for the allocation of a portion of the available tax increment revenues from the Property within the Railyards Project Area for redevelopment and for allocation of a portion of such tax increment revenues for development of some of the unfunded public facilities and infrastructure.

- E. This Master OPA and the Initial Phase OPA are made in accordance with the Railyards Redevelopment Plan, and the owner participation and preference rules adopted pursuant to the Railyards Redevelopment Plan, which provisions provide for participation by property owners and businesses in the redevelopment of real property in the Railyards Project Area in accordance with California Health & Safety Code Section 33339.
- F. The Agency is participating in the Master OPA and Initial Phase OPA because they are consistent with, and further, the goals and objectives of the Railyards Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Sacramento Railyards Project will eliminate the following blighting influences: buildings which are unsafe or unhealthy due to age, deterioration and dilapidation; inadequate and faulty utilities including without limitation inadequate traffic circulation and access, inadequate storm drains and sewers, inadequate water and power service, lack of parking and other public and neighborhood facilities; unremediated hazardous substances and similar factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots; incompatible adjacent uses; depreciated or stagnant property values; and further, the Property serves as a barrier for access between the Merged Downtown Redevelopment Project Area and the River District Redevelopment Project Area with consequent negative impacts on all of the project areas. The Agency has also determined that the Sacramento Railyards Project will meet the following goals of the current "Implementation Plan" adopted for the Railyards Project Area: (1) prevention and elimination of the spread of blight and deterioration and correcting environmental deficiencies, (2) redesign and redevelopment of stagnant and underutilized buildings and sites, (3) encouragement of high-quality architectural, landscape, urban design and land use principles to achieve the Railyards Redevelopment Plan objectives, (4) stimulation of economic growth and job creation by attracting new and continued private sector investment and assisting new and existing employers, (5) promotion of new office uses and mixed-use residential and retail development, (6) support for community facilities consistent with the General Plan to support the planned development, and (7) elimination of infrastructure deficiencies.
- G. The Agency has duly circulated, considered, certified, and adopted an Environmental Impact Report ("EIR") and a Mitigation Plan and Monitoring Program on May 6, 2008 for the Seventh Amendment of the Richards Boulevard Redevelopment Plan and adoption of the Railyards Redevelopment Plan, prior to adoption of the Railyards Redevelopment Plan and amendment of the Richards

Boulevard Redevelopment Plan.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO RESOLVES AS FOLLOWS:

Section 1. It is determined that the action proposed by this resolution is consistent with and duly considered by the above mentioned EIR, and after review of the actions and the EIR, the EIR is certified as adequate for review of the actions contemplated by this resolution, and no further environmental review is required.

Section 2. Pursuant to Section 33445 of the Health and Safety Code of the State of California, the Agency finds that:

a. The implementation of the public facility and infrastructure improvements specified in the Railyards Specific Plan and in the Master OPA and the Initial Infrastructure OPA will benefit the Railyards Redevelopment Project Area, by improving inadequate infrastructure and by constructing and installing public facilities and infrastructure and renovating buildings required for redevelopment within both the Railyards and the River District Redevelopment Project Areas;

b. Based on the Railyards Specific Plan Public Facilities Financing Plan, the cost of the Railyards public facilities and infrastructure improvements required for redevelopment of the Railyards by implementation of the Railyards Specific Plan will exceed the available public and private funding sources, and there is no other reasonable means of financing the public facilities and infrastructure improvements available to the community except for redevelopment area tax increment proceeds; and

c. The use of redevelopment tax increment proceeds for the Railyards public facilities and infrastructure improvements will result in the elimination of blighting influences resulting from inadequate, under capacity, and dilapidated infrastructure within the Richards Boulevard Project Area. The public facilities and infrastructure improvements set out in the Railyards Specific Plan and related entitlements are consistent with the Implementation Plan for the Railyards Redevelopment Plan as well as for the Implementation Plan for the River District Redevelopment Plan, both adopted pursuant to Health and Safety Code Section 33490.

Section 3. The Master OPA and the Initial Phase OPA, both of which are attached to the staff report and incorporated in this resolution by this reference are approved and the Interim Executive Director or the City Manager acting on behalf of the Agency, or their respective designee, are authorized as the authorized designee of the Agency, to execute each of them, and the documents required thereunder, and to take all actions reasonably contemplated thereby.

Section 4. The Interim Executive Director is authorized to amend the Agency budget as necessary to carry out the provisions of the Master OPA and the Initial Phase OPA.

ATTACHMENT 5

**Sacramento Railyards
Master Owner Participation Agreement**

SACRAMENTO RAILYARDS PROJECT

MASTER OWNER PARTICIPATION AGREEMENT
Using Funds from Project Area Tax Increment

Redevelopment Agency of the City of Sacramento ¶
and
S. Thomas Enterprises of Sacramento, LLC

Richards Boulevard Redevelopment Project Area/Proposed Railyards Project Area

May 13, 2008

MASTER OWNER PARTICIPATION AGREEMENT

Using Project Area Tax Increment

SACRAMENTO RAILYARDS PROJECT

Richards Boulevard Redevelopment Project Area/Proposed Railyards Project Area

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO (“Agency”) and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC (“DEVELOPER”) enter into this Master Owner Participation Agreement, as of May 13, 2008. For purposes of this Master OPA, the capitalized terms shall have the meanings set out herein or as hereinafter assigned in Section 13.

RECITALS

- A. Developer is the owner of the Property in the City of Sacramento formerly known as the Union Pacific Railyards and containing approximately 240 acres as shown on Exhibit 2. Railyards Property. As of the effective date of this Master OPA, the City of Sacramento has acquired Parcel A, which is the location of the Sacramento Valley Station, and has an option to purchase Parcel B, encompassing lots 38 and 39 on the Tentative Map for the Property, in accordance with the terms of that certain Purchase and Sale Agreement identified as City Agreement No. 2006-1405. After such purchase, the resulting Property would contain approximately 207 acres. The Property is immediately north of the Central Business District, northeast of Old Sacramento, east of the Sacramento River and Interstate 5, south of North B Street and the Richards Boulevard industrial area and Sacramento River Wastewater Treatment Plant, west of the historic Alkali Flat residential and office neighborhood and east of I-5 and the Sacramento River to the west, as further described in the Legal Descriptions in Exhibit 1.
- B. The Property is located within the original boundaries of the Richards Boulevard Redevelopment Plan and the boundaries of the newly-adopted Redevelopment Plan for the Railyards Redevelopment Project Area and is subject to the provisions of both plans to the extent of their applicability. Upon the exhaustion of all challenges to the Railyards Redevelopment Plan and the full effectiveness of the Railyards Redevelopment Plan, this Master OPA, as well as the Initial Phase OPA and each Subsequent OPA, will be governed solely by the Railyards Redevelopment Plan. If the newly adopted plan is prohibited from going into effect for any reason it is the Agency and City’s intent that the Property shall remain a portion of the Richards Boulevard Redevelopment Project Area and governed by its Redevelopment Plan. It is the intent of the parties that this Master OPA, continue in full force and effect irrespective of whether it continues under the Railyards Redevelopment or the Richards Boulevard Redevelopment Plan. Further it is the intent of the parties that this Master OPA be governed by the respective redevelopment plan in effect and including the Property,
- C. The Property has been fully urbanized for more than a century. It was first developed as the western terminus of, the Transcontinental Railroad in the early 1860s and

produced and repaired much of the rail equipment for its operation. The Central Pacific and Southern Pacific railroads used the Property for railroad uses for almost 150 years, with the last railroad workers leaving the maintenance and locomotive works in 1995. During its peak, the Property housed the largest railroad facility of its kind west of the Mississippi River. The Property's use as a production and maintenance facility for the railroads continued for most of its history. In the late 1990s, after the closure of the locomotive maintenance works at the site, Union Pacific purchased the Southern Pacific Railroad and acquired the Property. In December of 2006, the Developer purchased the Property from Union Pacific. Currently, most of the Property is owned by Developer, while approximately 9 acres are owned by the City. The Property continues to be used for passenger rail service through the existing historic Depot building, constructed in 1926 and used as the primary depot for passenger rail service in the Sacramento Valley. The Property continues to include the Union Pacific main lines that are used by freight and passenger trains, the passenger depot for Amtrak and Capitol Corridor trains, and certain other rail lines. The Property also contains several large City-owned or managed parking lots. The historic Central Shops buildings, constructed approximately 100 years ago, and located to the north of the Depot were a major portion of the complex used for rail equipment production and maintenance, and have been mostly vacant for some years. The California State Railroad Museum leases two of these buildings to repair and maintain its historic train stock. Sims Metal operates a metal salvage operation, approximately one and a half acres of which is located in the eastern portion of the Property. The Property has been undergoing environmental remediation for many years, and remediation activities are ongoing on certain portions of the Property. Limited portions of the Property, primarily the Depot area are served by major utilities; including water, sewer, storm drainage, solid waste, natural gas and electrical service; however, most of the Property currently lacks these utilities of sufficient capacity to support the land uses proposed for the site. The environmental documentation has identified historic assets within the project.

- D. The Developer and the City of Sacramento have entered into a Development Agreement, dated December 11, 2007, which sets forth a Specific Plan for development of the Property and a development program for the Railyards Development Project. The Specific Plan, Special Planning District, Railyards Design Guidelines, tentative map and other related land use entitlements were approved concurrently with the Development Agreement and generally describe the land uses, density and urban character planned for the Property and the infrastructure needed to redevelop the Property.
- E. The Development Agreement provides for the phasing of development of the Property. Under the Development Agreement, the Initial Phase (also known as Phases 1 and 2) of the planned development will be developed first as shown on the Initial Phase Property Description. This Master OPA is made with regard to the development of the total Property, including the Initial Phase. The Initial Phase has been further divided into four subphases (1A, 1.B.1, 1.B.2 and 2).

- F. This Master OPA is a master Owner Participation Agreement which establishes the framework for the allocation of a portion of the available tax increment revenues from the Project Area. A portion of the available tax increment will be allocated for the Initial Phase development under the Initial Phase Infrastructure OPA and thereafter to Individual Projects. This Master OPA, including the Initial Phase Infrastructure OPA, establishes the priority of the use of those tax increment funds.
- G. This Master OPA is made in accordance with the Redevelopment Plan, and the owner participation and preference rules adopted pursuant to the Redevelopment Plan, which provisions provide for participation by property owners and businesses in the redevelopment of real property in the Project Area in accordance with California Health & Safety Code Section 33339.
- H. The Agency is participating in this Master OPA because this Master OPA is consistent with, and furthers, the goals and objectives of the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Project will eliminate the following blighting influences: buildings which are unsafe or unhealthy due to age, deterioration and dilapidation, inadequate and faulty utilities including without limitation inadequate traffic circulation and access, inadequate storm drains and sewers, inadequate water and power service; lack of parking and other public and neighborhood facilities, unremediated hazardous substances, and similar factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots; incompatible adjacent uses; depreciated or stagnant property values; and further, the Property serves as a barrier for access between the Merged Downtown Redevelopment Project Area and the Richards Boulevard Redevelopment Project Area with consequent negative impacts on all of the project areas. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: (1) prevention and elimination of the spread of blight and deterioration, (2) redesign and redevelopment of stagnant and underutilized sites, (3) encouragement of high-quality architectural, landscape, urban design and land use principles to achieve the Redevelopment Plan objectives, (4) stimulation of economic growth and job creation by attracting new and continued private sector investment and assisting new and existing employers, (5) promotion of office uses, new mixed-use residential and retail development, (6) support for community facilities consistent with the General Plan to support the planned development, and (7) elimination of infrastructure deficiencies.
- I. Developer and the City are expending substantial sums in commencing and carrying out redevelopment of the Property under the Development Agreement and the subsequent Funding Agreement. In order to make the development of the Property feasible, it is the intent of the parties that the Developer receive priority for allocation of redevelopment funds for reimbursement of the cost to develop qualified infrastructure and other identified redevelopment projects in the Initial Phase area as detailed in the Initial Phase Infrastructure OPA. Further, it is intended that such priority be extended to any original assignees of Developer who develop qualified infrastructure or other qualified redevelopment projects within the Initial Phase area as

described in the Initial Phase OPA, to the extent of any agreement between the Developer and assignee.

J. In order to accomplish such Agency goals and purpose, the Master OPA provides that the Developer will develop, or cause to be developed, the Property in the manner and for the uses described in this Master OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this Master OPA.

K. The terms and conditions of this Master OPA are specific to the Project identified in this Master OPA and are not related to or applicable to any other activity or project within the Project Area.

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. **RECITALS.** The foregoing recitals are true and correct and are agreed and acknowledged by the parties.
2. **AGENCY FUNDING.** As provided in this Section 2, Agency shall make Agency Funding available to Developer under the Initial Phase OPA in accordance with its terms and for Subsequent OPAs for Individual Projects for the purposes described and to the extent stated therein. Subject to the terms of this Master OPA, Agency shall make available and provide Agency Funding to Developer for Individual Projects for purposes of assisting, facilitating, and implementing the development, redevelopment, installation, repair, demolition, replacement, or rehabilitation of buildings, infrastructure, landscaping, lighting, signage or other items, or to do any other qualified redevelopment activities, within the Property, in furtherance of a program for the elimination of blighting influences in the Project Area. To receive Agency Funding under this Master OPA, projects in the Property must be developed by Developer or by an assignee who receives a portion of the Property directly from Developer. For purposes of this Master OPA, assignee includes the further assignment to any single asset entity in which such assignee holds not less than ten percent (10%) interest, or any other entity which controls or is controlled by Developer's assignee, without limitation or abridgment of the rights of any Lender of the Developer or such assignee under this Master OPA. References in this Master OPA to Developer shall include such assignee.

2.1. **ALLOCATION OF NET TAX INCREMENT.** Pursuant to the Initial Phase Infrastructure OPA, Agency will reimburse Developer for not more than \$50,000,000 of actual cost of certain qualified infrastructure and for such other purposes as are stated therein. Such amount is adjusted annually by a six (6) percent compounded rate on the undisbursed balance as more particularly described in the Initial Phase Infrastructure OPA. All remaining Net Tax Increment not allocated under the Initial Phase Infrastructure OPA will be available for Individual Projects, or projects of assigns, subject to limitations and priorities stated herein and the approval of the Agency by

action of its governing board in exercise of its legislative functions and subject to qualification under Section 3 below.

2.2. NET TAX INCREMENT. The term "Net Tax Increment" shall mean that portion of the Gross TI generated from within the boundaries of the Property as the boundaries exist on the Commencement Date, and which revenues are actually received by the Agency from the Sacramento County Assessor's Office, less (1) any payments required to be made by the Agency to affected taxing entities from the Gross TI pursuant to Health and Safety Code section 33607.5, as it may be amended from time to time; (2) any amounts required to be set aside in the Agency's low and moderate income housing funds from Gross TI pursuant to Health and Safety Code sections 33334.2, 33334.3, and 33334.6, as they may be amended from time to time; (3) any amounts due the County of Sacramento for the Agency's proportionate share of the costs of assessing, collecting, and allocating property taxes and allocable to the Gross TI; (4) any other amounts required to be paid from Gross TI to third parties pursuant to applicable federal, state, or local laws or regulations, other than local laws or regulations of the City, Agency, or Sacramento Housing and Redevelopment Agency; (5) amounts allocated from, required to be paid from or otherwise a mandatory charge against Gross Tax Increment by orders or directives of courts, administrative agencies, the State of California, or the federal government and therefore unavailable to the Agency for payment under this Master OPA; and (6) actual costs of Agency administration directly allocable to the Property. All future Net Tax Increment payments shall be subordinated to the senior rights, if any, for any future bonded indebtedness. All Agency funding obligations under this Master OPA are limited to Net Tax Increment as it is received and payments to Developer will not be owed until after Agency's actual receipt of the Net Tax Increment funds. Each project proposed to receive the Net Tax Increment funding allocation must qualify as a redevelopment project under Community Redevelopment Law and the Redevelopment Plan, the use of Net Tax Increment for any proposed Individual Project must qualify under the Community Redevelopment Law, and the allocation of funding will be subject to a Subsequent OPA adopted in accordance with law by the Agency's governing board after due consideration and in exercise of its independent legislative authority and consistent with the terms hereof. Agency shall commit Net Tax Increment funds to eligible projects within three (3) years from receipt, in accordance with redevelopment law obligations to expend funds to eliminate blight.

2.3. PRIORITY FOR USE OF NET TAX INCREMENT. The Net Tax Increment funding, after payment under the Initial Phase Infrastructure OPA, will be committed according to the following priorities.

2.3.1. REDEVELOPMENT OBLIGATIONS. After Agency fulfills its Initial Phase Infrastructure OPA obligations (see below), and fulfills any outstanding obligations incurred for Developer's Individual Projects hereunder, the Agency reserves the right to prioritize the use of the Net Tax Increment funds to assure development necessary to meet Agency legal obligations for the Project Area or any subsequently adopted Project Area that contains the Property, including without limitation, housing projects to meet the Agency's affordable housing production requirements under the Community Redevelopment Law.

2.3.2. INDIVIDUAL PROJECT SELECTION. For purposes of allocating funding and selection of projects to become Individual Projects, the Agency shall consider each proposed project as and when it is proposed and shall first determine that a proposed project has a need for redevelopment financing (a “gap analysis” as the term is commonly used in California redevelopment practice and as typically applied by the Agency in all redevelopment project analysis) and that the proposed project is a qualified project, which for purposes of this Master OPA and all Subsequent OPAs shall mean a project qualified to receive redevelopment funds under the Community Redevelopment Law. Thereafter, to select among competing proposed projects, the Agency shall consider the availability of funding; the nature, quality, size, aesthetics, amenities, and location of the proposed project; the extent to which the proposed project will further the program for the elimination of blight in the Project area; and the extent to which the proposed project furthers the goals of the Redevelopment Plan, the Implementation Plan, and the Specific Plan. For a project to be considered by the Agency for selection as an Individual Project, the project proponent must provide information in the form and to the extent typically required by the Agency in calling for project proposals of like size and type, and such additional information as the Agency may reasonably request.

