



**Sacramento
Housing &
Redevelopment
Agency**

**REPORT TO COUNCIL,
REDEVELOPMENT AGENCY AND
SACRAMENTO CITY FINANCING
AUTHORITY**

City of Sacramento
915 I Street, Sacramento, CA 95814-2671
www.CityofSacramento.org

Public Hearing
August 11, 2009

**Honorable Mayor and Members of the City Council
Chair and Members of the Redevelopment Agency
Chair and Members of the Sacramento City Financing Authority**

Title: Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Location/Council District: 729 L Street; Council District 1; Merged Downtown Sacramento Redevelopment Project Area

Recommendation: Conduct a public hearing pursuant to Health and Safety Codes § 33433 and 33431 and Section 147(f) of the Internal Revenue Code of 1986, as amended (Code) and upon conclusion adopt: **1) a City Council Resolution** a) indicating that, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the deemed reissuance for federal tax purposes of a portion of the Sacramento City Financing Authority (Authority) 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) in an amount not to exceed \$10,000,000 allocable to the Hotel Berry project (Allocable Bonds), and has approved the deemed reissuance for federal tax purposes of the Allocable Bonds by the Authority; and b) indicating that the City Council has conducted a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing for the proposed financing of the Hotel Berry 2009 Project; and **2) a City Council Resolution** a) approving the 33433 Report; and b) approving the disposition of the property; and **3) a Redevelopment Agency Resolution** a) approving the Hotel Berry Financing Plan (Financing Plan); b) approving the disposition of the property and development project interests and authorizing the Executive Director, or her designee, to execute the Disposition and Development Agreement (DDA) and related documents between the Redevelopment Agency (Agency) and 729 L Street Limited Partnership (Developer); c) approving the funding commitment letter and funding agreements consistent with the Financing Plan; d) authorizing an Agency Budget amendment to allocate \$1,574,000 of Downtown Tax Increment Housing Set-Aside funds to the Hotel Berry 2009 Project; e) approving the deemed reissuance for federal tax purposes of the Allocable Bonds as "Qualified 501(c)(3) Bonds" under the Code.; f) authorizing the Executive Director, or her designee, to execute a funding commitment and funding agreements and related documents pursuant to the proposed Financing Plan; and **4) a Sacramento City Financing Authority Resolution** a) authorizing the deemed reissuance for federal tax purposes of the Allocable Bonds in an aggregate principal amount not to exceed

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

\$10,000,000; and b) authorizing the officers of the Authority to take certain actions in connection therewith.

Contact: Lisa Bates, Deputy Executive Director, 916-440-1316; Christine Weichert, Assistant Director, 916-440-1353.

Presenters: Jeree Glasser-Hedrick, Housing Finance Program Manager; Katherine Klein McFadden, Management Analyst.

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: The Hotel Berry, located at 729 L Street, is currently a 110-unit Single Room Occupancy (SRO) residential hotel built in 1929. A Location Map of the property is included as Attachment 1. The City Redevelopment Agency (Agency) purchased the Hotel Berry in March 2009 after the project's rehabilitation could not proceed as planned due to the collapse in the affordable housing tax credit market. The Agency plan was to temporarily close the hotel upon completion of tenant relocation and hold the property until market recovery. Subsequently, Federal stimulus funds were made available to the State's Tax Credit Allocation Committee (TCAC) to aid in the development of affordable housing. Stimulus funds are a one-time opportunity for the Hotel Berry project to proceed earlier than envisioned. Absent approval of the outlined recommendations, this project will likely remain vacant for several years with increased renovation costs once developed.

In June 2009, City Council approved submission of a tax credit application by Norwood Avenue Housing Corporation (NAHC), an Agency affiliate, and an Agency solicitation for a development partner through a Request for Qualifications (RFQ) process. The Hotel Berry RFQ was issued on June 4th and the tax credit application was submitted on June 9th. A project Site Map and additional Background are provided in Attachment 2 and 3.

RFQ Developer Selection

The Agency received five RFQ submittals from qualified nonprofit developers. The five member selection committee included representatives from: City Economic Development, Department of Health and Human Services, Downtown Sacramento Partnership, Sacramento Housing and Redevelopment Commission, and the Agency. On July 1st the selection committee chose a developer for the Hotel Berry site who subsequently withdrew their participation in the project on August 4th. NAHC will act as the developer and general partner for purposes of the tax credit application. Staff will identify a new development partner from the remaining qualified RFQ applicants.

Agency Disposition and Financing Plan

This year's TCAC funding round is expected to be highly competitive due to the affordable housing stimulus funding and the fact there is only one application

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

cycle. The TCAC application requires all funding commitments be in place no later than August 17, 2009.

