



**Sacramento
Housing &
Redevelopment
Agency**

**REPORT TO REDEVELOPMENT AGENCY
City of Sacramento
915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org**

**Staff Report
December 2, 2008**

Honorable Chair and Members of the Redevelopment Agency

Title: Economic Stimulus/Agreement: Development of a Fresh and Easy Neighborhood Market

Location/Council District: 965 El Camino Avenue, North Sacramento Redevelopment Area (Council District 2)

Recommendation: Adopt a **Redevelopment Agency Resolution** authorizing the Executive Director or her designee to: 1) amend the Sacramento Housing and Redevelopment Agency budget to allocate \$2,250,000 of the North Sacramento Redevelopment Area's Bank of America Line of Credit to the Fresh & Easy Neighborhood Market, and 2) execute an Owner Participation Agreement (OPA), loan agreements, and related documents with Hudson Development Company, LLC for the construction of site improvements.

Contact: Lisa Bates, Deputy Executive Director, 440-1316, Christine Weichert, Assistant Director, Housing and Community Development, 440-1353

Presenter: Robert Stitt, Management Analyst

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: Since the adoption of the North Sacramento Redevelopment Area in 1992, attracting a grocery store to the neighborhood has been a high priority. As proposed, the Fresh and Easy Neighborhood Market (Project) consists of 1.8 acres of commercial land to be developed into a 15,000 square foot grocery store. Petrovich Development, who owns Hudson Development Company, LLC, purchased the property in 2004. The developer will provide the land and construct the site improvements required by the City of Sacramento prior to the construction of the Fresh & Easy Neighborhood Market.

Petrovich Development will oversee construction of site improvements required for the project. The offsite improvements include sidewalks, driveways, street lights, landscaping and wet and dry utility upgrades for the infrastructure work. The onsite construction includes, but is not limited to, electrical, water and sewer

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

connections, a six-foot sound wall, new fire hydrants, paving and parking improvements, a loading dock and lighting. The cost for these improvements is estimated to be \$2,000,000.

The tenant, Fresh & Easy, will build the store and lease the land from the developer for a minimum of 20 years. Construction of the store is estimated to be \$3,000,000. Fresh & Easy, through its preferred developer, Drake Real Estate, will provide their own construction funding. No Agency funds will be used to build the store.

The Agency is proposing a \$2 million forgivable loan for the infrastructure improvements performed by Petrovich Development. Upon completion of the improvements, the site will be shovel ready for construction of the grocery store.

Given the economics of the area and conditions of the Fresh & Easy lease, there is limited repayment ability for this project. As long as the Fresh & Easy Market, or approved community serving business, occupies the site, the loan will be forgiven incrementally for 20 years.

The total estimated cost of the Project is \$6.0 million, including the land. The developer will provide the land as equity (16%). The cost of construction for the public infrastructure and site improvements will be capped at \$2.0 million (34%). Construction cost for the store is estimated to be \$3.0 million (50%). The Developer anticipates that the construction for this Project will be completed by Winter of 2010.

Currently, there are two businesses on site which must be relocated. An independent third party relocation consultant has been retained to determine the costs of relocation and provide the necessary services to assist each business in moving to another site. Staff anticipates that the relocation costs will be \$250,000 which is included in the proposed amount requested for the project.

Policy Considerations: The recommended action will assist in the elimination of blight and is consistent with the following goals of the North Sacramento Redevelopment Plan: 1) provide jobs for the neighborhood; 2) address the lack of necessary commercial facilities that are normally found in neighborhoods, specifically grocery stores.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Sacramento Housing and Redevelopment Agency as the lead agency under the California Environmental Quality Act (CEQA) has determined that an infill exemption be approved under CEQA Guidelines Section 15332. The project is exempt as an infill project because: (1) the site is not more than five acres and is substantially surrounded by urban uses; (2) the project is consistent with the General Plan and zoning; (3) approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality; and (4) the project can be served by all required utilities and public services.

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

Sustainability Considerations: The Fresh & Easy Project will achieve the following City of Sacramento Sustainability Master Plan goals:

- Reduce dependence on the private automobile by providing a grocery store near public transit (*Urban Design, Land Use, Green Building and Transportation*);
- Replace or renovate inefficient infrastructure (*Energy Independence*).

Other: The National Environmental Policy Act (NEPA) does not apply.

Committee/Commission Action: On August 6, 2008, the *North Sacramento Redevelopment Advisory Committee (RAC)* voted in favor of the project and related actions. The votes were as follows:

AYES: Hubbs, Mulligan, Curry, Lukehart, Scott, Charland, Harlan, Mack, Veden

NOES: None

ABSENT: Adams, Armstrong, Clark

Sacramento Housing and Redevelopment Commission: At its meeting on October 15, 2008, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

AYES: Burruss, Chan, Coriano, Dean, Fowler, Gore, Morgan, Otto, Shah, Stivers

NOES: None

ABSENT: Mohr

Rationale for Recommendation: The Project is designed to achieve goals of the North Sacramento Redevelopment Plan. Additional benefits include provision of needed grocery services to residents in the area, improvement to the landscape and infrastructure, additional local revenue, and increased private sector investment within the area.

Financial Considerations: This report recommends the allocation of \$2,250,000 from the North Sacramento Redevelopment Area Bank of America Credit Line to the 965 El Camino Fresh & Easy project. The OPA obligates the Agency to issue \$2 million in the form of a forgivable loan to fund construction of the offsite and onsite improvements. Every year, over a 20 year period, that a grocery store or approved community serving business is open and performs on the site, 1/20th of the loan will be forgiven. Additionally, \$250,000 will be allocated for potential relocation assistance. The Credit Line will be repaid from future years' North Sacramento Redevelopment Tax Increment funds.