2.3.3. DEVELOPER PROJECTS AND PUBLIC FACILITIES. Subject to Section 2.3.1, for the allocation of Net TI funding, priority will be given to Railyards Development Project public facilities financing, Developer-proposed housing projects, Central Shops rehabilitation, public parking facilities, and parks and open space, to the extent such projects are qualified to receive redevelopment funding and regardless as to whether construction of the project is undertaken by Developer, City or Agency.

2.3.4. PRIORITY OF HOUSING SET-ASIDE FUNDS. Subject to Section 2.3.1, LM Funds generated by the Railyards Development Project will be provided first to meet the Developer’s inclusionary housing ordinance obligations imposed by the City and those housing obligations imposed by the Community Redevelopment Law. Only after all such obligations are met would the housing set-aside funds generated within the Railyards Development Project be available for other affordable housing projects, whether located within or outside of the Project Area, except as follows. It is the Agency’s intent to commit low and moderate housing set-aside funds to eligible projects within three (3) years from receipt. If Developer fails to propose an affordable housing project within three (3) years of notification of available funds, the Agency reserves the right to solicit other affordable housing development proposals, for which Developer may also submit a proposal, individually, or with an affordable housing partner. If the Agency, in its sole discretion, chooses to use LM Funds from outside the Railyards to assist an affordable housing project within the Railyards when LM Funds from the Project Area are not available, then an equivalent amount of LM Funds from the Project Area shall be released from the obligations of this Section 2.3.4.

2.4. ASSIGNABILITY OF TAX INCREMENT RIGHTS. Rights to apply to receive Net Tax Increment generated from any portion of the Property that is sold by Developer will be transferred to the purchaser unless such purchaser waives such right to receive Net Tax Increment under the express terms of the purchase and sale agreement with Developer. The purchaser may apply and will have priority for allocation of those Net Tax Increment funds from that portion of the Property. If not used by that purchaser within a three (3)-year period, those Net Tax Increment

funds from that portion of the Property will also be released from the Master OPA obligation, as described in Section 2.2. However, the Developer can still apply for an allocation of those Net Tax Increment funds if not allocated to the purchaser.

2.5. ANNUAL NET TI FUNDING ALLOCATION. Each year, for the duration of the Redevelopment Plan, the Agency shall keep account of the Net Tax Increment received in that respective tax year which is available as Annual Net TI Funding pursuant to the terms of this Master OPA, the Initial Phase Infrastructure OPA, or any Subsequent OPA executed hereunder, subject to the priorities and limitations stated herein.

2.5.1. DISBURSEMENT OF ANNUAL NET TI FUNDING. The Annual Net TI Funding shall be accounted for and reported as appropriate for implementation of this Master OPA. The Annual Net TI funding shall be available for Individual Projects, subject to the priorities stated herein, and for disbursement on a revolving three-year term, measured annually from the effective date of each Agency budget of the year in which the Net Tax Increment Revenue is actually received by the Agency. Annually, Agency shall provide Developer with a written accounting of the Annual Net TI Funding potentially available for projects under this Master OPA.

2.5.2. REALLOCATION OF ANNUAL NET TI FUNDING. Notwithstanding anything in this Master OPA to the contrary, after expiration of each three-year period during which each year's Annual Net TI Funding must be allocated, said funding, if not encumbered or disbursed pursuant to the Initial Phase Infrastructure OPA or one or more Subsequent OPAs within the three-year period, will be subject to reallocation by the Agency for other redevelopment projects as determined by the Agency, in its sole and exclusive discretion, and as may be permitted under applicable law, the Redevelopment Plan and the Implementation Plan. The three (3)-year period shall be extended for a reasonable time as required to complete active and ongoing negotiations for and to review and adopt a Subsequent OPA.

3. PROJECT IMPLEMENTATION. The improvements that may be assisted, facilitated, or implemented with the Agency Funding shall be for any redevelopment purposes as defined by the Community Redevelopment Law, commencing at Health and Safety Code Section 33000, *et seq.*, within the Property.

3.1. SUBSEQUENT OPAS. Each Individual Project to receive funding under this Master OPA shall enter into a Subsequent OPA, which is a separate owner participation agreement, substantially in the Owner Participation Agreement Form, as it may then be in common use by the Agency, and which provides funding for all or a portion of the Individual Project's financial feasibility gap. The Subsequent OPA shall include the contents of the Owner Participation Agreement Form, as the same may be amended to meet the requirements of applicable law, or as may otherwise be agreed by the parties.

3.2. FUNDING GAP ANALYSIS FOR DEVELOPMENT PROJECTS. To the extent of available Agency Funding not otherwise obligated as provided in this Master OPA, Agency shall make funding available for an Individual Project within the Property to provide financial assistance for the project "gap" determined in a manner which is usual and customary in California

redevelopment practice, which is reasonable given the Individual Project need, and which complies with all applicable laws and regulation. The gap is that portion of the Individual Project which is not financeable through reasonably available debt and equity or which is otherwise commercially infeasible. Generally, the existence and extent of the gap is analyzed as provided in Health and Safety Code Section 33433 for the disposition of property acquired with tax increment funds, or such other methodology as may be commonly used in redevelopment practice for determination of a feasibility "gap" for a project. Said Section 33433 calculation is a residual land value calculation which determines the difference between the market value of the land and the residual value of the land after other reasonable costs of the proposed project are calculated, the difference being the financial feasibility gap in such instance.

3.3. INFORMATION AND DOCUMENTATION FOR GAP ANALYSIS. The Individual Project developer shall provide all information which is requested by Agency, provided that such information is commonly required by the Agency of any redevelopment project requesting such assistance; is necessary for the Agency to determine the existence and extent of the financial feasibility gap; is necessary to assure that the Project is consistent with this Master OPA, the Redevelopment Plan, and the Development Agreement; and is necessary to assure that the project can be built with available funding including any Agency assistance. As a minimum, the developer shall submit to Agency the Plans, Scope of Development and a line item Budget including both hard costs and soft costs for each such Individual Project proposed to be funded with Agency Funding pursuant to any Subsequent OPA or Agreements that may be executed in accordance with the provisions of this Master OPA. In addition the developer shall provide binding proof of adequate financing necessary to carry out the project, identification and proof of the financial strength of the legal entity carrying out the project and information on the qualifications of the developer and its team to demonstrate adequate capacity and capability to carry out the project.

3.4. PURPOSE OF SUBSEQUENT OPA. This Master OPA and any Subsequent OPA entered into pursuant to this Master OPA is a financing document of the Agency and not a land use or planning document. Approval of any Subsequent OPA entered into pursuant to this Master OPA, shall not be considered an approval of land use entitlements or the structural or aesthetic design of the Project. With respect to the Project and any projects under a Subsequent OPA, Developer and any developers under a Subsequent OPA shall 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 of Sacramento.

3.5. SUBSEQUENT OPA PROVISIONS. Developer and developers under any Subsequent OPA shall construct and manage each Individual Project which receives Agency Funding according to the requirements established in this Master OPA and any Subsequent OPA. Any Subsequent OPA will include, without limitation, the project description, a scope of development, the plans and specifications, and a schedule of performances in regards to commencement and completion of construction and release of any Agency Funding. Any Subsequent OPA will require that the developer under the Subsequent OPA shall promptly begin, diligently prosecute and timely complete the construction of the subject project in accordance with such schedule of performances. Any Subsequent OPA shall require the adherence to applicable law and the

Redevelopment Plan, shall provide for appropriate indemnification of the Agency, shall require appropriate levels of insurance to be maintained by the subject developer or its assignee, as applicable, shall require security to assure the appropriate use of any Agency Funding, and shall require such other provisions as are commonly required by the Agency for other such projects in the Project Area and other redevelopment project areas in the City.

3.6. **CEQA.** Each Subsequent OPA or any other funding under this Master OPA shall be subject to review under the California Environmental Quality Act ("CEQA") by the Agency, in the exercise of its independent judgment. No Subsequent OPA or any other funding under this Master OPA may be approved by the Agency unless it has first been determined that the proposed Individual Project has no significant impact on the environment; that any impacts it has on the environment have or upon completion of an adopted mitigation plan will be mitigated to less than significance; that the Agency has prepared, reviewed and adopted an environmental impact report and overriding considerations which support the Agency action; or that the Individual Project is exempt from CEQA.

3.7. **INITIAL PHASE INFRASTRUCTURE OPA.** The Initial Phase Infrastructure OPA is effectively a Subsequent OPA approved concurrently with this Master OPA. However, the Initial Phase Infrastructure OPA shall stand as an independent document for the Initial Phase Property and shall be the sole and only document allocating tax increment funds received by the Agency to fulfill the Agency's commitment to reimburse an amount not to exceed \$50 million as adjusted pursuant to the Initial Phase Infrastructure OPA for the construction and completion of qualified infrastructure projects and other specified redevelopment projects within the Initial Phase Property. The Agency and Developer acknowledge that most aspects of the Railyards Project, including the majority of necessary infrastructure, if built to the full entitlements, as anticipated, will have demonstrable financing gaps, which exceed the Net TI provided in reimbursement for qualified infrastructure and redevelopment projects costs within the Initial Phase Property under the Initial Phase Infrastructure OPA. Such determination is based on the Railyards Specific Plan Public Facilities Financing Plan and the pro-forma analysis of the Railyards Project prepared for the Agency by Keyser Marston Associates. Additionally, environmental review for the Initial Phase Infrastructure OPA has been completed and duly considered prior to its adoption.

3.8. **OBLIGATION TO MEET REDEVELOPMENT REQUIREMENTS.** Notwithstanding the lack of sufficient affordable housing set-aside funds or other public funding, Developer must nonetheless meet all of the Agency's Community Redevelopment Law housing production/inclusionary requirements for the Railyards development based on the level of housing developed within the Railyards.

3.9. **PROTECTION OF CENTRAL SHOPS.** If in the reasonable opinion of the Chief Building Official of the City, there is an immediate and imminent threat of structural collapse of any of the Central Shops, Developer shall take appropriate steps to stabilize the Central Shops from failure. Such steps may include temporary support of walls and temporary protection of roofs if such structures are in immediate jeopardy of failing. Such actions shall be considered temporary stabilization steps and not rehabilitation projects subject to State Historic Preservation Office or Secretary of Interior standards, to the extent permitted by law. However, such actions shall be in compliance with all applicable local regulations.

3.10. **RECIPROCAL EASEMENT AGREEMENTS.** Developer shall enter into reciprocal easement agreements with the City for the Intermodal Tunnel Entrance and Market Plaza no later than at the time of development of Market Plaza or the 5th and 6th Streets Public Parking Garage, whichever occurs first, as those projects are described in the Development Agreement and the Railyards Development Project entitlements. The Developer shall also not be in default of its obligations under the Track Relocation Agreement (City Agreement No. 2006-1406) and Purchase and Sale Agreement (City Agreement No. 2006-1405), and related agreements between Developer and City, as such agreements may be amended from time to time.

3.11. **COMPLIANCE WITH CITY AGREEMENTS.** As a condition of approval of and the allocation of Agency funding under this Master OPA, the Initial Phase Infrastructure OPA, and a Subsequent OPA, at the time of execution of the OPA and at the time funding is to be released for a project, the Developer must not be in default under the Development Agreement, the Initial Phase Infrastructure OPA, or the Master OPA or the Track Relocation Agreement, Tri-Party Memorandum of Understanding, Purchase and Sale Agreement, or Proposition 1 C Agreement, as those agreements are defined in the Development Agreement. Agency may allocate Net TI funds to City in lieu of making an allocation that may be owed to Developer under one or more OPAs in order to meet the financial obligations of Developer under the applicable City agreement. In addition, Agency may terminate this Master OPA, the Initial Phase Infrastructure OPA and/or any Subsequent OPA for default of Developer under the Development Agreement, Initial Phase Infrastructure OPA, Master OPA, or applicable Subsequent OPA. The term "default" as used in this Section 3.11 shall mean a material failure of performance or a substantial and unreasonable delay in performance by Developer of any of term, condition, obligation or covenant set out in the agreement between Developer and City, as reasonably determined by City in its sole discretion, subject to Developer's or Lender's applicable cure provisions. This Section 3.11 is, however, subject to the provisions of Section 11.12 (No Cross Default Against Non-Defaulting Party).

3.12. **PREVAILING WAGES.** For all public works projects, as defined in applicable California law, including without limitation California Government Code Section 4002, California Civil Code Section 3100, California Labor Code Section 1720 and California Public Contracts Code Sections 1101, 22200, 20161, 22002, and which are funded with Net Tax Increment Funds or other public funds, Developer shall pay prevailing wages as defined in Labor Code Section 1720 and undertake public bidding on and meet all public works requirements, as and to the extent those obligations are required by law, including without limitation California Public Contracts Code Sections 20162 and 20688.2. Developer indemnifies the Agency and the City for any claims for prevailing wages, whether the claims are filed against public works projects or private development projects, including without limitation any penalties, charges, defense fees and other costs resulting from such claims. Unless expressly released for the specific project by Agency or the City in their sole discretion with regard to their specific indemnification rights, the indemnity obligation stays with Developer irrespective of subsequent sale of any of the Railyards Property. Developer shall not be responsible for indemnification of the Agency or City for development undertaken by an approved assignee or transferee of Developer where such assignee or transferee enters into a separate OPA and indemnifies the Agency and the City as provided in this Section 3.12.

4. **USE COVENANTS.** Developer shall lawfully possess, control and manage the Property and the Project in accordance with the provisions of this Master OPA and any Subsequent OPA and the Redevelopment Plan.

5. **NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer for itself, the Contractor, subcontractors and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and subcontracts for the construction of any improvements pursuant to this Master OPA.:

5.1.1. **EMPLOYMENT.** Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, disability, sexual orientation, creed or national origin. 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, or national origin, with respect to, but not 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.

5.1.2. **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, or national origin.

6. **INDEMNIFICATION.** Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency. Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Developer. This indemnification provision shall survive the termination of this agreement.

7. **INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to the existence, removal, discharge or release of Hazardous Substances released or discharged on the Property.

8. INDEMNIFICATION FOR CHALLENGE TO REDEVELOPMENT PLAN OR OPAs. In the event of any action instituted by a third party challenging (i) the validity of any portion of this Master OPA, the Initial Phase Infrastructure OPA, or any Subsequent OPA, (ii) the adoption, of any, of the Redevelopment Plan for the Railyards Project Area, which includes amendment of the Richards Boulevard Redevelopment Plan, (iii) the proceedings taken for approval of an OPA and the Redevelopment Plan (including the CEQA requirements), or (iv) any other act undertaken by the parties in furtherance of this Master OPA, the Initial Phase OPA or any Subsequent OPAs; the parties agree to cooperate in the defense of the action and in all such litigation the following shall apply:

8.1. AGENCY DISCRETION TO DEFEND OR TENDER. Agency may, in its sole discretion, either defend such litigation or tender its defense to Developer. If the Agency elects to tender it shall do so at the earliest opportunity before responsive pleadings are due. Upon Agency's election to tender its defense to Developer and Developer's acceptance thereof, Agency shall be deemed to have waived any right to reimbursement of attorney's fees and costs incurred by Agency prior to such election, except for fees and costs incurred for necessary and appropriate action to avoid the entry of a default, or to avoid loss of opportunities to file demurrer, challenge judges, or take other actions of strategic import or to prevent other detriment to Agency before Developer's acceptance of the tender.

8.1.1. In the event that Agency determines to defend the action itself, Developer shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each Party shall bear its own attorney fees and costs.

8.1.2. In the event that Agency determines to tender the defense of the action to Developer, Agency shall promptly notify Developer of its determination. Developer shall, upon such notice from Agency, at Developer's expense, defend the action on its behalf and on behalf of Agency through counsel selected by Developer which has substantial experience and reputation with respect to the issue at hand and reasonably acceptable to Agency, and shall have the right to settle such action, provided Developer accepts defense and obligation without reservation, and that such settlement does not obligate Agency to make any payment or perform any obligation, or otherwise prejudice Agency without Agency's consent thereto. Developer shall bear all attorney fees and costs associated with such defense from and after the date of the tender. However, Agency may at any time after the tender elect to assume representation of itself; in that event, from and after the date Agency gives notice of its election to do so, Agency shall be responsible for its own attorney fees and costs incurred thereafter. The foregoing defense and indemnity obligation shall also extend to the City if the City is named in the same action.

8.2. EFFECT OF JUDGMENT. If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, the Railyards Redevelopment Plan and/or the amendment to the Richards Boulevard Redevelopment Plan or any provision of this Master OPA, the Initial Phase OPA or any Subsequent OPA, the following shall apply:

8.2.1. If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, Developer shall pay the entire cost thereof, without right of offset, contribution or indemnity from Agency or City, irrespective of anything to the contrary in the judgment or order.

8.2.2. Agency and Developer shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments to the Redevelopment Plan or the OPAs needed to allow the parties to proceed in a reasonable manner consistent with the terms set out herein, taking into account the terms and conditions of the court's judgment or order, and all applicable law. If agreement is not reached, either party shall have the right to terminate this Master OPA, the Initial Phase Infrastructure OPA and any Subsequent OPA for its convenience by giving the other party notice as provided herein.

8.2.3. In the event that amendment to this Master OPA is not required, and the court's judgment or order requires Agency to engage in other or further proceedings, Agency agrees to comply with the terms of the judgment or order expeditiously.