This report requests the approval of a Disposition and Development Agreement (DDA) and Financing Plan for the Hotel Berry project. The DDA identifies terms of the Agency's disposition of the land, building, and development project interests to the developer. A copy of the DDA is included as Attachment 11-Exhibit A. The Financing Plan outlines the strategic structure, the terms of previously committed funding, and proposed new funding to maximize Agency investment and leverage public funding for tax credit competitive purposes.

The Financing Plan recommends approval of the funding for the disposition of the property and operating assistance from \$8,089,050 of previously committed Agency funds for acquisition and development project interest; \$324,000 of new Downtown Tax Increment Housing Set-Aside funds (Downtown TI) for rehabilitation; \$450,000 of Mental Health Services Act funds and \$1,250,000 of Downtown TI for a capitalized operating reserve. The Financing Plan and associated DDA are contingent on the receipt of a tax credit award in September 2009. The Financing Plan and a Project Summary are included as Attachment 4 and 5.

Due to the decline in the market and lower rents, the project requires additional capital and operating assistance for financial feasibility. The amount of new Agency funding proposed is \$1,574,000. A cash flow proforma is included as Attachment 6, a schedule of maximum rents and income levels is included as Attachment 7, and a funding commitment letter is included as Attachment 8.

Policy Considerations: The recommended action would implement Agency and City policy goals related to preservation of Single Room Occupancy (SRO) and residential hotel units. Sacramento City Code requires that the City maintain an inventory of not less than 712 residential hotel or comparable units. The Hotel Berry is the second largest of the remaining downtown residential hotels and one of ten properties that comprise the City's SRO inventory. The 2005 JKL Corridor Action plan identified the importance to take action and preserve SRO units. An additional policy consideration relates to Agency's 9% Low Income Housing Tax Credit Prioritization Policy. Pursuant to the Agency's prioritization policy, Hotel Berry is a high priority for the Agency as an acquisition/rehabilitation project which will safeguard the City of Sacramento's SRO inventory.

Environmental Considerations:

California Environmental Quality Act (CEQA): The proposed rehabilitation project is exempt from California Environmental Quality Act (CEQA) review per Guidelines Section 15301.

Sustainability Considerations: The Project has been reviewed for consistency with the goals, policies and targets of the Sustainability Master Plan and the 2030 General Plan. If approved, the project will

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

advance the following goals, policies and targets: (1) Goal number one – Energy Independence, specifically by reducing the use of fossil fuels, improving energy efficiency, and providing long term affordable and reliable energy, (2) Goal number three – Air Quality, specifically by reducing the number of commute trips by single occupancy vehicles and reducing vehicle miles traveled, and (3) Goal number six – Urban Design, Land Use, Green Building, and Transportation specifically by reducing dependence on the private automobile by providing efficient and accessible public transit and transit-supportive land uses, and reducing long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy City.

Other: Environmental review pursuant to the National Environmental Policy Act (NEPA) is currently underway.

Committee/Commission Action: The Sacramento Housing and Redevelopment Commission will consider the staff recommendation for this item at its meeting of August 5, 2009. Staff will notify the Council of the Commission's recommendation.

Rationale for Recommendation: The proposed actions in this report are structured to leverage previously committed and new Agency funds to minimize the amount of additional Agency funding necessary for the Hotel Berry project to receive a tax credit award. The proposed use of previously committed Agency funds is consistent with funding already spent which restricts the property's use for long-term affordable housing.

Approval of the recommended actions and receipt of a TCAC allocation which includes the opportunity for one-time stimulus funding will bring to fruition the vision to transform the current dilapidated hotel into high quality, safe, supportive, and affordable SRO housing for downtown residents.

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Financial Considerations: Staff recommends approval of a Hotel Berry Financing Plan which includes approving the disposition of the property and development project interests for \$8,089,050 to be financed through previously committed funding including \$4,106,614 of loans and a \$3,982,436 grant; reprogramming of \$450,000 from the MHSA Building Hope fund to the Hotel Berry Project 2009; and an Agency Budget amendment to allocate an additional \$1,574,000 of Downtown Tax Increment Housing Set-Aside funds to the Hotel Berry 2009 Project. The Hotel Berry DDA and Financing Plan are contingent upon an award of tax credits by the TCAC.

M/WBE Considerations: Minority and Women's Business Enterprise requirements will be applied to all activities to the extent required by federal funding.