December 2, 2008

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

The developer will provide the land as equity. Fresh & Easy will lease the site from the developer and will build the store to its own specifications with approval from the City Planning Commission

M/WBE Considerations: The items discussed in this report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully Submitted by: 
LASHELLE DOZIER
Interim Executive Director

Recommendation Approved:

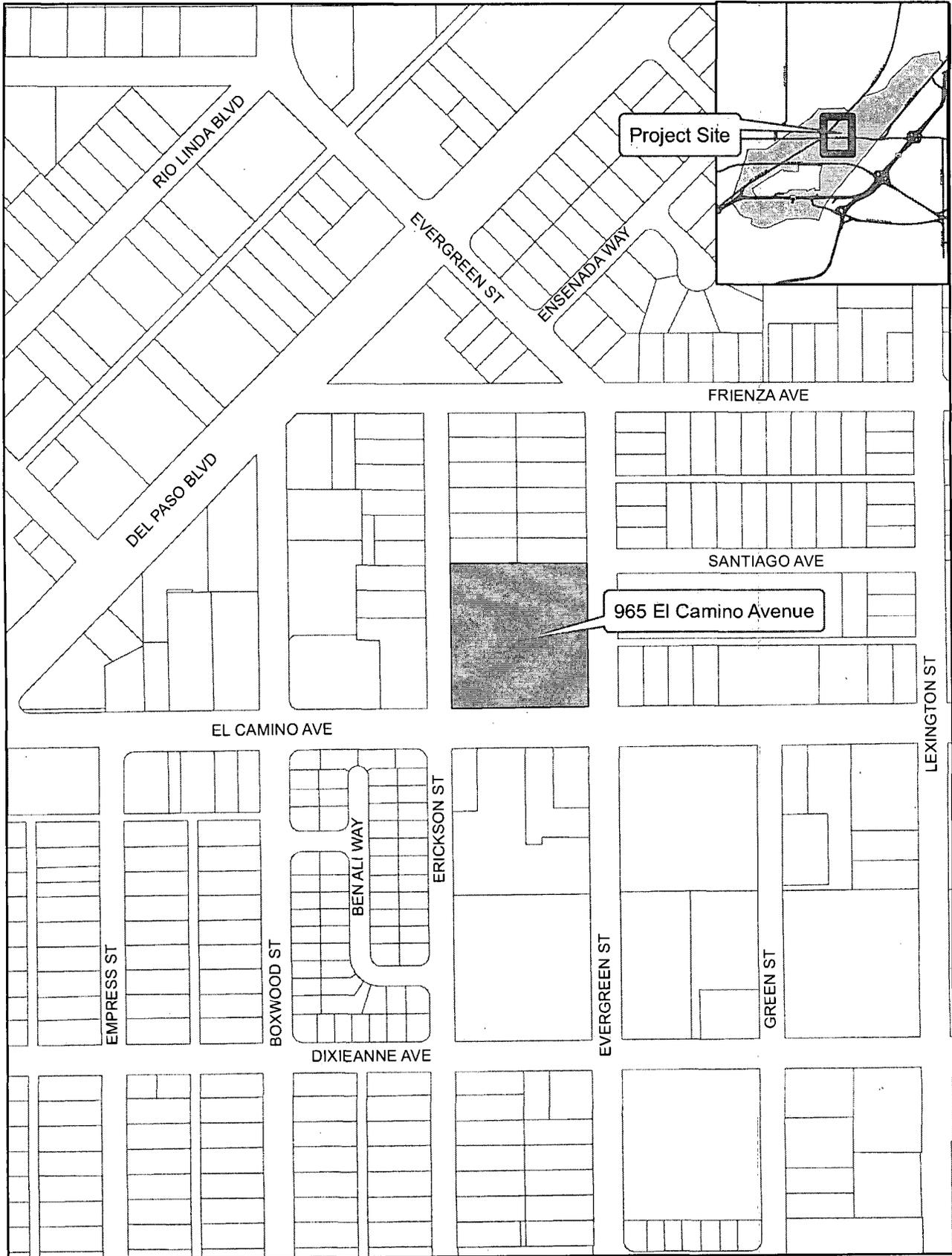

for RAY KERRIDGE
City Manager

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Fresh & Easy Grocery Store North Sacramento Redevelopment Area