8.3. **NONLIABILITY.** Neither party shall have liability to other party as a result of the loss of any action instituted by a third party challenging (i) the validity of any portion of this Master OPA, the Initial Phase Infrastructure OPA, or any Subsequent OPA, (ii) the adoption, of any, of the Redevelopment Plan for the Railyards Project Area, which includes amendment of the Richards Boulevard Redevelopment Plan, (iii) the proceedings taken for approval of an OPA and the Redevelopment Plan (including the CEQA requirements), or (iv) any other act undertaken by the parties in furtherance of this Master OPA, the Initial Phase OPA or any Subsequent OPAs.

9. **LIABILITY INSURANCE.** As a condition of this Master OPA and any Subsequent OPA executed hereunder, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; (e) claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (g) claims for contractual liability arising from the Developer's obligations under this Master OPA and any Subsequent OPA .

9.1. **LIABILITY INSURANCE POLICY LIMITS.** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000).

9.2. **WORKERS' COMPENSATION.** Workers' compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000 or statutory limits, whichever are greater.

9.3. **COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency legal counsel). Such insurance shall have limits of liability which are not less than \$3,000,000, each occurrence, for bodily injury coverage; \$5,000,000 aggregate, for products and completed operations coverage; \$1,000,000, each occurrence, for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

9.4. **COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$1,000,000.

9.5. **FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE.** For the duration of the Master OPA, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property, with the exception of the Central Shops, for which such coverage is not required unless it is available at commercially reasonable rates, with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project. In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

9.6. **INSURANCE PROVISIONS.** Each policy of insurance required under this Master OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

9.6.1. **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

9.6.2. **FAILURE TO MAINTAIN.** Developer's failure to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Master OPA, and failure to reinstate such insurance within ten (10) days after notice of any lapse in coverage is a material breach of this Master OPA.

9.6.3. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 9 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other

requirements of this Section 9 with respect to such insurance shall otherwise be satisfied by such blanket policy.

10. DEFAULTS AND REMEDIES. Except as otherwise provided in this Master OPA, if either party defaults in its material obligations under this Master OPA, 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 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 Master OPA, a failure or delay by a party to perform any term or provision of this Master OPA constitutes a default of this Master OPA.

10.1. CROSS-DEFAULT. A default of the Development Agreement or the Initial Phase Infrastructure OPA is a default of this Master OPA, subject to applicable cure rights.

10.2. NONLIABILITY 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 Master OPA.

10.3. ATTORNEY'S FEES AND RELATED. Should any party initiate any action based upon this Agreement, 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, mediator'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.

11. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS. The Developer may obtain a Loan in reliance on this Master OPA and encumber the Developer's interests in the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project and development on the Property and the Loans are made upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency

acknowledges that a Lender will rely upon this Master OPA in making the Loan and that Agency's obligations under this Master OPA are inducements to Lender's making of the Loan.

11.1. **NOTICES.** If the Agency gives any notice of default to Developer under this Master OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated _____ between the **Redevelopment Agency of the City of Sacramento** ("Master OPA"). Lender requests, in accordance with Section 11 of the Master OPA, that if any default notice shall be given to Developer under the Master OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

11.2. **ASSIGNMENTS AND TRANSFERS OF THE LOAN.** Agency shall not be bound to recognize any assignment of the Loan or related encumbrance of the Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

11.3. **LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the Master OPA, Lender shall not be obligated by the provisions of the Master OPA to construct or complete the Project. Nothing in this Section or any other provision of the Master OPA shall be construed to permit or authorize Lender to devote the Property to any uses, or to construct any improvements on the Property, other than those uses or improvements provided or permitted in the Master OPA or Subsequent OPA, as applicable.

11.4. **LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the Master OPA, each Lender shall have the right, at its option, to cure or remedy such default, within ninety (90) days beyond that time permitted for Developer's cure,, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the Master OPA or Subsequent OPA, as applicable. Nothing in this Section shall be deemed to limit,

modify or release any claim or remedy that the Agency may have against the Developer for such default.

11.5. **DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this Master OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 11 and Lender has failed to cure such default as provided in Section; provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Agency's right to terminate this Master OPA shall be tolled if and so long as:

11.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this Master OPA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer; and

11.5.2. Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property, and if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

11.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

11.5.4. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

11.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this Master OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this Master OPA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this Master OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's rights and interests under this Master OPA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the

right to assign or transfer Developer's rights and interests under this Master OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this Master OPA.

11.7. **MODIFICATIONS.** No modification or amendment to the Master OPA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

11.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this Master OPA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this Master OPA and provided such modifications, instruments, and agreements serve a material economic purpose. Agency acknowledges that Developer intends to monetize Agency's obligations under this Master OPA; however, Agency is under no obligation to enter into further agreements with any Lender or undertake any additional obligations to accommodate such intention. Developer acknowledges and will inform any purchaser or Lender relying on this OPA of the contingent nature of Agency's repayment obligation.

11.9. **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 Master OPA is in full force and effect and a binding obligation of the parties; (ii) this Master OPA 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 Master OPA, 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, in recordable form, 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 City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

11.10. **ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been reserved and will be made available to make development of the Property possible. Developer may assign all or a portion of Developer's interests or obligations under this Master OPA, or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer, without the prior written consent of Agency. However, the transfer or assignment of all or a portion of Developer's interests or obligations under this Master OPA, pursuant to this Section, requires the transferee or assignee to assume all or a proportionate share thereof of Developer's rights and obligations under this Master OPA to provide substantial and adequate evidence of its ability to fulfill Developer's obligations and to execute and deliver to Agency a valid, binding, written assumption of all or a proportionate share of such rights and obligations. Such a transfer or assignment as permitted in this Section 11.10 shall not relieve Developer, or any other party bound in any way by this Master OPA, from any of its obligations under this Master OPA or any Funding Agreement unless such assignee or transferee's valid,

binding written assumption executed and delivered to Agency provides for transfer of Developer's obligations in a manner acceptable to Agency. With respect to this provision, the Developer and the parties signing the Master OPA 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.

11.11. **FURTHER ENCUMBRANCES AND RELATED ASSURANCES.** Neither Developer's entering into this Master OPA nor its default thereunder shall alter, defeat, render invalid, diminish or impair the lien of any Mortgage or Deed of Trust on the Property made in good faith by a Lender and for value, made by Developer in accordance with this Master OPA. This Master OPA shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage, Deed of Trust or other security instrument securing financing with respect to development of the Property for the Railyards Project; provided, however that Agency is under no obligation to recognize the rights of a Lender under this Master OPA to the extent that such Loan contravenes or attempts to modify the terms of this Master OPA or the obligations of Agency under this Master OPA. Developer shall provide the Agency with a conformed copy of all documents related to any such Loan. Agency acknowledges that a Lender may rely on this Master OPA in making the Loan and that Agency's obligations under this Master OPA may be inducements to Lender's making of the Loan. In any event, Agency shall have no obligation under this Master OPA with regard to any Loan not made for construction of the Project and development on the Property as provided in Section 11, and Agency shall have no greater obligations with respect to any other such Lender on account of this Master OPA than the obligations which Agency has with respect to Developer on account of this Master OPA.

11.12. **NO CROSS DEFAULT AGAINST NON-DEFAULTING PARTY.** Where a portion of the Property has been transferred or assigned in accordance with the provisions of this Master OPA and notice of default has been given by Agency to an assignee, (i) neither Developer nor any non-defaulting assignee shall be liable for the default of the defaulting assignee, (ii) the rights of Developer and non-defaulting assignees under this Master OPA shall not be affected by the default of the defaulting assignee, and (iii) Agency shall not be in default or otherwise liable to Developer or a non-defaulting assignee for Agency's action in declaring a default against the defaulting assignee.

12. **DOCUMENT INTERPRETATION.** This Master OPA shall be interpreted in accordance with the following rules.

12.1. **INTEGRATED DOCUMENTS; SEVERABILITY.** This Master OPA and the documents incorporated in this Master OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This Master OPA including the incorporated documents integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous or contemporaneous agreements between the parties with respect to its subject matter. If any term or provision of this Master OPA shall, to any extent, be held invalid or unenforceable, the remainder of this Master OPA 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 to the extent permitted by law.

12.2. **CONFLICTING PROVISIONS.** If conflicts are discovered in provisions of this Master OPA and such incorporated documents, this Master OPA shall control with regard to plan review, construction terms, and Agency Funding of the Project, any Subsequent OPA shall control with regard to specific funding terms, however, nothing in any Subsequent OPA shall be construed to reduce the Initial Phase Infrastructure OPA Funding or the Agency Funding to which Developer is entitled under the Master OPA, and any Regulatory Agreement shall control with regard to use restrictions. In any event, the conflicts shall be construed so as to meet the intent of this Master OPA.

12.3. **WAIVERS AND AMENDMENTS.** All waivers of any provisions of this Master OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this Master OPA 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.

12.4. **CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this Master OPA are for the convenience of the parties to this Master OPA. 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 Master OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

12.5. **DRAFTER.** This Master OPA 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 Master OPA.

12.6. **MERGER.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Master OPA shall survive the execution of any Subsequent OPA or any Regulatory Agreement executed hereunder and shall not be merged in the Subsequent OPA, Regulatory Agreement or other documents.

12.7. **GOVERNING LAW.** This Master OPA shall be governed and construed in accordance with California law.

12.8. **INSPECTION OF BOOKS AND RECORDS.** Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Property as reasonably necessary to carry out its purposes under this Master OPA.

12.9. **OWNERSHIP OF DATA.** If this Master OPA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency copies of any and all data acquired for development of any infrastructure to be dedicated to public use on the Property and any item on the "Qualified Infrastructure and Building Rehabilitation List" which is an exhibit attached to the Initial Phase Infrastructure OPA, subject to the limitations imposed on Developer by any other owner of such data. To the extent that Developer's ownership or use of such data is subject to the payment of a fee or some other action on the part of Developer, Agency shall have the right to

make such payment or take such action on behalf of Developer in order to assure such ownership or use rights. Agency shall have the same ownership and rights to use such data as Developer to pursue completion of such infrastructure and public use facilities.

12.10. **SUCCESSORS.** This Master OPA shall inure to the benefit of and shall be binding upon the parties to this Master OPA and their respective heirs, successors, and assigns.

12.11. **NOTICES.** All notices to be given under this Master OPA shall be in writing and sent to the following addresses by one or more of the following methods:

12.11.1. Addresses for notices are as follows:
Agency: Redevelopment Agency of the City of Sacramento,
c/o Economic Development Department,
City of Sacramento,
915 I Street
Sacramento, California, 95814,
Attention: Railyards Project Manager

With copies to:

Redevelopment Agency of the City of Sacramento
c/o Sacramento Housing and Redevelopment Agency
630 I Street
Sacramento, California 95814
Attention: General Counsel

Developer: S. Thomas Enterprises of Sacramento, LLC
431 I Street, Suite 202
Sacramento, California 95814
Attention: Suheil J. Totah

With copies to:

Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, California 94607
Attention: Steven R. Meyers

Cushing, Morris, Armbruster & Montgomery, LLP
229 Peachtree Street, NE
Suite 2110, International Tower
Atlanta, Georgia 30303
Attention: Jeffrey F. Montgomery

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

- a. 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;
- b. 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;
- c. 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
- d. 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.

13. DEFINITIONS.

- 13.1. "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 Master OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The City of Sacramento Economic Development Department provides staffing for certain aspects of the operation of the Agency in conjunction with the Sacramento Housing and Redevelopment Agency which is a joint powers agency which also provides staffing for certain aspects of the operation of the Agency.
- 13.2. "Agency Funding" is the Net Tax Increment funding to be provided by the Agency to Developer, pursuant to one or more Subsequent OPAs under this Master OPA, pursuant to Section 3.5.
- 13.3. "Annual Net TI Funding" is the amount of Agency Funding available in any tax year of the Redevelopment Plan.
- 13.4. "City" is the City of Sacramento, a political subdivision of the State of California.
- 13.5. "Commencement Date" is the effective date of this Master OPA, which is the date written in the first paragraph of this Master OPA.
- 13.6. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.
- 13.7. "Developer" is S. Thomas Enterprises of Sacramento, LLC, a Delaware Limited Liability Company. The local office of the Developer is located at 431 I Street, Suite 202,

Sacramento, CA 95814. "Developer" also includes any entity or entities controlled by Stan Thomas, an individual, or any subsidiary thereof.

13.8. "Development Agreement" is the Development Agreement for Sacramento Railyards Project, Project No. P-05-097, between the Developer and the City for the development of the entire Property, dated December 11, 2007 as it may be amended from time to time, and the documents included directly or by reference therein, which include without limitation the Specific Plan, Special Planning District, Urban Design Guidelines, tentative map and other related land use entitlements approved concurrently with the Development Agreement, all of which generally describe the land uses, density and urban character planned for the Property and the infrastructure needed to redevelop the Property.

13.9. "Gross TI" shall be the total tax increment revenue generated annually by the Property and collected by the Sacramento County Assessor's Office, as described in Section 2.2 above.

13.10. "Hazardous Substances" as used in this Master OPA shall include, without limitation, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C. § 1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory), and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.

13.11. "Implementation Plan" is the current Implementation Plan for the Project Area as required by Health and Safety Code Sections 33490 and 33352(c).

13.12. "Individual Project" is each and every development or other qualified project to be funded under this Master OPA by Developer or by Developer's assignee as provided in Section 2 of this Master OPA.

13.13. "Initial Phase Infrastructure OPA" is the Subsequent OPA for the Initial Phase Property entered into concurrently with this Master OPA.

13.14. "Initial Phase" is the area of the Property shown on **Exhibit 3 Initial Phase Property** and includes Phases 1 and 2 as described in the Development Agreement.

13.15. "Initial Phase Property" is that portion of the Property that is described in the Development Agreement as being developed in the Initial Phase and as shown on **Exhibit 3**.

13.16. "Legal Description" is the legal description for the Property, a copy of which is attached as **Exhibit 1A Railyards Property Legal Description**. **Exhibit 1B City Acquisition Property Legal Description** is a legal description of that portion of the Property which the City intends to purchase pursuant to an agreement between Developer and City. A map of the Railyards Property is attached to this Master OPA as **Exhibit 2 Railyards Property**.

13.17. "Lender" shall include all holders of any lien or encumbrance as security for a Loan on all or any part of the Property.

13.18. "Loan" is the loan or loans obtained from third parties for the acquisition, construction or permanent financing of the Project, or any part of the Project.

13.19. "LM Funds" are the Agency's low and moderate housing set-aside (20%) funds which are required to be placed in the housing fund for development of affordable housing as stated in Health and Safety Code Section 33334.2. Unless specifically stated otherwise in a specific provision of this Master OPA, LM Funds refers to such funds generated from the Project Area.

13.20. "Master OPA" is this Master Project Agreement between Agency and Developer, including all documents incorporated in this Master OPA by reference.

13.21. "Net Tax Increment" is that portion of the Gross TI available for distribution as Agency Funding, as defined in Section 2.2 above.

13.22. "Owner Participation Agreement Form", a copy of which is attached as **Exhibit 4. Owner Participation Agreement Form**, is the form of Owner Participation in general current use by the Agency.

13.23. "Phase 1 Property" is that portion of the Property that is described in the Development Agreement as being developed in Phase 1.

13.24. "Other Project Properties" is that portion of the Property which is to be developed under the Development Agreement outside of the Initial Phase Property.

13.25. "Plans" are preliminary plans and specifications sufficient to determine the infrastructure improvements, uses, architectural appearance and design, and cost of a proposed project to be developed within the boundaries of the property, as would commonly be required by the Agency for review of a request for redevelopment funding under an owner participation agreement.

13.26. "Project" is all of the work to be accomplished under this Master OPA or any Subsequent OPA executed under this Master OPA.

13.27. "Project Area" is the newly-adopted Railyards Redevelopment Project Area and the Richards Boulevard Redevelopment Project Area, as and to the extent that both or either of them is in effect and includes the Property. . It is the intent of the parties that this Master OPA

continue in full force and effect irrespective of any change in the Redevelopment Plan, and irrespective of whether it continues under the Richards Boulevard Redevelopment Plan, as it may be amended, or under the newly adopted Railyards Redevelopment Plan.. .

13.28. "Property" refers to that certain real property in the City of Sacramento, formerly known as the Union Pacific Railyards, containing approximately 240 acres, which was purchased by Developer from the Union Pacific Railroad, excluding any property acquired by the City for the Sacramento Intermodal Transportation Facility and rail track right of way. Generally, the Property is immediately north of the Central Business District, east of the Sacramento River and Interstate 5, south of North B Street and the Richards Boulevard area, and west of the Alkali Flat Neighborhood. The Property is generally bounded by the Sacramento River Water Treatment Plant and industrial and commercial uses along Richards Boulevard to the north; the Alkali Flat neighborhood to the southeast; the Central Business District to the south; Old Sacramento to the southwest; and I-5 and the Sacramento River to the west. The Property is more particularly described in the Legal Description, which includes a description of the Property which the City intends to purchase pursuant to the Purchase and Sale Agreement (City Agreement No. 2006-1405) between Developer and City.

13.29. "Redevelopment Plan" is the redevelopment plan for the Project Area adopted by the City Council of the City under the Community Redevelopment Law, as it may be amended from time to time or readopted as a new redevelopment project area.

13.30. "Regulatory Agreement" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Property as a condition of Agency Funding.

13.31. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under any Subsequent OPA must be satisfied.

13.32. "Scope of Development" is the detailed description of the work to be done under any Subsequent OPA.

13.33. "Subsequent OPA" is any Owner Participation Agreement made under this Master OPA to provide Agency Funding for specific Individual Projects within the boundaries of the Property, as those improvements are proposed from time to time by Developer, or its assignee as permitted by this Master OPA. The Initial Phase OPA is a Subsequent OPA.

[The remainder of this page intentionally left blank]

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

**DEVELOPER :
S. THOMAS ENTERPRISES OF
SACRAMENTO, LLC**

**AGENCY: THE REDEVELOPMENT AGENCY
OF THE CITY OF SACRAMENTO**

By: _____

By: _____

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

EXHIBIT 1
LEGAL DESCRIPTIONS

EXHIBIT 1A

RAILYARDS PROPERTY LEGAL DESCRIPTION

All that property located in the City of Sacramento, County of Sacramento, described as follows:

Parcels 1 and 2 in the certificate of compliance recorded January 31, 2007 in Book 20070131, Page 2410 and parcels A, B and D in the certificates of compliance recorded December 28, 2006 in Book 20061228, Pages 1680, 1681, and 1682.

EXHIBIT 1B

CITY ACQUISITION LEGAL DESCRIPTION

All that property located in the City of Sacramento, County of Sacramento, described as follows:

Parcels A and B in the certificates of compliance recorded December 28, 2006 in Book 20061228, Pages 1680 and 1681.

EXHIBIT 2

RAILYARDS PROPERTY (MAP)

EXHIBIT 2

RAILYARDS PROPERTY (GRAY SHADED AREA)

April 29, 2008

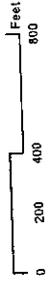
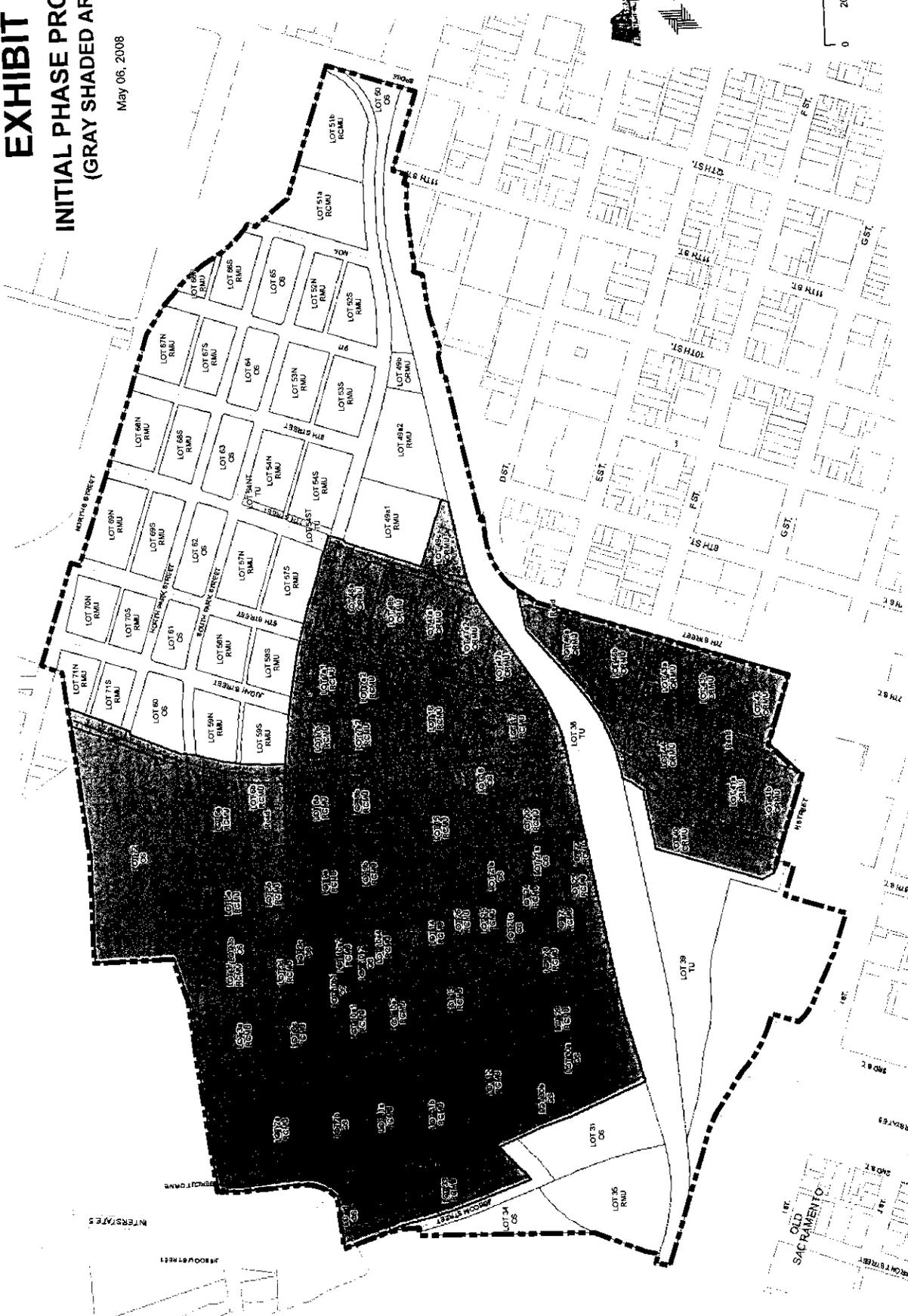


EXHIBIT 3
INITIAL PHASE PROPERTY (MAP)

EXHIBIT 3

INITIAL PHASE PROPERTY (GRAY SHADED AREA)

May 06, 2008



THOMAS ENTERPRISES, INC.

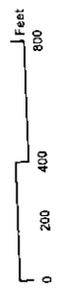


EXHIBIT 4 OWNER PARTICIPATION AGREEMENT FORM

OWNER PARTICIPATION AGREEMENT
Using Funds from Project Area Tax Increment

Redevelopment Agency of the City of Sacramento
Railyards Redevelopment Project Area
Project Name
Property Address

OWNER PARTICIPATION AGREEMENT
Project Area Tax Increment

Redevelopment Agency of the City of Sacramento
Railyards Redevelopment Project Area
Project Name
Property Address

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and ***DEVELOPER NAME*** also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of ***Effective Date***. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 13.

RECITALS

Developer is the owner of real property located at ***Property Address***, in the City of Sacramento, California, more particularly described in attached Exhibit 1: Legal Description, which is incorporated into this OPA by this reference. The Property is located in Railyards Redevelopment Project Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan.

A. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by property owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 33339).

The Agency is participating in this OPA because this OPA is consistent with, and furthers, the Redevelopment Plan and the Implementation Plan. Specifically and without limitation, the Agency has determined that the Project will eliminate the following blighting influences: low or stagnant property values and impaired investment in the Project Area, high number of property vacancies, low rents, and a high number of vacant lots, Inadequate public infrastructure, Deficient buildings, Improper parcels and Hazardous materials. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: ***Findings Under Implementation Plan***.

B. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

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:

AGENCY FUNDING. Agency is providing funding to the Project under the Funding Agreement for development of the Project as described in Section 3. If Developer fails to develop the Project as and when required by this OPA, Developer must repay the Agency Funding as provided in the Funding Agreement. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as described in Section 3, as well as other obligations and restrictions, including without limitation, use restrictions, as evidenced by the Regulatory Agreement.

1. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: ***Project Description***

2. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** This OPA is a financing document of the Agency and not a land use or planning document. Approval of the Project under this OPA by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project, or the aesthetic design of the Project except as an approval by the Agency of the Project design concept as presented in this OPA. Developer shall 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 Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this OPA and approvals given under this OPA. 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 has reserved approval rights 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 OPA are used as intended by the Agency.

2.1. **CONCURRENT REVIEW.** Agency agrees that its review of the Final Plans shall occur prior to or concurrently with City's review of such plans, so as not to delay the commencement and progress of Project development. Agency agrees that its review of the Final Plans is strictly limited to making a determination that the Final Plans conform to the architectural designs (but not the detailed schematics, if any) presented in the Plans, the Scope of Development, the uses permitted on the Property and the Redevelopment Plan.

2.2. **PRELIMINARY PLANS.** Developer has provided Agency with Preliminary Plans, and the Agency has approved the Preliminary Plans concurrently with this OPA. The Agency has been induced to undertake its obligations under this OPA by Developer's promise to develop the Project in accordance with the Plans, the Scope of Development and the provisions of this OPA.

2.3. **PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the construction of the Project.

Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to the Preliminary Plans and the Scope of Development. To the extent that the Preliminary Plans and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this OPA. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

DELIVERY. Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Agency Clerk and shall have clearly marked on its exterior "URGENT: ***Project Name*** PROJECT PLAN REVIEW" or the equivalent.

2.3.1. DEEMED APPROVAL. The Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within fifteen (15) days after their proper delivery to Agency.

2.3.2. AGENCY DISAPPROVAL. If Agency disapproves, in whole or in part, the Final Plans or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the Preliminary Plans, the Approved Final Plans, the Scope of Development and with any items previously approved under this Section 3. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this OPA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

2.4. GOVERNMENTAL CHANGES. If any revisions or corrections of the Final Plans shall be required by any government official, agency, department or bureau in exercise of its proper jurisdiction, the Developer shall inform the Agency. If Agency and Developer concur in writing with the required change, Developer shall incorporate the change and it shall be deemed approved by Agency. If Agency or Developer reasonably disagree with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

2.5. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLAN. If the Developer desires to make any substantial changes in the Final Plans as approved by the Agency, the Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final Plans. The Agency shall approve or disapprove the proposed change as soon as practicable. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

2.5.1. SUBSTANTIAL CHANGE. A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements. For purposes of this Section 2.5.1, a “material change” is a change that is material to the Agency in accomplishing its purposes under this OPA.

- a) Material changes in the layout, elevation design, square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Material changes in site development items for the Property that are specified in the Final Plans.
- d) Any changes requiring approval of any city, county or state board, body, commission or officer, or any change required by any city, county or state board, body, commission or officer.
- e) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

2.5.2. MISREPRESENTATION. If the Agency’s approval of the Final Plans is reasonably based upon a material misrepresentation to Agency by Developer or by anyone on Developer’s behalf, the Agency may, within a reasonable time after discovery of the misrepresentation, take any action permitted by law with regard to any such misrepresentation, notwithstanding Agency’s prior approval, including without limitation, rescission of the approval or such other equitable remedies as may then be appropriate to such rescission.

3. DEVELOPMENT PROVISIONS. As stated in detail in this Section 3.5, Developer shall construct and manage the Project according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this OPA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law [commencing at Health and Safety Code Section 33000] shall control.

3.1. CONSTRUCTION CONTRACTS. Developer shall submit to Agency the construction contract for the Project. Agency’s review of the construction contract shall be only for determining its compliance with this OPA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer’s cost, the construction of the Project in accordance with this OPA.

GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this

OPA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable. Conditions to the project imposed by the City shall be considered obligations of the Developer under this OPA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

3.2. ART IN PUBLIC PLACES. "Art in Public Places Program" means the "Aesthetic Improvement Policy" adopted by Agency Resolution Number 2865, October 16, 1979. It is Agency's policy for the creation and display of artwork in public areas. In conformance with Agency's Aesthetic Improvement Policy, also know as the Art in Public Places Policy, Developer shall expend not less than two percent (2%) of the Project construction contract price for the acquisition and installation of Aesthetic Improvements.

3.3. SUBSTANTIAL CHANGES. Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, as described in Section 3.6, without Agency approval of such changes as provided in Section 3.6.

3.4. LOCAL, STATE AND FEDERAL LAWS. The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Developer acknowledges and agrees that all wage and hour laws and other labor laws as applicable, including without limitation prevailing wage requirements, are the sole responsibility of Developer and Developer's contractors and subcontractors. Developer and its contractors and subcontractors have undertaken to ascertain the applicability of such laws prior to preparation of the final Project budget and have included the costs arising from such laws in the final Project budget. Developer shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

3.5. PREVAILING WAGES. ***IF Low Mod Funding Only*****IF If 40 at 20*** The California Department of Industrial Relations has undertaken the aggressive and expansive enforcement of prevailing wage laws for redevelopment projects. The Agency has advised, and the Developer acknowledges, that the Project is subject to the payment of prevailing wages under the laws of the State of California. Developer has had the opportunity to meet with Developer's legal counsel and to request a determination from the Department of Industrial Relations regarding the applicability of prevailing wage requirements to this Project. Developer has made its independent determination of the applicability of prevailing wage laws and has independently implemented such determination. Developer, therefore, indemnifies, holds harmless and defends

the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from Developer's determinations and actions related to prevailing wage obligations for the work of this OPA.

3.6. PUBLIC SAFETY PROTECTIONS. Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the Property or Developer's activities in connection with the Property, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

3.7. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT. Developer for itself, Manager, the General Contractor and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the construction of the Project.

3.7.1. EMPLOYMENT. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. 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, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability. Such action shall include, but not 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.

3.7.2. 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, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability.

3.8. PUBLIC IMPROVEMENTS. Developer shall, at Developer's expense as a Project cost, undertake and complete any modification, construction, relocation or improvement of public facilities, improvements and utilities for the development of the Property.

3.9. AGENCY ACCESS TO THE PROPERTY. Developer shall permit Agency representatives access, without charge, to the entire Property at any time and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under the OPA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

3.10. PROJECT SIGN. If Developer places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and Redevelopment Agency" as a participant in the Project. The Agency name on the sign shall be in letters not less than size of letters used to name any of the other participants.

3.11. CERTIFICATE OF COMPLETION. After the Agency has determined that Developer has completed the construction of the Project in accordance with the Final Plans and Developer's obligations under this OPA, the Agency will furnish the Developer with a "Certificate of Completion" certifying such completion. Such certification shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the OPA with respect to the obligations of the Developer to construct the Project as of the Completion Date, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute each Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

3.11.1. Such certification and such determination shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any provision of this OPA that is not related to construction of the Project.

3.11.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional fifteen (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the OPA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

3.12. CONSTRUCTION PERIOD EXTENSION FEE. If Developer does not complete the construction of the Project on or before the Completion Date stated in the Schedule of Performances, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning the calendar month following the Completion Date, a construction period extension fee of ***Extension Fee*** Dollars (\$***Extension Fee***) for each day by which the completion of construction is delayed beyond said completion date. Construction Extension Fees due for days of delay occurring prior to the first payment date shall be paid in arrears at the time of the first payment under this Section 1. The number of days used in computation of the Construction Extension Fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay Construction Extension Fees when due is a material default of this OPA. Any unearned portion of an advance payment of any such extension fee shall be refunded by the Agency within thirty (30) days of completion of construction, or of termination of the OPA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to unpaid Construction Extension Fees and to declare Developer in material default of this OPA. In any event, Construction Extension Fees shall not be accepted for a time period greater than six months, at which time Developer shall be deemed in material default of this OPA.

3.13. REPORTS. During the period of construction, the Developer shall submit to the Agency a written report of the progress of the work as and when reasonably requested by the Agency, but not more often than once each month.***IF If federal funds***

3.14. NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS. Developer shall assure that the respective parties through the Project Documents have the responsibility of notifying the Project contractors, architects and engineers for the Project of the requirements of this OPA. Developer shall include, where applicable, the provisions of this OPA in construction contracts and subcontracts for the Project, and Developer shall undertake the enforcement of such provisions.

3.15. PROPERTY CONDITION. Except as provided in this OPA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency.

3.16. ZONING OF THE PROPERTY. Agency exercises no authority with regard to zoning of the Property. Developer shall assure that zoning of the Property at the time of development shall be such as to permit the development and construction, use, operation and maintenance of the Project in accordance with the provisions of this OPA.

3.17. NO WORK PRIOR TO CLOSE OF ESCROW. Prior to Close of Escrow, Developer shall not commence any work or take any action that might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

3.18. ADDITIONAL PROJECT PROVISIONS. ***Additional Project Provisions***

4. DEVELOPMENT FINANCING. Developer shall be responsible for and shall pay all costs of developing the Project except as otherwise provided in this OPA. As a condition precedent to Agency's obligation to provide the Agency Funding, Developer shall provide the Agency with a complete and firm Project budget including all proposed sources and uses of funds, all "hard" and "soft" costs and contingencies and reflecting, as possible, firm bids or accepted contracts and with evidence of sufficient funds to meet all budget requirements. To the extent that funds specified in this OPA for the Project are insufficient to fully fund the Project, the Developer shall provide evidence, satisfactory to the Agency, of the additional required construction and permanent financing. Except as expressly provided in this OPA, no party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this OPA or otherwise to make any contribution beyond its obligations stated in this OPA.

4.1. EVIDENCE OF AVAILABLE FUNDS. Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 4.3); (b) firm and binding loan commitments (as provided in Section 4.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this OPA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, requests for clarification, further evidence or audited financial reports.

4.2. COMMITMENT AND LOAN REQUIREMENTS. As a material obligation under this OPA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this OPA. The Agency may reject a loan commitment unless such commitment: (a) is subject only to Lender's reasonable conditions of title and Developer's execution of standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contains only usual, customary, and commercially reasonable loan terms; (c) continues in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provides for an Agency Funding term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this OPA, that requires amendment of this OPA or that requires the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

4.3. EVIDENCE OF DEVELOPER EQUITY. Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity by any one or more of the following actions: (a) a deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely and proper completion; or (c) Developer's provision of financial statements prepared by a certified public accountant that show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) of the amount of the required equity. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

5. USE COVENANTS. Developer shall own and manage the Property in accordance with the provisions of this OPA.

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

5.2. **REGULATORY AGREEMENT.** Developer covenants by and for itself, its heirs, executors, administrators, and all persons claiming under or through it, that the Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

6. **INDEMNIFICATION.** Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency.

Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Developer.

This indemnification provision shall survive the termination of this agreement.

7. **INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to: (a) the removal, discharge or release of Hazardous Substances on the Property after Developer has taken possession of the Property; or (b) the existence of Hazardous Substances on the Property, which were not on the Property prior to Developer's taking possession of the Property.

8. **LIABILITY INSURANCE.** With regard to this OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

8.1. LIABILITY INSURANCE POLICY LIMITS. Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

8.2. WORKER'S COMPENSATION. Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000 or statutory limits, whichever are greater.