Fresh & Easy Grocery Store

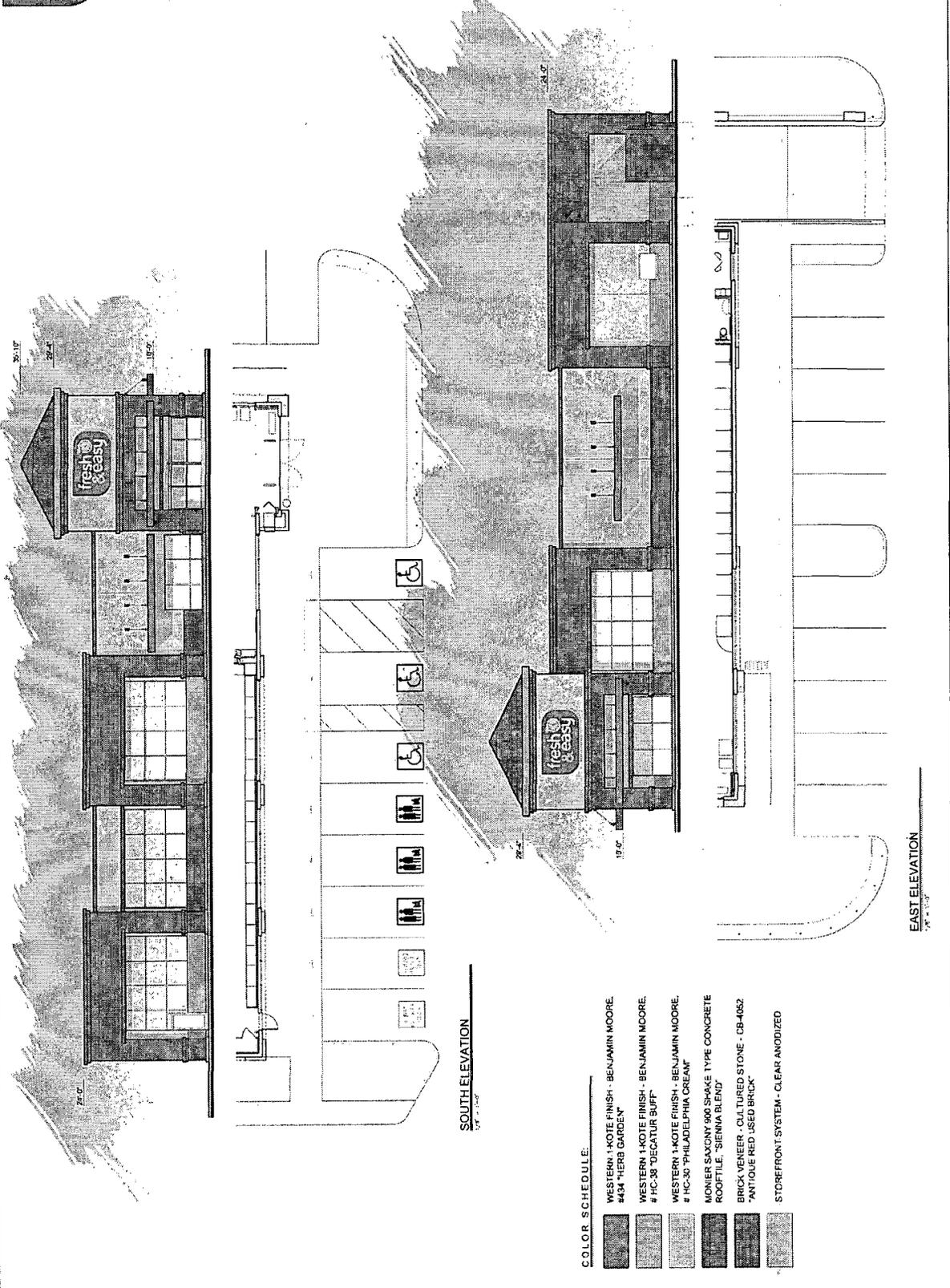
0 0.05 0.1 Miles



SHRA GIS
August 13, 2008



at
El Camino &
Evergreen
Sacramento, Ca

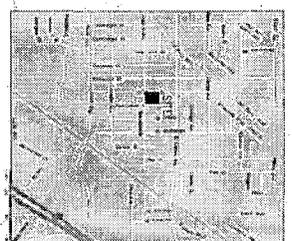
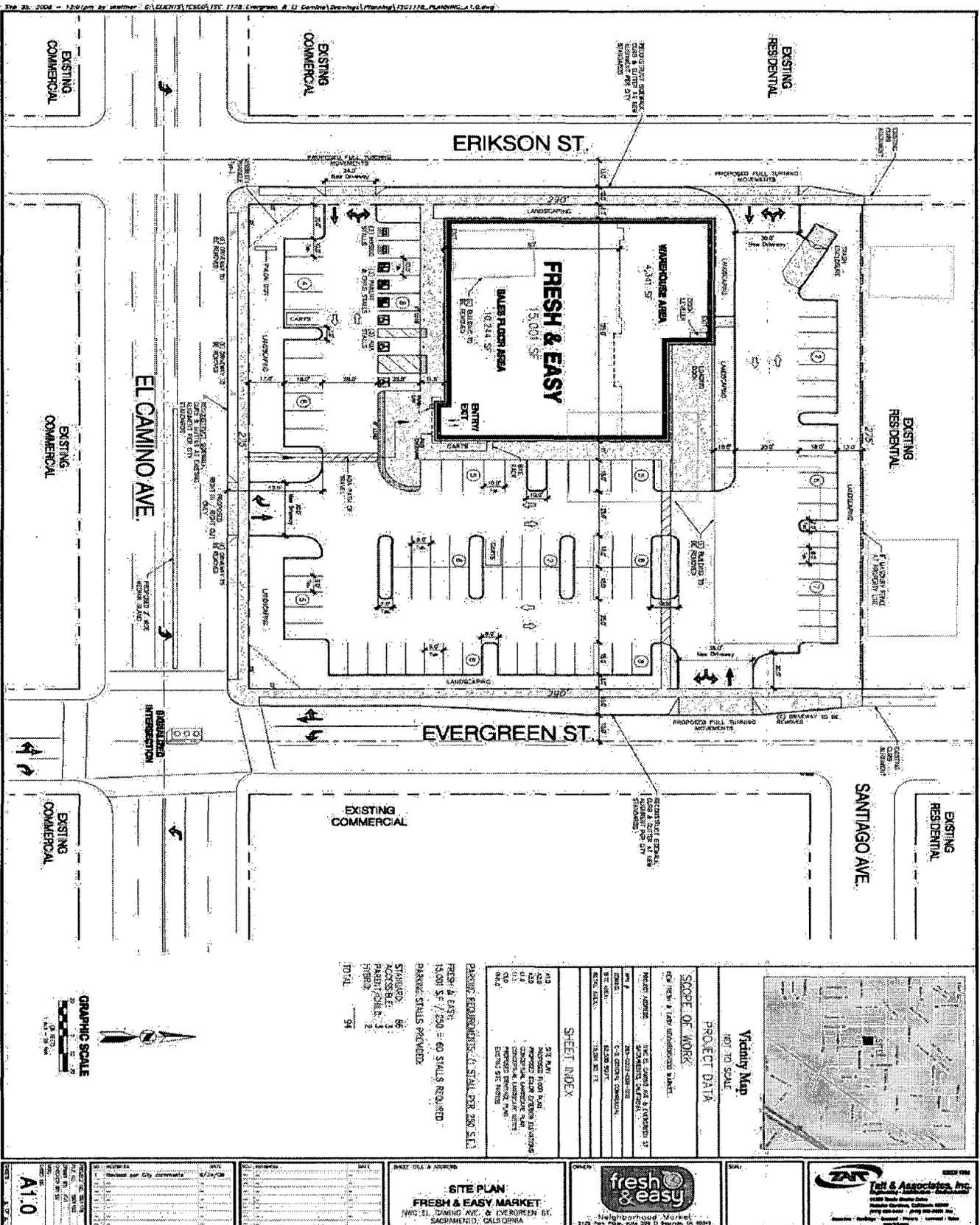


SOUTH ELEVATION
1/4" = 1'-0"

EAST ELEVATION
1/4" = 1'-0"

COLOR SCHEDULE:

- WESTERN 1-KOTE FINISH - BENJAMIN MOORE. #434 "HERB GARDEN"
- WESTERN 1-KOTE FINISH - BENJAMIN MOORE. # HC-36 "DECATUR BUFF"
- WESTERN 1-KOTE FINISH - BENJAMIN MOORE. # HC-30 "PHILADELPHIA CREAM"
- MONIER SAXONY 500 SHAKE TYPE CONCRETE ROOF TILE, SIENNA BLEND
- BRICK VENEER - CULTURED STONE - CB-4052 "ANTIQUE RED-USED BRICK"
- STOREFRONT SYSTEM - CLEAR ANODIZED



Vicinity Map
1:50' TO SCALE

SCOPE OF WORK:
NEW STORE & 100' WAREHOUSE MARKET.

PROJECT ADDRESS: 2101 EL CAMINO AVE & EVERGREEN ST
SACRAMENTO, CA 95811

DATE: 05/08/2012

SCALE: 1/8" = 1'-0"

DATE: 05/08/2012



PARKING REQUIREMENTS: 60 STALLS PER 15,000 SF SALES FLOOR AREA.
15,000 SF / 250 = 60 STALLS REQUIRED.
PARKING STALLS PROVIDED.