8.3. COMPREHENSIVE GENERAL LIABILITY. Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency Counsel). Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence, for bodily injury coverage; \$2,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

8.4. COMPREHENSIVE AUTOMOBILE LIABILITY. Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$1,000,000.

8.5. FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE. For the duration of OPA, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the Property with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project. In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

8.6. INSURANCE PROVISIONS. Each policy of insurance required under this OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

8.6.1. ADDITIONAL INSURED. During the term of construction, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the worker's compensation policy, unless otherwise approved by Agency's legal counsel in writing.

8.6.2. SINGLE PROJECT INSURANCE. It is the intent of the parties that the Project have available all the specified insurance coverages. Developer shall not provide insurance coverages that are considered in aggregate with other Projects which Developer or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Developer shall

immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

8.6.3. **CANCELLATION.** Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

8.6.4. **FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this OPA, the Agency shall have the right to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

8.6.5. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 10 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 8 with respect to such insurance shall otherwise be satisfied by such blanket policy.

9. **DEFAULTS AND REMEDIES.** Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, 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 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 OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party.

9.1. *****IF If Liquidated Damages***.** After such return of property and funds and termination of the OPA, neither Agency nor Developer shall have any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary

9.2. *****IF If Liquidated Damages***OTHER RIGHTS AND REMEDIES. ***IF IF LIQUIDATED DAMAGES***** Upon the occurrence of any default***IF If Liquidated Damages***, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this OPA as allowed under this OPA, at law or in equity

9.3. NONLIABILITY 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 OPA.

9.4. 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. The term "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. 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.

10. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS. Before issuance of a Certificate of Completion, the Developer may, upon written Agency approval, obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this OPA in making the Loan and that Agency's obligations under this OPA are inducements to Lender's making of the Loan.

10.1. NOTICES. If the Agency gives any notice of default to Developer under this OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated _____ between the Redevelopment Agency of the City of Sacramento and ***Developer Name*** ("OPA"). Lender requests, in accordance with Section 10 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

10.2. ASSIGNMENTS AND TRANSFERS OF THE LOAN. Agency shall not be bound to recognize any assignment of the Loan or related encumbrance of the Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

10.3. LENDER NOT OBLIGATED TO CONSTRUCT. Notwithstanding any of the provisions of the OPA, Lender shall not be obligated by the provisions of the OPA to construct or complete the Project. Nothing in this Section or any other provision of the OPA shall be construed to permit or authorize Lender to devote the Property to any uses, or to construct any improvements on the Property, other than those uses or improvements provided or permitted in the OPA.

10.4. LENDER'S OPTION TO CURE DEFAULTS. After any default of Developer's obligations under the OPA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Project, however, Lender shall not undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Project on the Property in the manner provided in the OPA. Any Lender who properly completes the Project as provided in the OPA shall be entitled, upon written request made to the Agency, to Certificate of Completion from the Agency in a manner provided in the OPA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Developer's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the OPA by the Developer shall not apply to the part of the Property to which such Certification relates. Nothing in this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

10.5. DEFAULT BY DEVELOPER. In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 12.5 and Lender has failed to cure such default as provided in Section 12.5 provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

10.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this OPA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its

designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer.

10.5.2. Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property, and if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

10.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

10.5.4. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

10.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this OPA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's right, title and interest under this OPA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the right to assign or transfer Developer's right, title and interest under this OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this OPA.

10.7. **MODIFICATIONS.** No modification or amendment to the OPA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

10.8. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this OPA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this OPA and provided such modifications, instruments, and agreements serve a material economic purpose.

10.9. 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 OPA is in full force and effect and a binding obligation of the parties; (ii) this OPA 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 OPA, 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 City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

10.10. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER. In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this OPA or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer without the prior written consent of Agency. The transfer or assignment, pursuant to this Section, requires the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer. Such a transfer as permitted in this Section 12 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Developer and the parties signing the OPA 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.

11. DOCUMENT INTERPRETATION. This OPA shall be interpreted in accordance with the following rules.

11.1. INTEGRATED DOCUMENTS; SEVERABILITY. This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA, 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 OPA shall, to any extent, be held invalid or unenforceable, the remainder of this OPA 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.

11.2. CONFLICTING PROVISIONS. If conflicts are discovered in provisions of this OPA and such incorporated documents, this OPA shall control with regard to plan review and construction terms, the Funding Agreement shall control with regard to funding terms and the Regulatory Agreement shall control with regard to affordability restrictions. In any event, the conflicts shall be construed so as to meet the intent of this OPA.

11.3. WAIVERS AND AMENDMENTS. All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA 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.

11.4. CAPTIONS, GENDER AND NUMBER. The section headings, captions and arrangement of this OPA are for the convenience of the parties to this OPA. 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 OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

11.5. DRAFTER. This OPA 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 OPA. All exhibits referred to in this OPA are attached to it and incorporated in it by this reference.

11.6. MERGER. All of the terms, provisions, representations, warranties, and covenants of the parties under this OPA shall survive the Close of Escrow and shall not be merged in the Grant Deed or other documents.

11.7. 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 OPA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

11.8. GOVERNING LAW. This OPA shall be governed and construed in accordance with California law.

11.9. INSPECTION OF BOOKS AND RECORDS. Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Property as reasonably necessary to carry out its purposes under this OPA.

11.10. OWNERSHIP OF DATA. If this OPA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency any and all data acquired for development of the Property. Agency shall have full ownership and rights to use such data.

11.11. SUCCESSORS. This OPA shall inure to the benefit of and shall be binding upon the parties to this OPA and their respective heirs, successors, and assigns.

12. NOTICES. All notices to be given under this OPA shall be in writing and sent to the following addresses by one or more of the following methods:

12.1. Addresses for notices are as follows:

12.1.1. Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: ***Agency staff***.

12.1.2. Developer:***Developer Name***, ***Developer Address***; Attention: ***Developer staff***.

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

12.2.1. 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;

12.2.2. 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;

12.2.3. 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

12.2.4. 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.

13. DEFINITIONS.

13.1. "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 OPA 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.

13.2. "Agency Funding" is the funding provided by the Agency under this OPA to Developer for the Project.

13.3. "Agency Funding Agreement" is the ***Funding Agreement Name***.

13.4. "Certificate of Completion" is the certificate issued by the Agency certifying Developer's completion of the construction of the Project.

13.5. “CEQA” is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.

13.6. “City” is the City of Sacramento, a political subdivision of the State of California.

13.7. “Community Redevelopment Law” is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

13.8. “Completion Date” is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is ***Completion Date***.

13.9. “Construction Extension Fee” is the fee payable by Developer for each day by which the completion of construction is delayed beyond the date for completion of construction.

13.10. “Contractor” is the general contractor or contractors with whom Developer has contracted for the construction of the Project.

13.11. “Developer” is ***Developer Name***, ***Developer Legal Status***. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; 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 OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency’s Executive Director. The principal office of the Developer is located at ***Developer Address***.

13.12. “Escrow” is the escrow for the transactions contemplated by this OPA.

13.13. “Escrow Instructions” means the escrow instructions for the close of the Escrow.

13.14. “Final Plans” are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 3, which shall include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this OPA. The Final Plans shall incorporate any related mitigation measures that may be required for compliance with CEQA. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this OPA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this OPA, including without limitation, the Preliminary Plans and the Scope of Development.

13.15. “Hazardous Substances” as used in this OPA shall include, without limitation to, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of

the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C.1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory) and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.

13.16. "Legal Description" is the legal description of the various parcels of real property affected by this OPA. The Legal Description is attached as **Exhibit 1 Legal Description**.

13.17. "Lender" shall include all holders of any lien or encumbrance as security for a loan on all or any part of the Property. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this OPA.

13.18. "Loan" is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Project.

13.19. "OPA" is this Owner Participation Agreement between Agency and Developer, including all documents incorporated in this OPA by reference.

13.20. "Rescission of Regulatory Agreement" is the document that may be recorded upon the happening of certain events to remove the regulatory restriction related to the funding source.

13.21. "Preliminary Plans" are the Project designs prepared by the Project architect, ***Architect name***, dated ***Preliminary Plan Date***, a portion of which (consisting of various elevations) is attached as **Exhibit 2 Preliminary Plans**. Agency has approved the Preliminary Plans concurrently with the approval of this OPA.

13.22. "Plans" shall mean either or both Preliminary Plans and Final Plans as the context may indicate.

13.23. "Project" is all of the work to be accomplished under this OPA.

13.24. "Project Area" is the Railyards Redevelopment Project Area, as defined in the Redevelopment Plan.

13.25. "Redevelopment Plan" is the redevelopment plan for the 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.

13.26. "Regulatory Agreement" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions, that run with the Property as a condition of Agency Funding.

13.27. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as Exhibit 3: Schedule of Performances.

13.28. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as Exhibit 4: Scope of Development.

13.29. "Property" is that real property to be developed under this OPA, as more particularly described in the Legal Description. The Property includes all improvements contained within the Property.

13.30. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include 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 such enforced delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the enforced delay, as determined by Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Developer has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

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

DEVELOPER :
*****DEVELOPER NAME*****

AGENCY: THE REDEVELOPMENT AGENCY
OF THE CITY OF SACRAMENTO

By: _____
*****Developer signatory*****
*****Developer signatory title*****

By: _____

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

ATTACHMENT 6

**Sacramento Railyards
Initial Phase Infrastructure
Owner Participation Agreement**

**SACRAMENTO RAILYARDS
INITIAL PHASE PROJECT**

INITIAL PHASE INFRASTRUCTURE OWNER PARTICIPATIONS AGREEMENT
Using Funds from Project Area Tax Increment

**Redevelopment Agency of the City of Sacramento
and
S. Thomas Enterprises of Sacramento, LLC**

Richards Boulevard Redevelopment Project Area/Proposed Railyards Project Area

May 13, 2008

SACRAMENTO RAILYARDS
INITIAL PHASE INFRASTRUCTURE OWNER PARTICIPATION AGREEMENT
Using Project Area Tax Increment

Richards Boulevard Redevelopment Project Area/Proposed Railyards Project Area

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC enter into this Initial Phase Owner Participation Agreement (OPA), as of May 13, 2008. For purposes of this Initial Phase Infrastructure OPA, the capitalized terms shall have the meanings set out in the body of this Initial Phase Infrastructure OPA or as assigned in Section 13 below.

RECITALS

- A. Developer is the owner of the Property, which includes the Initial Phase Property and consists of approximately 240 acres. As of the effective date of this Initial Phase Infrastructure OPA, the City of Sacramento has acquired Parcel A, which is the location of the Sacramento Valley Station, and has an option to purchase Parcel B, encompassing lots 38 and 39 on the Tentative Map for the Property, in accordance with the terms of that certain Purchase and Sale Agreement identified as City Agreement No. 2006-1405. After such purchase, the resulting Property would contain approximately 207 acres. The Property is immediately north of the Central Business District, northeast of Old Sacramento, east of the Sacramento River and Interstate 5, south of North B Street and the Richards Boulevard industrial area and Sacramento River Wastewater Treatment Plant, and west of the historic Alkali Flat residential and office neighborhood (see Exhibit 2, Railyards Property). The Initial Phase Property is the western portion of the Property to be developed under the Initial Phase Development Plan (development phases 1 and 2) as that project is identified in the Development Agreement. The Initial Phase Property consists of approximately 100 acres as shown on Exhibit 3, Initial Phase Property.
- B. The Property is located within the original boundaries of the Richards Boulevard Redevelopment Plan and the boundaries of the newly-adopted Redevelopment Plan for the Railyards Redevelopment Project Area and is subject to the provisions of both plans to the extent of their applicability. Upon the exhaustion of all challenges to the Railyards Redevelopment Plan and the full effectiveness of the Railyards Redevelopment Plan, this Initial Phase OPA, as well as the Master OPA and each Subsequent OPA, will be governed solely by the Railyards Redevelopment Plan. If the newly adopted plan is prohibited from going into effect for any reason it is the Agency and City's intent that the Property shall remain a portion of the Richards Boulevard Redevelopment Project Area and governed by its Redevelopment Plan. It is the intent of the parties that this Initial Phase OPA, continue in full force and effect irrespective of whether the Property continues to be under the Railyards Redevelopment or the Richards Boulevard Redevelopment Plan. Further it is the intent of the parties that this Initial Phase Infrastructure OPA be governed by the respective redevelopment plan in effect and including the Property.

- C. The Property, generally, and the Initial Phase Property specifically, has been fully urbanized for more than a century. It was first developed as the western terminus of, the Transcontinental Railroad in the early 1860s and produced and repaired much of the rail equipment for its operation. The Central Pacific and Southern Pacific railroads used the Property for railroad uses for almost 150 years, with the last railroad workers leaving the maintenance and locomotive works in 1995. During its peak, the Property housed the largest railroad facility of its kind west of the Mississippi River. The Property's use as a production and maintenance facility for the railroads continued for most of its history. In the late 1990s, after the closure of the locomotive maintenance works at the site, Union Pacific purchased the Southern Pacific Railroad and acquired the Property. In December of 2006, the Developer purchased the Property from Union Pacific. Currently, most of the Property is owned by Developer, while approximately 9 acres are owned by the City. The Property continues to be used for passenger rail service through the existing historic Depot building, constructed in 1926 and used as the primary depot for passenger rail service in the Sacramento Valley. The Property continues to include the Union Pacific main lines that are used by freight and passenger trains, the passenger depot for Amtrak and Capitol Corridor trains, and certain other rail lines. The Property also contains several large City-owned or managed parking lots. The historic Central Shops buildings, constructed approximately 100 years ago, and located to the north of the Depot were a major portion of the complex used for rail equipment production and maintenance, and have been mostly vacant for some years. The California State Railroad Museum leases two of these buildings to repair and maintain its historic train stock. Sims Metal operates a metal salvage operation, approximately one and a half acres of which is located in the eastern portion of the Property. The Property has been undergoing environmental remediation for many years, and remediation activities are ongoing on certain portions of the Property. Limited portions of the Property, primarily the Depot area are served by major utilities; including water, sewer, storm drainage, solid waste, natural gas and electrical service; however, most of the Property currently lacks these utilities of sufficient capacity to support the land uses proposed for the site. The environmental documentation has identified historic assets within the project.
- D. The Developer and the City of Sacramento have entered into a Development Agreement, dated December 11, 2007, which sets forth a Specific Plan for the Property and a development program for the Property. The Development Agreement and related and implementing documents generally describe the infrastructure present and needed in the Property.
- E. The Developer and the Agency have concurrently entered into a Master OPA for the entire Property, which acknowledges and includes this Initial Phase Infrastructure OPA as the Subsequent OPA (described therein) for the Initial Phase Property. The redevelopment of the Initial Phase Property is part of a program for the elimination of blighting influences throughout the Property and is necessary for such redevelopment.
- F. This Initial Phase Infrastructure OPA is made in accordance with the Redevelopment Plan, and the owner participation and preference rules adopted pursuant to the Redevelopment Plan, which provides for participation by property owners and businesses

in the redevelopment of real property in the Project Area in accordance with California Health & Safety Code Section 33339.

- G. The Agency is participating in this Initial Phase Infrastructure OPA because this Initial Phase Infrastructure OPA is consistent with, and furthers, the goals and objectives of the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Initial Phase Project will eliminate the following blighting influences: buildings which are unsafe or unhealthy due to age, deterioration and dilapidation, inadequate and faulty utilities including without limitation inadequate traffic circulation and access, inadequate storm drains and sewers, inadequate water and power service; lack of parking and other public and neighborhood facilities, unremediated hazardous substances, and similar factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots; incompatible adjacent uses; depreciated or stagnant property values; and further, the Initial Phase Property serves as a barrier for access between the Merged Downtown Redevelopment Project Area and the remainder of the Richards Boulevard Redevelopment Project Area to the north and east with consequent negative impacts on both of the other project areas. The Agency has also determined that the Initial Phase Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: (1) elimination of blighting influences and correct environmental deficiencies, (2) renovation of unsafe buildings, (3) elimination of conditions that hinder viable use of properties, impairs property values and inhibits private commercial and residential investment, (4) elimination of infrastructure deficiencies, (5) stimulation of economic growth and job creation by encouraging new private sector investment, (6) guiding development to assure high aesthetic standards and environmental quality, preserving historic resources where feasible, (7) encouragement for transit-oriented development and the use of transit, (8) encouragement for the participation of private development partners and businesses, and (9) provision of housing for all income levels.
- H. The Agency has determined that there is no other reasonable means of financing those portions of the Initial Phase Project to be financed under this Initial Phase Infrastructure OPA available to the City or to Developer.
- I. In order to accomplish such Agency goals and purpose, the Initial Phase Infrastructure OPA provides that the Developer will redevelop, or cause to be redeveloped, the Initial Phase Property in the manner and for the uses described in this Initial Phase Infrastructure OPA and the Development Agreement. Therefore, Developer desires to develop the Initial Phase Property, and Agency desires to assist development of the Initial Phase Property, on the terms and conditions in this Initial Phase Infrastructure OPA.
- J. Developer and the City are expending substantial sums in commencing and carrying out redevelopment of the Initial Phase Property under the Development Agreement.
- K. The terms and conditions of this Initial Phase Infrastructure OPA are specific to the Initial Phase Project identified in this Initial Phase Infrastructure OPA and are not related to or applicable to any other activity or project within the Project Area.

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. **RECITALS.** The foregoing recitals are true and correct and are agreed and acknowledged by the parties.
2. **AGENCY FUNDING.** As provided in this Section 2, Agency shall provide the Agency Funding to Developer, as defined in Section 13.2, for purposes of assisting, facilitating, and implementing the development, redevelopment, installation, repair, demolition, replacement, rehabilitation of buildings, roadways, utility and drainage infrastructure, parking facilities, landscaping and public open spaces, lighting, signage, or any combination thereof, located on the Initial Phase Property and determined to be Qualified Infrastructure and Building Rehabilitation as shown on Exhibit 4. Such Agency Funding shall be disbursed to Developer in the manner set forth in this Initial Phase Infrastructure OPA and any implementing Funding Agreement.

2.1. REIMBURSEMENT OF QUALIFIED INFRASTRUCTURE COSTS. Upon request of Developer and subject to the following provisions, Agency shall reimburse Developer the Reimbursement Obligation. The Reimbursement Obligation shall be made from the Initial Phase Net TI (as defined in Section 2.5), for not more than \$50,000,000, as adjusted pursuant to Section 2.1.1, in reimbursement of costs of the items listed in the Qualified Infrastructure and Building Rehabilitation List. In any event, the Reimbursement Obligation is limited to the amount of Initial Phase Net TI actually received by the Agency. Agency agrees that the Qualified Infrastructure and Building Rehabilitation List shall be modified at the request of the Developer to add infrastructure projects which are required to satisfy conditions to funding commitments made by the State for specific projects within the Initial Phase Project under State bond programs providing infrastructure funding and the related State funding agreement. In any event, the parties may agree to further changes in the list of qualified infrastructure.

2.1.1. ANNUAL INCREASE IN REIMBURSEMENT OBLIGATION. The Reimbursement Obligation is based upon projections of Initial Phase Tax Increment generated by development on the Initial Phase Property to be completed by Developer, which projections have been adjusted to net present value. To account for such net present value adjustment on the actual date of each reimbursement, the balance of the Reimbursement Obligation, after deduction for reimbursements previously made, shall bear 6% annual interest, compounded annually, commencing on the effective date of this Initial Phase Infrastructure OPA. The effective date shall be the date of execution of this Initial Phase Infrastructure OPA.

2.1.2. EXTENT OF REIMBURSEMENT OBLIGATION. Agency obligation to pay the Reimbursement Obligation is limited to Initial Phase Net TI, as defined in Section 2.5, actually received by the Agency from the property taxes generated by the development of the Initial Phase Property. The Agency's obligation to pay reimbursement under this OPA shall begin at the time Initial Phase Net TI is actually received. To the extent the Initial Phase Net TI funds from

the cumulative Initial Phase development, not otherwise obligated pursuant to this OPA or any assignment under this OPA, are inadequate to fully reimburse the Developer, Developer shall forgo such reimbursement. Agency shall not be obligated to provide reimbursement for such qualifying infrastructure until the completion of construction of the infrastructure for which reimbursement is requested. For purposes of this Section 2.1.2 "actual costs" shall mean all of the following, to the extent that the payment of the stated items is not in conflict with applicable public bidding and prevailing wage requirements as herein described: payments to third parties on account of actual design contracts for engineering, architectural and other design of the item of qualified infrastructure or building rehabilitation; third party costs paid on account of a construction contract for the item of qualified infrastructure; third party costs paid on account of project or construction management contracts for the construction of the item of qualified infrastructure, including without limitation subcontracts and materials contracts; payments to the Developer for project or construction management services, in lieu of payments to a third party for such services but not to exceed ten percent (10%) of said construction contracts; and such other reasonable and necessary construction-related costs as may be approved by the Agency in writing in advance of their incurrence. Actual costs shall be documented by presenting complete, accurate and legible copies of invoices and checks or receipts demonstrating payments to third parties for the services and materials described herein or payments to Developer for construction management services, as demonstrated by a contract or certified payroll record. Developer shall make requests for payment not more often than monthly.

2.2. FUNDING AGREEMENTS. Reimbursement for design and construction of any item on the Qualified Infrastructure and Building Rehabilitation List may be governed by an individual project funding agreement entered into prior to Developer seeking reimbursement. If the parties determine that any item on the Qualified Infrastructure and Building Rehabilitation List may require regular reimbursement disbursements during the work, the parties shall enter into a Funding Agreement as a condition to making such periodic disbursements. The parties may also agree to other methods of reimbursement or disbursement as evidenced by a Funding Agreement.

2.3. VESTING REIMBURSEMENT RIGHTS. The Development Agreement sets forth a vesting schedule, consisting of an initial term and up to four extension options, for development of the Property based upon development milestones specified therein. The reimbursement rights pursuant to this Initial Phase Infrastructure OPA shall remain in full force and effect provided that Developer satisfies those milestones. Should Developer fail to meet a milestone, either during the initial term or an extension option period, Agency shall be relieved from further reimbursement obligations under this Initial Infrastructure OPA, provided however that Agency shall reimburse any then-outstanding contracts, subject to Section 2.4.

2.4. TERMINATION OF RIGHTS TO REIMBURSEMENT FOR LATE CONSTRUCTION. Without regard to the status of reimbursement made prior to said expiration of rights, Agency shall not reimburse Developer under this Section 2 for any infrastructure not substantially completed before the expiration of fifteen (15) years from the effective date of this agreement.

2.5. NET TAX INCREMENT. The term "Initial Phase Net TI" shall mean that portion of the Initial Phase Gross Tax Increment, actually received by the Agency from the Sacramento County Assessor's Office, less (1) any payments required to be made by the Agency to affected taxing

entities pursuant to Health and Safety Code section 33607.5, as it may be amended from time to time; (2) any amounts required to be set aside in the Agency's low and moderate income housing funds pursuant to Health and Safety Code sections 33334.2, 33334.3, and 33334.6, as they may be amended from time to time; (3) any amounts due the County of Sacramento for the Agency's proportionate share of the costs of assessing, collecting, and allocating property taxes; (4) any other amounts required to be paid to third parties pursuant to applicable laws federal, state, or local laws or regulations, other than local laws or regulations of the City, Agency, or Sacramento Housing and Redevelopment Agency; (5) amounts allocated from, required to be paid from or otherwise a mandatory charge against Project Area tax increment by orders or directives of courts, administrative agencies, the State of California, or the federal government and therefore unavailable to the Agency for payment under this Initial Phase OPA; and (6) actual costs of Agency administration directly allocable to the Initial Phase Property. All future Initial Phase Net TI payments shall be subordinated to the senior rights, if any, for any future bonded indebtedness. Developer and Agency acknowledge that if the Redevelopment Plan is changed or replaced, the available Initial Phase Net TI from the amended Redevelopment Plan may be reduced to the extent of any loss of territory or other restriction, or if the available Initial Phase Net TI is from a replacement Redevelopment Plan then it will not include tax increment from the existing Project Area.

3. **INITIAL PHASE PROJECT DESCRIPTION.** The improvements that may be assisted, facilitated, or implemented with the Agency Funding to be provided to Developer under this Initial Phase Infrastructure OPA are the items specified in Exhibit 4., the Qualified Infrastructure and Building Rehabilitation List as it may be amended pursuant to Section 2., above.

4. **INITIAL PHASE PROJECT PLANNING AND DEVELOPMENT.** Developer is developing only the items listed in the Qualified Infrastructure and Building Rehabilitation List under this Initial Phase Infrastructure OPA. Notwithstanding this Initial Phase Infrastructure OPA, such development is subject to the review of the City under the Development Agreement. Developer shall submit documentation to Agency for any individual project for which Developer intends to seek reimbursement prior to commencement of construction for verification that the item is included in the Qualified Infrastructure and Building Rehabilitation List. However, no further review of plans and specifications is required for compliance with this Initial Phase Infrastructure OPA. This Initial Phase Infrastructure OPA is intended generally as a financing document and implementation document for redevelopment under the Redevelopment Plan. It is not intended to be a land use or planning document. Approval of this Initial Phase Infrastructure OPA shall not be considered an approval of land use entitlements or the engineering, structural or aesthetic design of the Initial Phase Project.

4.1. **PUBLIC WORKS AND GOVERNMENTAL OBLIGATIONS; INDEMNITY THEREFORE.** Each item of the work to be done under this Initial Phase Infrastructure OPA constitutes a public work as defined under California law, including without limitation the California Public Contract Code (Public Contract Code Section 1100 *et seq.*) and under the Labor Code (Labor Code Section 1720 *et seq.*) Developer shall be responsible to determine the applicability of California law for work under this Initial Phase Infrastructure OPA and to comply with all applicable provisions, including without limitation bidding and contracting procedures and payment of prevailing wages. Developer shall comply with any such federal or state requirements resulting from the

receipt of federal or state funds for work to be done under this Initial Phase Infrastructure OPA. The Developer shall assure that the construction of the Initial Phase Project is carried out in conformity with all applicable laws and regulations. Developer shall keep, or cause to be kept, all records, and make all payments, of any kind, that may be required for compliance with said laws and regulations. Before commencement of construction or development of any work of improvement to be funded under this Initial Phase Infrastructure OPA, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Agency shall cooperate in securing certifications and permits that require approval of the various entities. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Initial Phase Project. Developer, therefore, agrees to indemnify, hold harmless and defend the Agency from all wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from Developer's determinations and actions related to public bidding, contracting, and prevailing wage obligations for the work to be funded under this Initial Phase Infrastructure OPA or arising from failure to comply with any governmental laws, regulations, rules, and orders.

4.2. GOVERNMENTAL REVIEW PROCESS AND REQUIREMENTS. With respect to the Initial Phase Project, Developer shall comply with the Redevelopment Plan and shall 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 of Sacramento. Notwithstanding any other provision of this Initial Phase Infrastructure OPA, Developer is not relieved of any building, planning, design and other plan review requirements that are otherwise applicable to construction of the Initial Phase Project, including without limitation those of the City of Sacramento. Conditions to the Initial Phase Project lawfully imposed by the City shall be considered obligations of the Developer under this Initial Phase Infrastructure OPA.

4.3. PUBLIC SAFETY PROTECTIONS. Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the Initial Phase Property and Developer's activities in connection with construction of the Initial Phase Project, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

4.4. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT. Developer for itself, the Contractor, subcontractors and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and subcontracts for the construction of the Initial Phase Project:

4.4.1. EMPLOYMENT. Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, disability, sexual orientation, creed or national origin. 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, or national origin with respect to, but not 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.

4.4.2. **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, or national origin.

4.5. **AGENCY ACCESS TO THE INITIAL PHASE PROPERTY.** Developer shall permit Agency representatives access, without charge, to the entire Initial Phase Property at any time during normal business hours, upon reasonable notice and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under this Initial Phase Infrastructure OPA.

4.6. **INITIAL PHASE PROJECT SIGN.** If Developer places a sign on the Initial Phase Property during construction of the Initial Phase Project stating the names of the Initial Phase Project participants, it shall also name "Redevelopment Agency of the City of Sacramento" as a participant in the Initial Phase Project. The Agency name on the sign shall be in letters not less than the size of letters used to name any of the participants other than Developer.

4.7. **REPORTS.** During the period of construction of the Initial Phase Project or any part of the Initial Phase Project, the Developer shall submit to the Agency a written report of the progress of the work as and when reasonably requested by the Agency, but not more often than once each quarter.

4.8. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure the notification of the Initial Phase Project contractors, architects and engineers of the requirements of this Initial Phase Infrastructure OPA. Developer shall include, where applicable, the provisions of this Initial Phase Infrastructure OPA in construction contracts and subcontracts for the Initial Phase Project, and Developer shall be responsible for and undertake the enforcement of such provisions.

4.9. **ZONING OF THE INITIAL PHASE PROPERTY.** Agency exercises no authority with regard to zoning of the Initial Phase Property. Developer shall assure that zoning of the Initial Phase Property at the time of construction of the Initial Phase Project shall be such as to permit the development and construction, use, operation and maintenance of the Initial Phase Project in accordance with the provisions of this Initial Phase Infrastructure OPA.

4.10. **COMPLIANCE WITH CITY AGREEMENTS.** As a condition of payment of Agency Funding under this Initial Phase Infrastructure OPA at the time funding is to be released, the Developer must not be in default under the Development Agreement, the Initial Phase Infrastructure OPA, or the Master OPA, Track Relocation Agreement, Tri-Party Memorandum of Understanding, Purchase and Sale Agreement, or Proposition 1 C Agreement, as those agreements are defined in the Development Agreement. As to an assignee's default where

assignee seeks payment under this Initial Phase Infrastructure OPA, at the time such funding is to be released such assignee must not be in default of any agreement with the City with regard to that assignee's assigned interest in the Property. Agency may allocate Agency funds to City, for Developer's or assignee's default under said agreements or Developer's or assignee's default under any future agreement related to Developer's development of the Property, as the case may be, in lieu of making an allocation that may be owed to Developer or to a defaulting assignee, respectively, under this Initial Phase OPA in order to meet the financial obligations of Developer or defaulting assignee, respectively, under the applicable City agreement. In addition, Agency may terminate this Initial Phase Infrastructure OPA for default of Developer, or as to an assignee's interest for such assignee's default, under the Development Agreement, Initial Phase Infrastructure OPA, Master OPA, or applicable Subsequent OPA. The term "default" as used in this Section 4.10 shall mean a material failure of performance or a substantial and unreasonable delay in performance by Developer of any term, condition, obligation or covenant set out in the agreement between Developer and City, as reasonably determined by City in its sole discretion, subject to Developer's or Lender's applicable cure provisions. This Section 4.10 is, however, subject to the provisions of Section 10.10 (No Cross Default Against Non-Defaulting Party).

5. USE COVENANTS. Developer shall lawfully possess, control and manage the Initial Phase Property and the Initial Phase Project in accordance with the provisions of this Initial Phase Infrastructure OPA and the Redevelopment Plan.

5.1. 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 the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Initial Phase Property and the Initial Phase Project.

5.2. REGULATORY AGREEMENT. Developer covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Initial Phase Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

6. INDEMNIFICATION. Developer shall indemnify, protect, defend and hold harmless Agency, its officers, directors, commission members, employees, advisory committee members, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Developer, its officers, employees, agents or independent contractors and for any and all costs incurred by Agency in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Agency. Agency shall indemnify, protect, defend and hold Developer harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of Agency, its officers, commission members, employees, advisory committee members or agents and for any and all costs incurred by Developer in defending against such liability claims, including attorney's fees, except for injury, death or property damage caused by the negligent act or willful misconduct of Developer. This indemnification provision shall survive the termination of this agreement.

7. **INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims resulting from any acts or omissions related to the existence, removal, discharge or release of Hazardous Substances released or discharged on the Initial Phase Property.

8. **LIABILITY INSURANCE.** As a condition of this Initial Phase Infrastructure OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Initial Phase Project to obtain and maintain, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; (e) claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (g) claims for contractual liability arising from the Developer's obligations under this Initial Phase Infrastructure OPA.

8.1. **LIABILITY INSURANCE POLICY LIMITS.** Developer shall assure that the insurance required by this Section shall be written with a deductible of not more than \$100,000.

8.2. **WORKERS COMPENSATION.** Workers' compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000 or statutory limits, whichever are greater.

8.3. **COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency legal counsel). Such insurance shall have limits of liability which are not less than \$3,000,000, each occurrence, for bodily injury coverage; \$5,000,000 aggregate, for products and completed operations coverage; \$1,000,000, each occurrence, for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

8.4. **COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Initial Phase Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$1,000,000.

8.5. FIRE, HAZARD AND EXTENDED COVERAGE INSURANCE. For the duration of this Initial Phase Infrastructure OPA, Developer shall obtain and maintain fire and hazard insurance to the full insurable value of the structures on the Initial Phase Property which are not to be demolished, with the exception of the Central Shops, for which such coverage is required unless it is not available at commercially reasonable rates, with endorsements of extended coverage, vandalism, and malicious mischief, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Initial Phase Project. In the event of damage to the Initial Phase Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Initial Phase Project and the public improvements.

8.6. INSURANCE PROVISIONS. Each policy of insurance required under this Initial Phase Infrastructure OPA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable:

8.7. ADDITIONAL INSURED. During the term of construction of the Initial Phase Project, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the workers' compensation policy, unless otherwise approved by Agency's legal counsel in writing.

8.8. CANCELLATION. Each policy shall bear an endorsement precluding cancellation or termination of the policy or reduction in coverage unless the Agency has been given written notice of such intended action at least thirty (30) days prior to its effective date.

8.8.1. FAILURE TO MAINTAIN. If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Initial Phase Infrastructure OPA, the Agency shall have the right to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

8.8.2. BLANKET COVERAGE. Developer's obligation to carry insurance as required under this Section 8 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 8 with respect to such insurance shall otherwise be satisfied by such blanket policy.

9. DEFAULTS AND REMEDIES. Except as otherwise provided in the Master OPA, if either party defaults in its material obligations under this Initial Phase Infrastructure OPA, 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 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 Initial Phase Infrastructure OPA, a failure or delay by a party to perform any term or provision of this Initial Phase Infrastructure OPA constitutes a default of this Initial Phase Infrastructure OPA.

9.1. CROSS-DEFAULT. A default of the Development Agreement or the Master OPA is a default of the Initial Phase Infrastructure OPA, subject to applicable cure rights.

9.2. RIGHTS AND REMEDIES. Upon the occurrence of any default, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this Initial Phase Infrastructure OPA, whether at law or in equity.

9.3. NONLIABILITY 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 Initial Phase Infrastructure OPA.

9.4. ATTORNEY'S FEES AND RELATED. Should any party initiate any action based upon this Agreement, 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, mediator'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.

10. ENCUMBRANCE OF INITIAL PHASE PROPERTY AND LENDER PROTECTIONS. The Developer may obtain a Loan in reliance on this Initial Phase Infrastructure OPA and encumber the Developer's interests in the Initial Phase Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Initial Phase Project and development on the Initial Phase Property and the Loans are made upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this Initial Phase Infrastructure OPA in making the Loan and that Agency's obligations under this Initial Phase Infrastructure OPA are inducements to Lender's making of the Loan.