STAIRWAY: 06'
ACCESSIBLE: 1
PARKING: 2
TOTAL: 91

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64-66 PROPOSED INTERIOR ELEVATIONS

67-69 PROPOSED EXTERIOR ELEVATIONS

70-72 PROPOSED INTERIOR ELEVATIONS

SITE PLAN:
FRESH & EASY MARKET
2101 EL CAMINO AVE. & EVERGREEN ST.
SACRAMENTO, CALIFORNIA



SCALE:

ZAR
Zett & Associates, Inc.
11400 Rock Road, Suite 200
Sacramento, California 95828
Phone: (916) 486-1111
Fax: (916) 486-1111
www.zett.com

DATE: 05/08/2012
SCALE: 1/8" = 1'-0"
PROJECT: FRESH & EASY MARKET
SHEET: 1-3

REVISIONS:

NO.: 1
DATE: 05/08/2012
DESCRIPTION: INITIAL SET

NO.: 2
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 3
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 4
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 5
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 6
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 7
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DESCRIPTION: REVISIONS

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NO.: 11
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NO.: 12
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 13
DATE: 05/08/2012
DESCRIPTION: REVISIONS

NO.: 14
DATE: 05/08/2012
DESCRIPTION: REVISIONS

**Fresh & Easy
Project Background and Underwriting Analysis**

Site: The subject site is 965 El Camino Avenue (APN 265-0322-009) located in the North Sacramento Redevelopment Area. The parcel is bordered by Erickson Street to the west and Evergreen Street to the east. The east, west and south neighbors are commercial businesses. Contiguous to the north border of the site is a residential neighborhood. A six-foot block wall will be constructed as a sound barrier for the residential neighbors.

Project Description: The Project consists of 1.8 acres of commercial land to be developed into a 15,000 square feet grocery store, plus parking. The tenant, Fresh & Easy, will build the store and lease the land from the developer for 20 years with four five-year options. Construction costs of the store will exceed \$3,000,000. No Agency funds will be used to construct the store. The developer will provide the land and all onsite and offsite improvements as required by the City of Sacramento.

Fresh & Easy: The proposed grocery store, Fresh & Easy Neighborhood Market, is a subsidiary company of Tesco, the fourth largest retailer in the world. Gross sales for Tesco, a publicly-traded United Kingdom corporation, exceeded 46 billion pounds in 2007. Tesco plans to invest \$2 billion dollars for expansion of the Fresh & Easy stores in the United States; 67 stores have been opened since November. Overall, there will be 500 Fresh & Easy stores in Northern California. The stores provide fresh food at affordable prices. The food is packaged at a local distribution center and shipped to each store daily. Expiration dates are printed on all products. Fresh & Easy has begun targeting underserved neighborhoods where there are few, if any, supermarkets. The El Camino site has little grocery competition in the geographic area.

Entitlements: The site is zoned C-2. The City of Sacramento (City) has reviewed the site plan. The project will require a special permit due to the *Swanston Lightrail Interim Ordinance*. Entitlements should be approved in November 2008.

Development Team: Petrovich Development Company is a regional development company with over 4 million square feet of projects currently being developed. The developer has many national chains as clients; and they have completed or are currently developing 13 Rite Aid stores. The developer specializes in uniquely designed retail shopping centers that add value to the surrounding community. The most significant Sacramento development is the 'R' Street Marketplace which is anchored by Safeway. Petrovich Development typically does not sell its properties, but holds and maintains the projects.

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

Relocation: Currently, there are two businesses on site which will be relocated: a manufactured home dealer and a recreational vehicle sales company. A relocation consultant has been retained to determine the costs of relocation and the services that will need to be provided to assist each business in moving to another site. State of California relocation regulations and guidelines will be followed due to the use of redevelopment tax increment funds. Services include establishing the benefits to which each business is entitled, referrals to available business sites, assistance with securing a new site, moving and filing of claims for benefits. The relocation consultant will develop the cost estimates for the relocation to another site and coordinate the relocation procedures with Agency and the current tenants.

Sources and Uses of Funds: A summary of the development budget for the Project is included below.

Sources of Funds

Developer Equity	\$	940,896	16%
Fresh & Easy		3,000,000	50%
SHRA Loan		2,000,000	34%
Total	\$	5,940,896	

Uses of Funds

Land	\$	940,896	16%
Grocery Store		3,000,000	50%
Soft Costs		345,060	6%
Offsite Improvements		398,050	7%
Onsite improvements		1,180,599	20%
Contingency		76,291	1%
Total	\$	5,940,896	

Local Hiring: While there is no ordinance requiring local hires for this project, Fresh & Easy has a company policy of 30% in hiring local people. To date, more than half of the company's employees live within a four mile radius of each store, far exceeding its goal.

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

RESOLUTION NO. 2008 –

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

APPROVAL OF AN OWNER PARTICIPATION AGREEMENT (OPA) TO LOAN AN AMOUNT NOT TO EXCEED \$2,250,000 TO HUDSON DEVELOPMENT COMPANY, LLC FOR THE CONSTRUCTION OF OFFSITE AND ONSITE IMPROVEMENTS TO 965 EL CAMINO AVENUE

BACKGROUND

- A. Hudson Development Company, LLC (Developer) owns 965 El Camino Avenue, Sacramento (APN#:265-0322-009) and desires to construct public utilities improvements and onsite improvements on the property for purposes of development of the underutilized property.
- B. Developer approached the Redevelopment Agency of the City of Sacramento for a loan of \$2,000,000 in order to assist with the improvement of the property to encourage the development of a grocery store. There are two existing businesses on site that will be provided relocation assistance not to exceed a combined \$250,000.
- C. The Project will eliminate blighting conditions and is consistent with the North Sacramento Redevelopment Plan and Implementation Plan goals of providing employment opportunities for Project Area residents and addressing the lack of necessary commercial facilities that are normally found in neighborhoods, specifically grocery stores

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

- Section 1. All evidence presented having been duly considered, the findings, as stated above, are approved. This action is exempt from environmental review and has been approved by the Agency.
- Section 2. The Agency Budget is hereby amended to transfer \$2,250,000 from the North Sacramento Bank of America Credit Line to the Fresh & Easy Project.

December 2, 2008

Fresh & Easy Neighborhood Market at 965 El Camino Avenue

Section 3. The Executive Director, or designee, is authorized to execute the OPA and the Loan Agreement and all related documents, subject to approval as to form by Agency counsel, and to take all actions to implement the OPA.

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Exhibit A – Owner Participation Agreement

OWNER PARTICIPATION AGREEMENT
Using Funds from Project Area Tax Increment

Redevelopment Agency of the City of Sacramento

North Sacramento Redevelopment Project Area
Fresh & Easy Market Neighborhood Market
965 El Camino Avenue, Sacramento, CA

OWNER PARTICIPATION AGREEMENT
Project Area Tax Increment

Redevelopment Agency of the City of Sacramento

North Sacramento Redevelopment Project Area
Fresh & Easy Neighborhood Market
965 El Camino Avenue, Sacramento, CA

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and Hudson Development Company, LLC also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of _____, 2008. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 16.