10.1. **NOTICES.** If the Agency gives any notice of default to Developer under this Initial Phase Infrastructure OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the request for notice. Any such default notice that is not so delivered to Lender shall not be effective or binding with regard to Lender or otherwise affect Lender, but failure to deliver such default notice to Lender shall not affect its validity with respect to Developer. Lender shall use the following form for requesting notice:

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated _____ between the **Redevelopment Agency of the City of Sacramento** (“Initial Phase Infrastructure OPA”). Lender requests, in accordance with Section 10 of the Initial Phase Infrastructure OPA, that if any default notice shall be given to Developer under the Initial Phase Infrastructure OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

10.2. **ASSIGNMENTS AND TRANSFERS OF THE LOAN.** Agency shall not be bound to recognize any assignment of the Loan or related encumbrance of the Initial Phase Property unless and until Lender has given Agency written notice of the name and address of the assignee (and if more than one person is an assignee, the designated name and address for notices) and such assignee qualifies as a Lender under this Initial Phase Infrastructure OPA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Initial Phase Property.

10.3. **LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the Initial Phase Infrastructure OPA, Lender shall not be obligated by the provisions of the Initial Phase Infrastructure OPA to construct or complete the Initial Phase Project. Nothing in this Section or any other provision of the Initial Phase Infrastructure OPA shall be construed to permit or authorize Lender to devote the Initial Phase Property to any uses, or to construct any improvements on the Initial Phase Property, other than those uses or improvements provided or permitted in the Initial Phase Infrastructure OPA.

10.4. **LENDER'S OPTION TO CURE DEFAULTS.** After any default of Developer's obligations under the Initial Phase Infrastructure OPA, each Lender shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Developer, and to add the cost of such cure to the debt and the lien secured by the Initial Phase Property. The Agency shall accept such performance as if it had been performed by Developer; provided, however, that such Lender shall not be subrogated to the rights of the Agency by undertaking such performance. If the breach or default relates to construction of the Initial Phase Project, however, Lender shall not undertake or continue the construction of the Initial Phase Project (beyond the extent necessary to conserve or protect Initial Phase Project or construction already made) unless Lender assumes, in writing satisfactory to the Agency, Developer's obligations to complete the Initial Phase Project on the Initial Phase Property in the manner provided in the Initial Phase Infrastructure OPA. Nothing in

this Section shall be deemed to limit, modify or release any claim or remedy that the Agency may have against the Developer for such default.

10.5. DEFAULT BY DEVELOPER. In the event of a default by Developer, Agency shall not terminate this Initial Phase Infrastructure OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 10 and Lender has failed to cure such default as provided in Section 10.4; provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Initial Phase Property, then the Agency's right to terminate this Initial Phase Infrastructure OPA shall be tolled if and so long as:

10.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this Initial Phase Infrastructure OPA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Initial Phase Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer; and

10.5.2. Lender or its designee has rights to obtain possession of the Initial Phase Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Initial Phase Property, and if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

10.5.3. Upon receiving possession of the Initial Phase Property, Lender or its designee promptly commences and diligently proceeds to cure such default.

10.5.4. From and after the cure of such Developer default, Lender or its designee is not required to obtain possession or to continue in possession of the Initial Phase Property. Nothing in this Section shall preclude the Agency from exercising any of its rights or remedies with respect to Developer during any period of such forbearance.

10.6. FORECLOSURE. Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Initial Phase Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this Initial Phase Infrastructure OPA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this Initial Phase Infrastructure OPA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this Initial Phase Infrastructure OPA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's rights and interests under this Initial Phase Infrastructure OPA as a result of a judicial or nonjudicial

foreclosure under any power contained in such encumbrance, or any conveyance of the Initial Phase Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, such Lender or its designee shall have the right to assign or transfer Developer's rights and interests under this Initial Phase Infrastructure OPA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this Initial Phase Infrastructure OPA.

10.6.1. **MODIFICATIONS.** No modification or amendment to the Initial Phase Infrastructure OPA which materially and adversely affects the Lender's interest in the Initial Phase Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

10.7. **FURTHER ASSURANCES TO LENDERS.** Agency and Developer shall in good faith consider making such reasonable modifications to this Initial Phase Infrastructure OPA and executing such further instruments and agreements between them as a Lender may reasonably request, provided such modifications, instruments and agreements do not materially, adversely affect any party's expectations or benefit, rights or obligations under this Initial Phase Infrastructure OPA and provided such modifications, instruments, and agreements serve a material economic purpose. Agency acknowledges that Developer intends to monetize Agency's obligations under this Initial Phase Infrastructure OPA; however, Agency is under no obligation to enter into further agreements with any Lender or undertake any additional obligations to accommodate such intention. Developer acknowledges and will inform any purchaser or Lender relying on this OPA of the contingent nature of Agency's repayment obligation.

10.8. **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 Initial Phase Infrastructure OPA is in full force and effect and a binding obligation of the parties; (ii) this Initial Phase Infrastructure OPA 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 Initial Phase Infrastructure OPA, 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, in recordable form, 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 City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

10.9. **FURTHER ENCUMBRANCES AND RELATED ASSURANCES.** Neither Developer's entering into this Initial Phase OPA nor its default thereunder shall alter, defeat, render invalid, diminish or impair the lien of any Mortgage or Deed of Trust on the Property made in good faith by a Lender and for value, made by Developer in accordance with this Initial Phase OPA. This Initial Phase OPA shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage, Deed of Trust or other security instrument securing financing with respect to development of the Property for the Railyards Project; provided, however that Agency is under no obligation to recognize the rights of a Lender under this Initial Phase OPA to the extent that such

Loan contravenes or attempts to modify the terms of this Initial Phase OPA or the obligations of Agency under this Initial Phase OPA. Developer shall provide the Agency with a conformed copy of all documents related to any such Loan. Agency acknowledges that a Lender may rely on this Initial Phase OPA in making the Loan and that Agency's obligations under this Initial Phase OPA may be inducements to Lender's making of the Loan. In any event, Agency shall have no obligation under this Initial Phase OPA with regard to any Loan not made for construction of the Project and development on the Property as provided in Section 10, and Agency shall have no greater obligations with respect to any other such Lender on account of this Initial Phase OPA than the obligations which Agency has with respect to Developer on account of this Initial Phase OPA.

10.10. NO CROSS DEFAULT AGAINST NON-DEFAULTING PARTY. Where a portion of the property has been transferred or assigned in accordance with the provisions of this Initial Phase OPA and notice of default has been given by Agency to an assignee, (i) neither Developer nor any non-defaulting assignee shall be liable for the default of the defaulting assignee, (ii) the rights of Developer and non-defaulting assignees under this Initial Phase Infrastructure OPA shall not be affected by the default of the defaulting assignee, and (iii) Agency shall not be in default or otherwise liable to Developer or a non-defaulting assignee for Agency's action in declaring a default against the defaulting assignee.

11. ASSIGNMENT AND TRANSFER. In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been reserved and will be made available to make development of the Initial Phase Property possible. Developer may assign all or a portion of Developer's interests or obligations under this Initial Phase Infrastructure OPA, or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer, without the prior written consent of Agency. However, the transfer or assignment of all or a portion of Developer's interests or obligations under this Initial Phase Infrastructure OPA, pursuant to this Section, requires the transferee or assignee to assume all or a proportionate share thereof of Developer's rights and obligations under this Initial Phase Infrastructure OPA to provide substantial and adequate evidence of its ability to fulfill Developer's obligations and to execute and deliver to Agency a valid, binding, written assumption of all or a proportionate share of such rights and obligations. Such a transfer or assignment as permitted in this Section shall not relieve Developer, or any other party bound in any way by this Initial Phase Infrastructure OPA, from any of its obligations under this Initial Phase Infrastructure OPA or any Funding Agreement unless such assignee or transferee's valid, binding written assumption executed and delivered to Agency provides for transfer of Developer's obligations in a manner acceptable to Agency. With respect to this provision, the Developer and the parties signing the Initial Phase Infrastructure OPA 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. DOCUMENT INTERPRETATION. This Initial Phase Infrastructure OPA shall be interpreted in accordance with the following rules.

12.1. INTEGRATED DOCUMENTS; SEVERABILITY. This Initial Phase Infrastructure OPA and the documents incorporated in this Initial Phase Infrastructure OPA are to be considered as one

document and default of any of them shall be considered a default of all of them. This Initial Phase Infrastructure OPA including the incorporated documents integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous or contemporaneous agreements between the parties with respect to its subject matter. If any term or provision of this Initial Phase Infrastructure OPA shall, to any extent, be held invalid or unenforceable, the remainder of this Initial Phase Infrastructure OPA 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 to the extent permitted by law.

12.2. **CONFLICTING PROVISIONS.** If conflicts are discovered in provisions of this Initial Phase Infrastructure OPA and such incorporated documents, this Initial Phase Infrastructure OPA shall control with regard to plan review, construction terms, and Agency Funding of the Initial Phase Project, any subsequent Funding Agreement shall control with regard to specific funding terms, however, nothing in any Funding Agreement shall be construed to reduce the Agency Funding to which Developer is entitled under the Initial Phase Infrastructure OPA, and any Regulatory Agreement shall control with regard to use restrictions. In any event, the conflicts shall be construed so as to meet the intent of this Initial Phase Infrastructure OPA.

12.3. **WAIVERS AND AMENDMENTS.** All waivers of any provisions of this Initial Phase Infrastructure OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this Initial Phase Infrastructure OPA 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.

12.4. **CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this Initial Phase Infrastructure OPA are for the convenience of the parties to this Initial Phase Infrastructure OPA. 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 Initial Phase Infrastructure OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

12.5. **DRAFTER.** This Initial Phase Infrastructure OPA 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 Initial Phase Infrastructure OPA.

12.6. **MERGER.** All of the terms, provisions, representations, warranties, and covenants of the parties under this Initial Phase Infrastructure OPA shall survive the execution of the Regulatory Agreement executed hereunder and shall not be merged in the Regulatory Agreement or any other instrument.

12.7. **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 Initial Phase Infrastructure OPA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

12.8. **GOVERNING LAW.** This Initial Phase Infrastructure OPA shall be governed and construed in accordance with California law, and venue for all actions under this Initial Phase Infrastructure OPA shall be Sacramento County, California.

12.9. **INSPECTION OF BOOKS AND RECORDS.** Agency has the right, at all reasonable times, to inspect the books and records of Developer regarding the Initial Phase Property as reasonably necessary to carry out its purposes under this Initial Phase Infrastructure OPA.

12.10. **OWNERSHIP OF DATA.** If this Initial Phase Infrastructure OPA is terminated, for any reason, prior to the completion of the Project, Developer shall deliver to Agency copies of any and all data acquired for development of any infrastructure to be dedicated to public use on the Property and any item on the “Qualified Infrastructure and Building Rehabilitation List” which is attached to this Initial Phase Infrastructure OPA as Exhibit 4, subject to the limitations imposed on Developer by any other owner of such data. To the extent that Developer’s ownership or use of such data is subject to the payment of a fee or some other action on the part of Developer, Agency shall have the right to make such payment or take such action on behalf of Developer in order to assure such ownership or use rights. Agency shall have the same ownership and rights to use such data as Developer to pursue completion of such infrastructure and public use facilities.

12.11. **SUCCESSORS.** This Initial Phase Infrastructure OPA shall inure to the benefit of and shall be binding upon the parties to this Initial Phase Infrastructure OPA and their respective heirs, successors, and assigns.

12.12. **NOTICES.** All notices to be given under this Initial Phase Infrastructure OPA shall be in writing and sent to the following addresses by one or more of the following methods:

12.12.1. **ADDRESSES.** Addresses for notices are as follows:

Agency:

Redevelopment Agency of the City of Sacramento,
c/o Economic Development Department,
City of Sacramento,
915 I Street
Sacramento, California, 95814,
Attention: Railyards Project Manager

Fax Number: 916-808-8161

With copy to:

Redevelopment Agency of the City of Sacramento
c/o Sacramento Housing and Redevelopment Agency

630 I Street
Sacramento, California 95814
Attention: Legal Department

Fax Number: 916-448-6558

Developer:

S. Thomas Enterprises of Sacramento, LLC
431 I Street, Suite 202
Sacramento, California 95814
Attention: Suheil J. Totah

Fax Number: 916-329-4501

With copy to:

Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, California 94607
Attention: Steven R. Meyers

Fax Number: 510-444-1108

And copy to:

Cushing, Morris, Armbruster & Montgomery, LLP
229 Peachtree Street, NE
Suite 2110, International Tower
Atlanta, Georgia 30303
Attention: Jeffrey F. Montgomery

Fax Number: 404-658-9865

12.12.2. **DELIVERY.** Notices may be delivered by one of the following methods:

- a. 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;
- b. 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;
- c. 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

d. 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" stated above or to such other address as Developer or Agency may respectively designate by written notice to the other.

13. DEFINITIONS.

13.1. "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 Initial Phase Infrastructure OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The City of Sacramento Economic Development Department provides staffing for certain aspects of the operation of the Agency in conjunction with the Sacramento Housing and Redevelopment Agency which is a joint powers agency which also provides staffing for all other aspects of the operation of the Agency.

13.2. "Agency Funding" is the funding to be provided by the Agency to Developer, to reimburse the costs to Developer of designing and constructing those improvements on the **Qualified Infrastructure and Building Rehabilitation List, Exhibit 4**, for purposes of assisting, facilitating, and implementing the development, redevelopment, installation, repair, demolition, replacement, or rehabilitation of buildings, infrastructure, landscaping, lighting, and signage at the Initial Phase Property, pursuant to one or more Funding Agreements.

13.3. "City" is the City of Sacramento, a political subdivision of the State of California.

13.4. "Commencement Date" is the effective date of this Initial Phase Infrastructure OPA, which is the date written in the first paragraph of this Initial Phase Infrastructure OPA.

13.5. "Community Redevelopment Law" is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.

13.6. "Contractor" is the general contractor or contractors with whom Developer will contract with for the construction of the Initial Phase Project, or any part of the Initial Phase Project.

13.7. "Developer" is S. Thomas Enterprises of Sacramento, LLC, a Delaware limited liability company, or any other transferee of the Initial Phase Property or a portion thereof, or any assignee of S. Thomas Enterprises of Sacramento, LLC's interest or obligations under this Initial Phase Infrastructure OPA. The local office of the Developer is located at 431 I Street, Suite 202, Sacramento CA 95814. Developer also includes any entity or entities controlled by Stan Thomas, an individual, or any subsidiary thereof.

13.8. “Development Agreement” is the Development Agreement for Sacramento Railyards Project, Project No. P-05-097, between the City of Sacramento and S. Thomas Enterprises of Sacramento, LLC, approved on December 11, 2007, and executed as of the same date, as it may be amended from time to time, and the documents included directly or by reference therein, which include without limitation the Specific Plan, Special Planning District, Urban Design Guidelines, tentative map and other related land use entitlements approved concurrently with the Development Agreement, all of which generally describe the land uses, density and urban character planned for the Property and the infrastructure needed to redevelop the Property.

13.9. “Funding Agreement” is any subsequent agreement entered into to implement this Initial Phase Infrastructure OPA that includes Agency agreement that certain infrastructure or other improvements are contained on the Qualified Infrastructure and Building Rehabilitation List and specifies the manner and procedure for Developer to seek reimbursement.

13.10. “Hazardous Substances” as used in this Initial Phase Infrastructure OPA shall include, without limitation, to, all substances, wastes and materials designated or defined as hazardous or toxic pursuant to any of the following statutes, as they may be amended or superseded, from time to time: the Clean Water Act (33 U.S.C. § 1321 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the United States Department of Transportation Hazardous Materials Table (49 CFR § 172.101); the Environmental Protection Agency list of hazardous materials (40 CFR Part 302) and California Health and Safety Code Sections 25115, 25117, 25122.7, 25140 (Hazardous Waste Control Law), 25316 (Carpenter-Presley-Tanner Hazardous Substances Account Act), 25501 (Hazardous Materials Release Response Final Plans and Inventory), and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.

13.11. “Initial Phase Development Plan” is the proposed plan for land use development on the Initial Phase Property in the Railyards Specific Plan and as defined in the Development Agreement and also defined as Phases 1 and 2.

13.12. “Initial Phase Infrastructure OPA” is this Master Initial Phase Project Agreement between Agency and Developer, including all documents incorporated in this Initial Phase Infrastructure OPA by reference.

13.13. “Initial Phase Gross Tax Increment” shall be the total tax increment revenue generated annually by the Initial Phase Property and collected by the Sacramento County Assessor’s Office, as described in Section 2.5 above.

13.14. “Initial Phase Net TI” is defined in Section 2.5.

13.15. “Initial Phase Property” is that Portion of the Property designated as the location for the Initial Phase Development of the Railyards Project (also known as Phases 1 and 2) of the planned development to be developed first, as more particularly identified in **Exhibit 3 Initial**

Phase Property. The Master OPA is made with regard to the development of the total Property, including the Initial Phase Property. The Initial Phase has been further divided into four subphases (1A, 1.B.1, 1.B.2 and 2).

13.16. “Initial Phase Project” is all of the work to be accomplished under this Initial Phase Infrastructure OPA.

13.17. “Lender” shall include all holders of any lien or encumbrance as security for a Loan on all or any part of the Initial Phase Property. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this Initial Phase Infrastructure OPA.

13.18. “Loan” is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Initial Phase Project, or any part of the Initial Phase Project.

13.19. “Master OPA” is the Master Owner Participation Agreement for the Sacramento Railyards Project that applies to all of the Property, of which this Initial Phase Infrastructure OPA is a Subsequent OPA, as defined in that agreement

13.20. “Project Area” is the Railyards Redevelopment Project Area, as defined in the Railyards Redevelopment Plan or the Richards Boulevard Redevelopment Project Area as defined in the Richards Boulevard Redevelopment Plan, each of which are redevelopment project areas as defined by the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*), whichever may then be in effect for governance of the Property.