RECITALS

Developer is the owner of real property located at 965 El Camino Avenue, Sacramento, CA, in the City of Sacramento, California (the "Property"), more particularly described in attached Exhibit 1: Legal Description, but excluding therefrom the approximate 15,000 square foot southeast corner as shown on Exhibit 2: Preliminary Site Plan, which exhibit is incorporated in the OPA by this reference. The Property is located in North Sacramento Redevelopment Project Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan. Developer has ground leased the Property to Fresh & Easy Neighborhood Market Inc., a Delaware corporation ("Fresh & Easy"), Agency hereby acknowledges receipt of a photocopy of said ground lease. Pursuant to the ground lease Fresh & Easy is responsible for constructing on-site improvements for the Property including, without limitation, the grocery store building. This OPA applies only to Developer's Work, as hereinafter defined; the on-site and tenant improvements to be constructed by Fresh & Easy are not subject to the provisions of this OPA.

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).

B. 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 and social deterioration. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: This project will provide neighborhood jobs, and will address the lack of necessary commercial facilities that are normally found in neighborhoods, specifically grocery stores.

C. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property or will cause the Property to be redeveloped in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, or to cause

the Property to be developed in accordance with the ground lease with Fresh & Easy, 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:

1. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: on-site and offsite improvements only as set forth in Exhibit 4 (“Developer’s Work”) which improvements are necessary to enable development by Fresh & Easy of a community grocery store of approximately 15,000 square feet. Excluded from the definition of the “Project” is the actual construction of the grocery store which is to be built by Fresh & Easy pursuant to the ground lease. The grocery store shall be a Fresh and Easy Store or a grocery store of an equivalent standard as determined by the Agency.

2. **AGENCY FUNDING.** Agency is providing funding to the Project under the Funding Agreement for development of the Project as described in Section 1. 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 1, as well as other obligations and restrictions, including without limitation, use restrictions, as evidenced by the Regulatory Agreement.

2.1. The Agency Funding Agreement consists of a forgivable loan in an amount not to exceed Two Million Dollars (\$2,000,000). Loan Documents shall evidence the forgivable loan for the Project, repayable over a term of twenty (20) years if not forgiven. This Loan shall be evidenced by a Note and a recorded Trust Deed.

2.2. **DEVELOPER’S POWER TO HAVE THE FORGIVABLE LOAN FORGIVEN.** Developer or its assignee shall have the sole power to have the forgivable loan in the amount of the Loan for the construction of this Project.

2.2.1. As more particularly described in the Funding Agreement, the Loan shall be forgiven in an amount of \$100,000 each year over a twenty-year period for each year that the Property is operated in compliance with the Regulatory Agreement.

3. **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.

3.1. 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.

3.2. 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.

3.3. PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS. Developer shall prepare or cause to be prepared 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 or cause to be submitted 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.

3.4. DELIVERY. Developer shall deliver or cause to be delivered 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: Fresh & Easy Neighborhood Market PROJECT PLAN REVIEW" or the equivalent.

3.4.1. 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.

3.4.2. 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.

3.5. 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.

3.6. 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.

3.6.1. 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 including, without limitation, construction of the building which is the responsibility of Fresh & Easy under the ground lease ("Fresh & Easy's Work). For purposes of this Section 3.6.1, a "material change" is a change that is material to the Agency in accomplishing its purposes under this OPA.

a) Material changes in off-site development items for the Property that are specified in the Final Plans.

b) 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.

c) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

3.6.2. 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.

4. DEVELOPMENT PROVISIONS. As stated in detail in this Section 4, Developer shall construct and manage the Project or shall cause the Project to be constructed and managed according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans for Developer's Work. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Developer's Work. 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.

4.1. 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 or is less than 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.

4.2. 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 ninety (90) days of the date of this OPA, make an initial deposit toward "plan check fees which fees are applicable to Developer's Work with the City's Planning Department. 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 reasonable decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

4.3. ART IN PUBLIC PLACES. The "Art in Public Places Program" means the "Aesthetic Improvement Policy" adopted by Agency Resolution Number 2865. The Project with its scope of work as defined in this OPA is exempt from this requirement.

4.4. 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.

4.5. 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 of Developer's Work, 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.

4.6. PREVAILING WAGES. 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.

4.7. 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.

4.8. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT. Developer for itself, its 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 Developer's Work.

4.8.1. 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.

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

4.9. **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.

4.10. **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.

4.11. **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.

4.12. **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.

4.12.1. 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.

4.12.2. 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.

4.13. CONSTRUCTION PERIOD EXTENSION FEE. If Developer does not complete the construction of the Developer's Work 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 Twenty-Five Dollars and No Cents Dollars (\$25.00) 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.

4.14. 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.

4.15. 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.

4.16. 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.

4.17. 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.

4.18. **NO WORK PRIOR TO CLOSE OF ESCROW.** Prior to Close of Escrow, Developer shall not commence or permit the commencement of 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.

5. **DEVELOPMENT FINANCING.** Developer shall be responsible for and shall pay all costs of Developer's Work for 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 for Developer's Work 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. Developer shall have the right to reallocate funds among the various line items if the actual costs vary from the budget as a result of final bidding for Developer's Work or if there are unexpected conditions. To the extent that funds specified in this OPA for the Developer's Work are insufficient to fully fund Developer's Work, Developer represents and warrants to Agency that Developer has immediately available funds sufficient to pay any costs in excess of those funds to be provided by Agency pursuant to this OPA. Additionally, any cost savings, if any, shall be the Developers to keep to offset the cost of the land and its holding costs. 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.

5.1. **INTENTIONALLY DELETED.**

5.2. **COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this OPA, Developer shall assure that the loan documents, if any, 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 materially different from those approved by Agency for the Project except in the event the monies are needed to complete the Project for unforeseen conditions or for line items that were underestimated. 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.

5.3. **INTENTIONALLY DELETED.**

6. **USE COVENANTS.** Developer shall own and manage or cause to be managed the Property in accordance with the provisions of this OPA.

6.1. 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 listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the Property and the Project. 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 and the Project. This covenant against discrimination shall continue in perpetuity. The foregoing covenants shall run with the land.

6.2. 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.

7. 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.

8. 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.

9. LIABILITY INSURANCE. With regard to this OPA, the Developer shall obtain and maintain, and require its 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.

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 TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

9.2. 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.

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 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.

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 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.

9.6. 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:

9.6.1. 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.

9.6.2. 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.

9.6.3. 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.

9.6.4. 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.

9.6.5. 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 10 with respect to such insurance shall otherwise be satisfied by such blanket policy.

10. 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, other than funds properly retained as 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

10.1. LIQUIDATED DAMAGES. IF DEVELOPER FAILS TO COMPLETE THE PROJECT AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF DEVELOPER, AGENCY MAY PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 10. DEVELOPER AND AGENCY AGREE THAT IN EVENT OF DEFAULT BY DEVELOPER: (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; AN AMOUNT EQUAL TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO AGENCY; (B) THE PAYMENT OF THE LIQUIDATED DAMAGES TO AGENCY SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF AGENCY FOR DEVELOPER'S FAILURE TO COMPLETE THE PROJECT; AND (C) PAYMENT OF THOSE SUMS TO AGENCY AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

_____ Developer's Initials
_____ Agency's Initials

11. OTHER RIGHTS AND REMEDIES. Upon the occurrence of any default by Developer subject to the liquidated damages provision, Agency's sole remedy therefore shall be as liquidated damages. Upon the occurrence of any default by any party other than subject to 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

11.1. 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.

12. 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.

13. 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.

13.1 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 **Hudson Development Company, LLC** ("OPA"). Lender requests, in accordance with Section 13.1 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]

13.2 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.

13.3 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.

13.4 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.

13.5 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 13.5 and Lender has failed to cure such default as provided in Section 13.5 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:

13.5.1 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.

13.5.2 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

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

13.5.4 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.

13.6 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 non-judicial 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.

13.7 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.

13.8 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.

13.9 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.

13.10 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 (a) acceptance by the Redevelopment Agency of the City of Sacramento (b) construction and opening of a Fresh & Easy or an approved successor tenant has been issued a temporary or final Certificate of Occupancy, and (c) the proposed transferee has executed and delivered to Agency an acknowledgment and acceptance of the regulatory Agreement suitable for recording, 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 13 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. Once (a) the Redevelopment Agency of the City of Sacramento has accepted all of Developer's Work which comprises the Project and (b) Fresh & Easy has been issued a temporary or final Certificate of Occupancy, and (c) the proposed transferee has executed and delivered to Lender an acknowledgment and acceptance of the Regulatory Agreement suitable for recording, Developer may sell and transfer its interest in and the Property with the prior consent of Lender, which shall be unreasonably withheld.

13.11 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.

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

14.1 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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.

14.7 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.

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

14.9 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.

14.10 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.

14.11 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.

15. 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:

15.1 Addresses for notices are as follows:

15.1.1 Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Robert Stitt.

15.1.2. Developer: Hudson Development Company, LLC, 5046 Sunrise Boulevard, Suite One, Fair Oaks, CA 95628; Attention: Paul S. Petrovich.

15.2 Notices may be delivered by one of the following methods:

15.2.1. 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;

15.2.2. 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;

15.2.3. 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

15.2.4. 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.

16. DEFINITIONS.

16.2. "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.

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

16.4. "Agency Funding Agreement" is the Forgivable Loan Agreement.

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

- 16.6. “CEQA” is the California Environmental Quality Act (commencing at Public Resources Code Section 21000), together with all rules and regulations promulgated under the statutes.
- 16.7. “City” is the City of Sacramento, a political subdivision of the State of California.
- 16.8. “Community Redevelopment Law” is the law governing redevelopment in the State of California and is found commencing at Health and Safety Code Section 33000.
- 16.9. “Completion Date” is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is January 31, 2010.
- 16.10. “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.
- 16.11. “Contractor” is the general contractor or contractors with whom Developer has contracted for the construction of the Project.
- 16.12. “Developer” is Hudson Development Company, LLC, a California limited liability company. 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 5046 Sunrise Boulevard, Fair Oaks, CA 95628.
- 16.13. “Escrow” is the escrow for the transactions contemplated by this OPA.
- 16.14. “Escrow Instructions” means the escrow instructions for the close of the Escrow.
- 16.15. “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.

- 16.16. “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.
- 16.17. “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**.
- 16.18. “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.
- 16.19. “Loan” is the loan or loans obtained from third parties for the construction or permanent financing, or both, of the Project.
- 16.20. “OPA” is this Owner Participation Agreement between Agency and Developer, including all documents incorporated in this OPA by reference.
- 16.21. “Preliminary Plans” are the Project designs prepared by the Project architect, Tait & Associates, Inc., 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.
- 16.22. “Plans” shall mean either or both Preliminary Plans and Final Plans as the context may indicate.
- 16.23. “Project” is all of the work to be accomplished under this OPA, sometimes referred to as “Developer’s Work”.
- 16.24. “Project Area” is the North Sacramento Redevelopment Project Area, as defined in the Redevelopment Plan.

- 16.25. “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.
- 16.26. “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 (attached hereto as **Exhibit 5 Regulatory Agreement**)
- 16.27. “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**.
- 16.28. “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**.
- 16.29. “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.
- 16.30. “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 :
HUDSON DEVELOPMENT COMPANY, LLC

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

By: _____
Paul S. Petrovich
Manager

By: _____
LaShelle Dozier, Interim Executive
Director

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

Exhibit 1 Legal Description

A portion of the East 275 feet of Lot Number Four (4) in Block Number Forty-Five (45) of North Sacramento Subdivision No. 1, as said lot and block are shown and numbered on that certain Map entitled "Plat of North Sacramento Subdivision No. 1", which said Map or Plat was filed for record in the Office of the Recorder of said County of Sacramento on the 15th day of December, 1910, into which said Map or Plat referenced is hereby made for a more particular description (excludes the approximate 15,000 square feet thereof as shown on Exhibit 2 of the OPA).

Exhibit 3: Schedule of Performances.

<u>Action Item</u>	<u>Date (No Later Than)</u>
Redevelopment Agency Approval of OPA	December 2, 2008
Design Review Approval	October 31, 2008
City Planning Commission Approval & Entitlements	January 31, 2009
Building Permits Issued	May 31, 2009
Construction Start	June 30, 2009
Completion of Developer's Work	December 31, 2009
Estimated Operational Start of Grocery Store	March 31, 2010

Note: The dated set forth above for the Estimated Operational Start of Grocery Store is subject to all of the terms and conditions of the ground lease between Developer and Fresh & Easy.

Exhibit 4: Scope of Development; Developer's Work.

The subject site is 965 El Camino Avenue (APN 265-0322-009) located in the North Sacramento Redevelopment Area. The 1.8 acre parcel is bordered by Erikson Street to the west and Evergreen Street to the east.

The developer will construct all sidewalks and landscaping on Erikson, Evergreen and El Camino; four driveways; six street lights. Developer will provide all required fire hydrants; man holes; and water, drainage and sewer improvements; traffic lights; and any necessary offsite improvements.