13.21. “Property,” for purposes other than Recital A, refers to that certain real property in the City of Sacramento, formerly known as the Union Pacific Railyards, containing approximately 240 acres, which was purchased by Developer from the Union Pacific Railroad, excluding any property acquired by the City for the Sacramento Intermodal Transportation Facility and rail track right of way. Generally, the Property is immediately north of the Central Business District, east of the Sacramento River and Interstate 5, south of North B Street and the Richards Boulevard area, and west of the Alkali Flat Neighborhood. The Property is generally bounded by the Sacramento River Water Treatment Plant and industrial and commercial uses along Richards Boulevard to the north; a mix of office and residential uses in the Alkali Flat neighborhood to the southeast; office and retail uses in the Central Business District to the south; and Old Sacramento to the southwest. The Property is more particularly described in the Legal Description, **Exhibit 1 Legal Descriptions**, which includes **Exhibit 1A, Railyards Property Legal Description**, a description of the Property and **Exhibit 1B, City Acquisition Legal Description**, a legal description of that portion of the Property which the City intends to purchase pursuant to an agreement between Developer and City. A map of the Property is attached to this Initial Phase Infrastructure OPA as **Exhibit 2 Railyards Property. (Map)**.

13.22. “Qualified Infrastructure and Building Rehabilitation List” is the list of infrastructure and building improvements qualified for reimbursement from Initial Phase Net TI

under this Initial Phase Infrastructure OPA. The Qualified Infrastructure and Building Rehabilitation List is attached as **Exhibit 4 Qualified Infrastructure and Building Rehabilitation List**.

13.23. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the City Council of the City. The Redevelopment Plan as it applies to the Property is either the Richards Boulevard Redevelopment Plan or the newly adopted Railyards Redevelopment Plan, whichever is then in effect. If for any reason the newly adopted plan shall be prohibited from going into effect it is the intent of the City and Agency that the Property shall continue to be included in the Richards Boulevard Redevelopment Project Area and governed by the Richards Boulevard Redevelopment Plan. Upon the exhaustion of all challenges to the Railyards Redevelopment Plan and the full effectiveness of the Railyards Redevelopment Plan, this Initial Phase Infrastructure OPA, as well as the Master OPA and each Subsequent OPA, will be governed solely by the Railyards Redevelopment Plan. It is the intent of the parties that this Initial Phase Infrastructure OPA continue in full force and effect irrespective of whether it continues under the Railyards Redevelopment Plan as it may be amended, which includes the Initial Phase Property, or by action of law remains under the pre-existing Richards Boulevard Redevelopment Plan, as it may be amended. It is the intent of the parties that the Master OPA and this subsequent Initial Phase Infrastructure OPA be confirmed as governed by the respective redevelopment plan in effect, as if originally adopted under that plan.

13.24. "Regulatory Agreement" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Initial Phase Property as a condition of Agency Funding. The Regulatory Agreement is attached as **Exhibit 5 Regulatory Agreement**.

13.25. "Reimbursement Obligation" is the amount of the obligation of the Agency to reimburse the Developer for costs to design and construct items on the Qualified Infrastructure and Building Rehabilitation List, all as further defined in Section 2.

THE PARTIES HAVE EXECUTED THIS INITIAL PHASE INFRASTRUCTURE OPA in Sacramento, California as of the date first written above.

DEVELOPER :
S. THOMAS ENTERPRISES OF
SACRAMENTO, LLC

By: _____

Approved as to form:

Developer Counsel

AGENCY: THE REDEVELOPMENT AGENCY
OF THE CITY OF SACRAMENTO

By: _____
Ray Kerridge, City Manager
as designee for the Redevelopment
Agency

Approved as to form:

Agency Counsel

EXHIBIT 1
LEGAL DESCRIPTIONS

EXHIBIT 1A

RAILYARDS PROPERTY LEGAL DESCRIPTION

All that property located in the City of Sacramento, County of Sacramento, described as follows:

Parcels 1 and 2 in the certificate of compliance recorded January 31, 2007 in Book 20070131, Page 2410 and parcels A, B and D in the certificates of compliance recorded December 28, 2006 in Book 20061228, Pages 1680, 1681, and 1682.

EXHIBIT 1B

CITY ACQUISITION LEGAL DESCRIPTION

All that property located in the City of Sacramento, County of Sacramento, described as follows:

Parcels A and B in the certificates of compliance recorded December 28, 2006 in Book 20061228, Pages 1680 and 1681.

EXHIBIT 2
RAILYARDS PROPERTY (MAP)

EXHIBIT 3
INITIAL PHASE PROPERTY (MAP)

EXHIBIT 3

INITIAL PHASE PROPERTY (GRAY SHADED AREA)

May 06, 2008

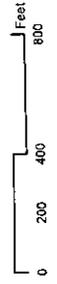
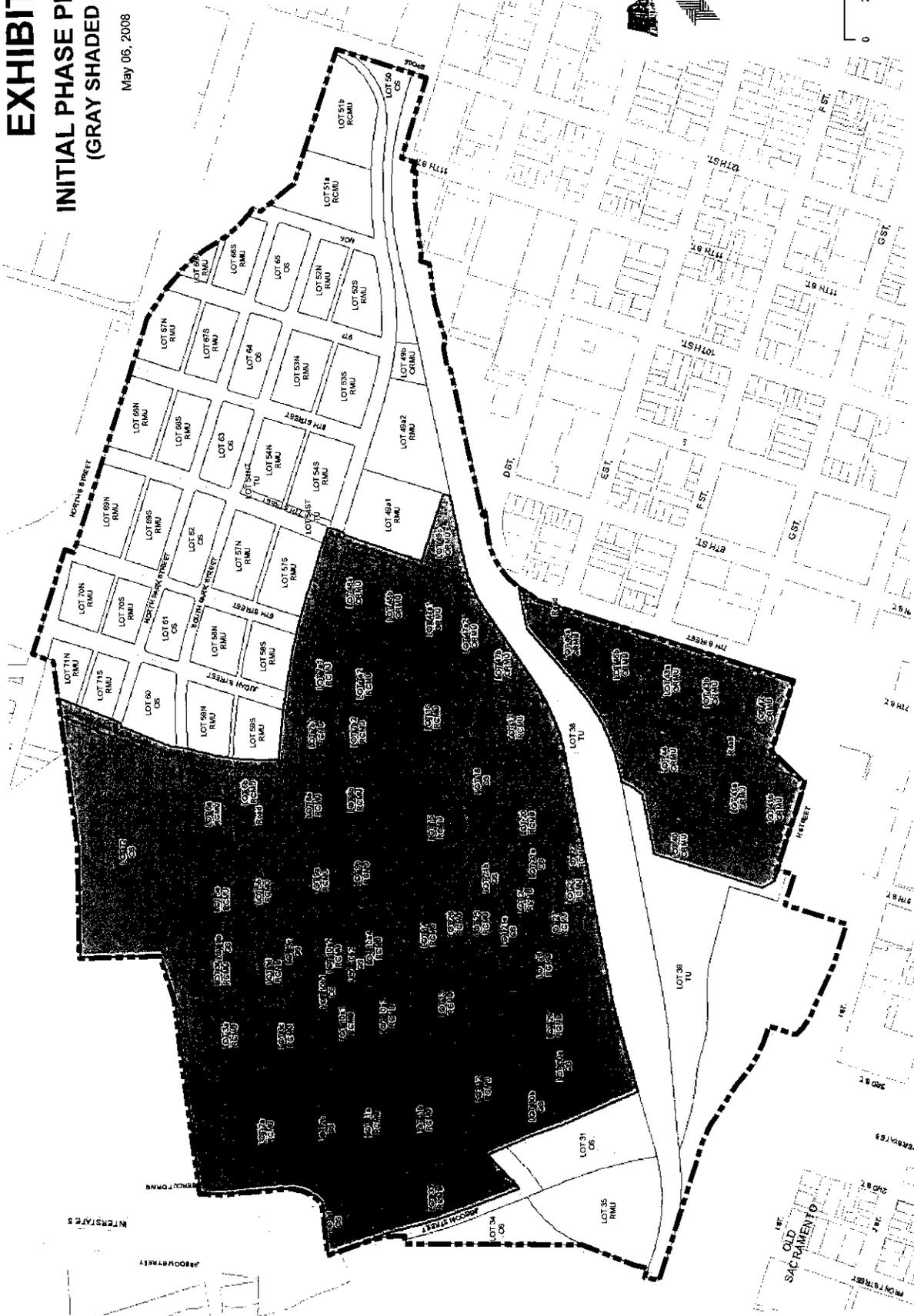


EXHIBIT 4

**QUALIFIED INFRASTRUCTURE AND
BUILDING REHABILITATION LIST**

EXHIBIT 4

QUALIFIED INFRASTRUCTURE AND BUILDING REHABILITATION LIST

1. 5th Street from H Street to Railyards Boulevard
2. Railyards Boulevard from Jibboom Street to 7th Street
3. Expansion of 7th Street from H Street to Railyards Boulevard
4. 6th Street from H Street to Railyards Boulevard
5. Wet and dry utilities to be placed within the right of way of any qualifying streets
6. The storm drainage detention facility (cistern), pump station and outfall
7. 5th and 6th Street Public Parking Garage
8. Car Shop #3 and Paint Shop Renovation
9. Market Plaza (Parcels 21a and 21b) between Car Shop #3 and the Paint Shop
10. Intermodal Tunnel Gateway Structure (Parcel 22)
11. Pedestrian Access Improvements between the 5th and 6th Street Public Parking Garage and the Intermodal Tunnel North Entrance
12. Car Machine Shop Renovation
13. Planing Mill Renovation

EXHIBIT 5
REGULATORY AGREEMENT

NO FEE DOCUMENT:

Entitled to free recording
per Government Code 6103.

When recorded, return to:

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
c/o Economic Development Department
915 I Street
Sacramento, CA 95814

**REGULATORY AGREEMENT
INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS RUNNING WITH THE LAND**

**RAILYARDS PROJECT
INITIAL PHASE**

PROJECT NAME:	
PROJECT ADDRESS:	Generally, north of the Central Business District, east of the Sacramento River and Interstate 5, south of North B Street and the Richards Boulevard area, and west of the Alkali Flat Neighborhood.

NOTICE: THIS REGULATORY AGREEMENT IMPOSES COVENANTS, CONDITIONS AND RESTRICTION ON THE PROPERTY WHICH STAY WITH THE PROPERTY FOR MANY YEARS, INCLUDING RESTRICTIONS ON THE USE AND MAINTENANCE OF THE PROPERTY.

ARTICLE I TERMS AND DEFINITIONS.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS ACKNOWLEDGED, AGENCY AND OWNER HAVE ENTERED THIS REGULATORY AGREEMENT AS OF THE EFFECTIVE DATE.

1. **GENERAL.** This Regulatory Agreement includes the Exhibits listed below, which are attached to and incorporated in this Regulatory Agreement by this reference.

2. **DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in the following definitions table and in the body of the Regulatory Agreement. (Terms being defined are indicated by quotation marks.)

TERM	DEFINITION	
"Effective Date"	This Regulatory Agreement shall be effective as of the following date:	
"Agency"	Redevelopment Agency of the City of Sacramento	
"Owner" and "Developer"	The Agency is a public body, corporate and politic. S. Thomas Enterprises of Sacramento, LLC	
"Agency Address"	Agency's business address is c/o Economic Development Department, 915 I Street, Sacramento, California 95814	
"Owner Address"	Owner's business address is as follows:	431 I Street, Suite 202, Sacramento, California 95814
"Jurisdiction"	City of Sacramento	
"Property"	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as Exhibit 1 – Legal Description of the Property.	
"Initial Phase Infrastructure OPA"	This Regulatory Agreement is subject to the Initial Phase Infrastructure Owner Participation Agreement, between Developer and Agency and executed concurrently with this Regulatory Agreement	
"Agency Funding"	The Agency Funding made by Agency to Owner under the Initial Phase Infrastructure OPA for development of the Initial Phase Property	
"Term"	The Term of each of the respective covenants, conditions and restrictions contained in this Regulatory Agreement is the term stated in the Initial Phase Infrastructure OPA, this Regulatory Agreement and in the absence of such provision, the term of the Redevelopment Plan.	
"Approved Use"	Owner shall assure that the property is used only for the Approved Uses, which are any uses consistent with the Redevelopment Plan and applicable land use regulations.	
"Disapproved Uses"	Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses, without prior written Agency approval:	
	Manufacturing; storage or manufacturing of hazardous materials; solely for a passive activity, such as a telephone switching facility; sale, distribution or lending of sexually oriented products or films except as incidental to a novelty, gift store or video rental business of general interest; and any activity constituting a nuisance.	

3. **REPRESENTATIONS.** Agency has provided good and valuable consideration, including substantial funds for the development of the Property. The funds used by Agency for the Project are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. This Regulatory Agreement represents a portion of a larger transaction, and is an inextricable part of the larger transaction. Therefore, Agency has undertaken its obligations conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement. Owner has had full opportunity to make itself independently

familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

4. **COVENANTS.** Owner makes the following covenants. Unless Owner has received the prior written consent of Agency otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Initial Phase Infrastructure OPA or subsequent Funding Agreement, or in the absence of a specified term, the term of the Redevelopment Plan..

a. Owner shall use and shall permit others to use the Property only for the Approved Uses.

b. Owner shall not use and shall not permit others to use the Property for any of the Disapproved Uses.

c. Owner shall assure full compliance with the Special Provisions, if any.

d. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible, and if restoration or replacement is not economically feasible, the Owner shall cause the property to be cleared and landscaped or placed in any of the other Approved Uses.

e. Owner shall not cause and shall not permit discrimination on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease, or rental or in the use or occupancy of the Property. Owner covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.

5. **RESTRICTION ON SALES AND LEASES.** Developer is prohibited from selling or leasing the Property unless and until the buyer or lessee has executed and the parties have recorded an acknowledgment and acceptance of this Regulatory Agreement. In any event, any and all successors in interest to the Property are subject to this Regulatory Agreement.

6. **NATURE OF COVENANTS.** The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest

extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

7. **TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue for the term of the Redevelopment Plan, as it may be amended from time to time, excepting the covenant against discrimination, as stated in Section 0 above, which shall continue in perpetuity.

8. **REPORTING AND INSPECTION.** Upon reasonable belief that any property within the Project is not in compliance with this Regulatory Agreement, Agency may make a written request for information or inspection, and Owner shall promptly thereafter provide any additional information or documentation to verify Owner's compliance with the provisions of this Regulatory Agreement and if requested shall provide the Agency or its agents the opportunity to inspect the subject property during reasonable hours solely for the purpose of reviewing Owner's compliance with this Regulatory Agreement.

9. **INDEMNITY FOR OWNER'S FAILURE TO MEET LEGAL REQUIREMENTS.** Owner shall indemnify and hold Agency, its officers, directors, and employees harmless from any and all liability arising from Owner's failure to comply with the covenants, conditions and restrictions contained in this Regulatory Agreement and its failure to comply with all other laws, rules, regulations and restrictions related to the use of any Agency funds. Without limitation, such indemnity shall include repayment to the Agency of the costs of funds and the value of lost opportunities resulting from the required repayment by Agency to the funding source of funds improperly used.

10. **CHANGES WITHOUT CONSENT OF TENANTS, LESSEES, OR OTHERS.** Only Agency and its successors and assigns, and Owner and its successors and assigns (subject to the reasonable approval of Owner's lender) shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Agreement. Such changes or termination shall not require the consent of any easement holder, licensee, other mortgagee, trustee, or beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property.

11. **DEFAULT.** Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. To the extent reasonable under the circumstance, in the event of any breach, the Agency and Owner shall reasonably endeavor to identify a remedy for such breach by conference and conciliation. If such violation is not corrected to the satisfaction of Agency within thirty (30) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Regulatory Agreement, effective on the date of such declaration of default, and upon such default the Agency may apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of

the Agreement, for money damages or for such other relief as may be appropriate. The injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

12. BINDING SUCCESSORS IN INTEREST. This Regulatory Agreement shall bind and the benefits shall inure to the Owner, its successors in interest and assigns, and to the Agency and its successors for the term of this Regulatory Agreement.

13. CONTRADICTORY AGREEMENTS. Owner warrants that he has not, and will not, execute any other agreement with provisions in contradiction or opposition to the provisions of this Regulatory Agreement, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations stated and supersede any other requirements in conflict with this Regulatory Agreement.

14. ATTORNEYS' FEES. If the services of any attorney are required by any party to secure the performance of this Regulatory Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or mediation is necessary to enforce or interpret any provision of this Regulatory Agreement or the rights and duties of any person in relation to this Regulatory Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of this Regulatory 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. The prevailing party shall mean the party receiving an award in arbitration or a judgment in its favor, unless the award or judgment is less favorable than the best settlement offered in writing in a reasonable manner by the other party, in which case the prevailing party is the party making such settlement offer.

15. SEVERABILITY. If any term or provision of this Regulatory Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Regulatory Agreement shall not be affected; provided that the intent of the Regulatory Agreement may then be reasonably fulfilled. In any event, the term or provisions shall be deemed to be invalid only as to the entity and circumstance for which it was held to be invalid.

16. NO WAIVER. No waiver by the Agency of any breach of or default under this Regulatory Agreement shall be deemed to be a waiver of any other or subsequent breach or default.

17. NOTICES. Written notices and other written communications by and between the parties shall be addressed to the Owner at the Owner Address and to the Agency at the Agency Address or such other address as each respective party has designated by written notice to the other party.

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

OWNER : S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

By:

Developer signatory
****Developer signatory title****

Approved as to form:

Developer Counsel

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

Ray Kerridge, City Manager
as designee for the Redevelopment Agency

Approved as to form:

Agency Counsel