The developer will provide a six-foot sound wall on the north side of the property; all grading, paving and parking improvements; a loading dock; a trash enclosure; a minimum of 62 parking spaces and site lights as required for the onsite improvements.

The developer will comply with any conditions of approval that may be imposed by Design Review, Planning Commission or other regulatory bodies. Agency will review and have authority to approve future development proposed during the term of the Owner's Participation Agreement.

Exhibit 5: Regulatory Agreement

NO FEE DOCUMENT:

Entitled to free recording
 per Government Code 6103.
 When recorded, return to:
 SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY
 630 "I" Street
 Sacramento, CA 95814

**REGULATORY AGREEMENT
 FOR NON-RESIDENTIAL DEVELOPMENT
 INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS RUNNING WITH THE LAND**

PROJECT NAME:	965 El Camino Fresh & Easy Market
PROJECT ADDRESS:	965 El Camino Avenue, Sacramento, CA
APN:	265-0322-009
EFFECTIVE DATE:	

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	
	The Agency is a public body, corporate and politic.	
"Owner" and "Developer"	Hudson Development Company, LLC	
"Agency Address"	Agency's business address is 630 I Street, Sacramento, California 95814	
"Owner Address"	Owner's business address is as follows:	c/o Petrovich Development Company 5046 Sunrise Boulevard, Fair Oaks, CA 95628
"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 , but excluding therefrom the approximate 15,000 square foot southeast corner as shown on the Preliminary Site Plan which is attached as Exhibit 2 to the OPA.		
"Funding Agreement"	This Regulatory Agreement is subject to an Owner Participation Agreement, which is considered the Funding Agreement. Also Funding Agreement includes, the Forgivable Loan Agreement between Agency and Owner, dated as follows:	Dated:	
"Agency Funding"	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property		
"Agency Funding Amount"	The amount of the Agency Funding, as follows:	Amount of Funding	\$2,000,000
		Source of Funding	Project Area Tax Increment
"Funding Requirements"	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in Exhibit 2 – Funding Requirements . In consideration of the Agency Funding, the Agency has purchased the covenants, conditions and restrictions contained in the Regulatory Agreement.		
"Term"	The Term of each of the respective covenants, conditions and restrictions contained in this Regulatory Agreement is the term stated in the Funding Agreement, this Regulatory Agreement and in the absence of such provision, the term of the Redevelopment Plan.		
"Special Provisions"	None.		
"Approved Use"	Owner shall assure that the property is used only for the following Approved Uses:		
	Fresh & Easy Market Neighborhood Market or other use allowed in the Special Planning Area excluding those listed as Disapproved Uses, subject to Agency's approval after construction of the building. Agency acknowledges that pursuant to the ground lease Fresh & Easy has the right to assign and sublet, that Owner has no ability to force Fresh & Easy to build or operate, and that the failure of Fresh & Easy to do so shall not constitute a default on the part of Owner. In the event of a termination of the ground lease if Owner leases for a use that is not approved by the Redevelopment Agency of the City of Sacramento, Owner shall then commence payment of the Promissory Note in accordance with its Special Terms, payments to be prorated and commence two years after the date of the Promissory Note if Fresh & Easy has not then commenced construction of the building, or upon opening for business by a tenant whose use was not approved by Agency.		
"Disapproved Uses"	Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses:		
	Adult store/film; vet office/kennel; funeral; Video arcade/pool hall; bowling alley; music; dancing; manufacturing; hazardous materials; storage or warehousing facilities; tattoo and or piercing establishment; second-hand or thrift store; pawn shop; check cashing or paycheck advance business; passive activity (switching station); and nuisances		

3. **RECAPTURE.** If Developer fails or refuses to comply with the Regulatory Agreement, and fails to cure such breach within thirty (30) days after notice from Agency to Developer of such breach, Developer shall repay to Agency, on demand a proportionate share of the Agency Funding ("Recapture"). Said proportionate share shall be in the same ratio that the term of the Regulatory Agreement remaining (from the date of the Agency's notice) bears to the full term of the Regulatory Agreement.

4. **TERMINATION OF COVENANTS.** If the Agency is paid the Recapture, the covenants, conditions and restrictions contained in this Regulatory Agreement shall terminate, except as to covenants which provide otherwise, including without limitation, the covenant against discrimination, all of which continue in effect.

5. **REPRESENTATIONS.** Agency has provided good and valuable consideration. 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.

6. 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 Funding Requirements.

Owner shall use and shall permit others to use the Property only for the Approved Uses, and with the Redevelopment Plan for the Project Area.

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

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

c. Owner shall maintain or cause to be maintained 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 or cause to be maintained 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.

d. Owner shall not cause and shall not permit discrimination on the basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, or rental or in the use or occupancy of the 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.

e. Owner shall assure compliance with the federal Personal Responsibility and Work Opportunity Act (Public Law 104-193, commonly known as the Welfare Reform Act) prohibiting the Agency funding of federal, state or local benefits to persons who are not citizens or qualified aliens as defined in the such act.

7. RESTRICTION ON SALES AND LEASES. Agency acknowledges that Developer has ground leased the Property to Fresh & Easy Neighborhood Market Inc., a Delaware corporation ("Fresh & Easy"), and that pursuant to the ground lease Developer is not responsible for construction on the Property of a grocery store building and certain other on-site improvements. Developer is prohibited from selling or leasing the Property to any other party unless and until the buyer or lessee has executed and the parties have recorded an acknowledgment and acceptance of this Regulatory Agreement in the form attached hereto Exhibit 3: Acknowledgment and Acceptance of Regulatory Agreement. In any event, any and all successors in interest to the Property are subject to this Regulatory Agreement.

8. 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.

9. TERM. The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. In the absence of a term in the Funding Requirements, the term shall be twenty (20) years from the Effective Date.

10. RECORDKEEPING AND REPORTING. Upon written request of Agency, to the extent that such information or documentation is required by law, Owner shall promptly provide any additional information or documentation to verify Owner's compliance with the provisions of this Regulatory Agreement. At the written request of the Agency, Owner shall, within a reasonable time following receipt of such request, to the extent that such information is in the possession of or is reasonably available to Owner, furnish reports and shall give specific answers to questions regarding the income, assets, liabilities, contracts, operations, and condition of the property and their compliance with the Funding Agreement and this Regulatory Agreement.

11. AUDIT AND INSPECTION. To the extent that such information is required by law and is in the possession of or is reasonably available to Owner, the Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related items shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents during reasonable hours solely for the purpose of reviewing Owner's compliance with this Regulatory Agreement. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles.

12. 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.

13. 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. Subject to any reasonable approval that may be required by Owner's lender, if any, such changes or termination shall not require the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property.

14. 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 Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory 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.

a. Agency may institute or prosecute in its own name, any suit Agency may consider advisable in order to compel performance of any obligation of any owner to develop and maintain the subject property in conformity with this Regulatory Agreement and to remedy any default of this Regulatory Agreement. Agency may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for

uses not permitted under this Regulatory Agreement and which improvements are suitable only for uses not permitted under this Regulatory Agreement.

b. The remedies of the Agency under this Regulatory Agreement are cumulative. The exercise of one or more of such remedies, including, without limitation, remedies under the Funding Agreement shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

15. 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.

16. 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, subject to the terms and conditions of the ground lease to Fresh & Easy, 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.

17. 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.

18. 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.

19. 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.

20. 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 : HUDSON DEVELOPMENT COMPANY, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY**

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

By: _____
Paul S. Petrovich
Manager

By: _____
LaShelle Dozier, Interim Executive Director

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

[NOTARIZED ACKNOWLEDGEMENTS]

Exhibit 1: Legal Description of the Property

LEGAL DESCRIPTION

A portion of the East 275 feet of Lot Number Four (4) in Block Number Forty-Five (45) of North Sacramento Subdivision No. 1, as said lot and block are shown and numbered on that certain Map entitled "Plat of North Sacramento Subdivision No. 1", which said Map or Plat was filed for record in the Office of the Recorder of said County of Sacramento on the 15th day of December, 1910, into which said Map or Plat referenced is hereby made for a more particular description (excludes the approximate 15,000 square feet thereof as shown on Exhibit 2 of the OPA).

Exhibit 2 – Funding Requirements

**TAX INCREMENT FUNDING REQUIREMENTS
FOR NON-HOUSING FUND PROJECTS**

These “TI Funding Requirements” are incorporated in the “Regulatory Agreement” to which they are attached. In turn, the Regulatory Agreement is incorporated in the Funding Agreement referenced in the Regulatory Agreement. Pursuant to the Funding Agreement, the Regulatory Agreement (with these TI Funding Requirements) is recorded against the properties assisted with the “Agency Funding” provided under the Funding Agreement. [The capitalized terms used in these TI Funding Requirements shall have the meanings stated below. Terms being defined are indicated by quotation marks. Capitalized terms that are not defined in these TI Funding Requirements are defined in the Regulatory Agreement.]

1. RECITALS. Agency is a redevelopment agency organized and operating under the California Community Redevelopment Law (commencing at Health & Safety Code Section 33000).

a. Agency has provided the “Agency Funding” from redevelopment tax increment (as defined in the California Constitution Article XIII, Section 16, and further defined in Health & Safety Code Section 33670) for the “Project Area” named in the Regulatory Agreement and Funding Agreement. The Agency Funding is subject to the provisions of the redevelopment plan for the Project Area and the California Community Redevelopment Law.

b. The Project is being developed on the Property which is in the Redevelopment Plan for the Project Area named in the Agency Funding Agreement. Agency has approved the Agency Funding on condition that the “Property” named in the Agency Funding Agreement is rehabilitated or developed as the Project, defined in the Agency Funding Agreement and operated and maintained in accordance with the Redevelopment Plan, which regulation is accomplished by recordation of this Regulatory Agreement with these TI Funding Requirements as covenants running with the land.

2. TERM. These covenants shall burden and regulate the Property for the term of the Redevelopment Plan, but in any event, not less than twenty (20) years from the date of recordation..

3. USE. The Property shall be used solely for the Approved Uses and shall not be used for the Disapproved Uses.

4. ANTI-DISCRIMINATION. The Owner covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account 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 or any portion of it, nor shall the Owner or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall run in perpetuity.

5. PLAN COMPLIANCE. Owner shall comply, in all respects, with the Redevelopment Plan.

Exhibit 3: Acknowledgment and Acceptance of Regulatory Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Redevelopment Agency of Sacramento
630 I Street,
Sacramento, CA 95814

ACKNOWLEDGMENT AND ACCEPTANCE OF REGULATORY AGREEMENT

This Acknowledgment and Acceptance of Regulatory Agreement (“Agreement”) is made and given this _____ day of _____, 20____, by _____.

RECITALS

- A. On or about _____, 2008, the Redevelopment Agency of the City of Sacramento, a public body, cororate and politic (“Agency”) and Hudson Development Company, LLC, a California limited liability company (“Hudson”), entered into a Regulatory Agreement for Non-Residential Development Including Covenants, Conditions and Restrictions Running With the Land (“Regulatory Agreement”) with respect to that certain real property described in Exhibit A (the “Property”), attached hereto and incorporated by this reference.
- B. At the time of entering into the Regulatory Agreement the Property was subject to a ground lease as entered into by and between Hudson, as Landlord, and Fresh & Easy Neighborhood Stores, Inc., a Delaware corporation (“Fresh & Easy”), as Tenant.
- C.. The Regulatory Agreement requires that any successor of Hudson, as Landlord, and any successor of Fresh & Easy, as Tenant, shall enter into and record an acknowledgment and acceptance of the Regulatory Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals which are deemed to be true and correct and incorporated in this Acknowledgment, and the mutual covenants and conditions contained herein, and intending to be legally bound, the parties agree as follows:

1. Acknowledgment and Acceptance. _____ (“Successor”), as successor in interest to Hudson/Fresh & Easy] does hereby acknowledge and accepts the terms and conditions of the Regulatory Agreement and agrees to be bound thereby.
2. Severability. If any term of this Acknowledgment or the application of such term to a person or circumstance, shall to any extent be declared invalid or unenforceable, the remainder of this Acknowledgment, or the application of such term, to a person or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each term of this Acknowledgment shall remain valid and enforceable to the fullest extent permitted by law.
3. Binding on Successors. This Acknowledgment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal and personal representatives, successors and assigns.
4. Attorneys Fees. In the event a dispute arises concerning the performance of the obligations hereunder or the meaning or interpretation of any provision of this Acknowledgment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the prevailing party in establishing its rights

hereunder including, without limitation, court costs and reasonable attorneys' fees. The venue for any legal action shall in Sacramento County, California.

5. Governing Law. This Assignment shall be governed by the laws of the State of California.

6. Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid; by personal delivery; by facsimile, or by private overnight courier service to the address or facsimile number set forth below for the respective party, provided that if any party gives notice of a change of name or address or number, notices to that party shall thereafter be given as instructed in such notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice or demand is being given. Notices shall be addressed Agency at 630 I Street, Sacramento, California 95814, and notices to _____ shall be addressed to _____

IN WITNESS WHEREOF, this Acknowledgment has been executed the day and date first above written.

SUCCESSOR:

Name of Entity

By: _____

(Attach Notary Acknowledgment)