Respectfully Submitted by: 
LA SHELLE DOZIER
Executive Director

Recommendation Approved:

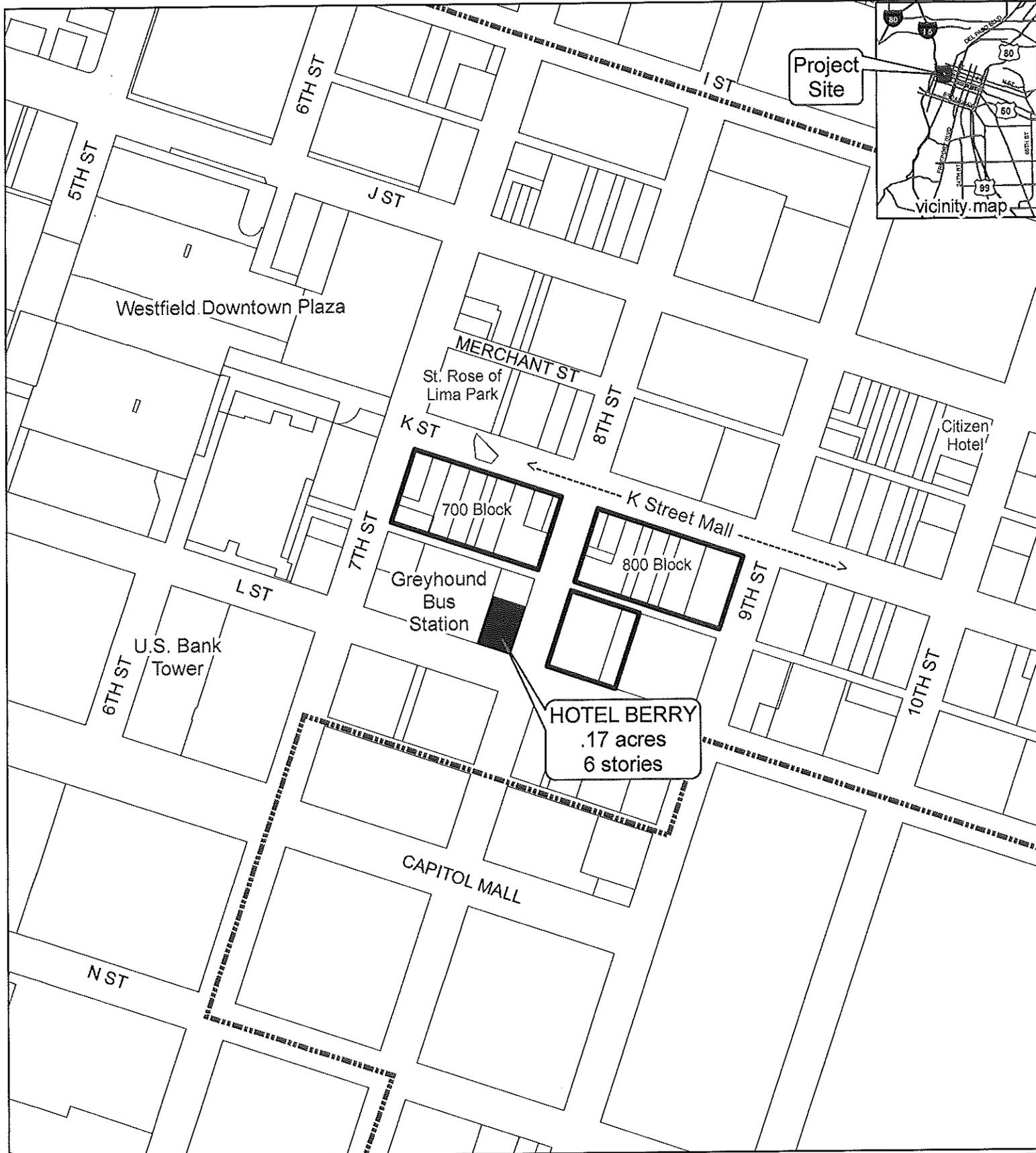

RAY KERRIDGE
City Manager

Attachments

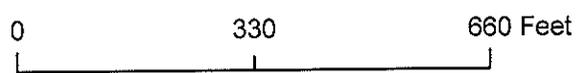
1	Location Map	pg. 6
2	Site Map	pg. 7
3	Background	pg. 8
4	Financing Plan	pg. 11
5	Project Summary	pg. 15
6	Cash Flow Proforma	pg. 16
7	Schedule of Maximum Rents and Incomes	pg. 17
8	Funding Commitment Letter	pg. 18
9	City Council Resolution	pg. 26
10	City Council Resolution	pg. 28
11	Redevelopment Agency Resolution	pg. 29
	Exhibit A – Disposition and Development Agreement	pg. 33
	Exhibit B - Financing Plan	pg. 72
	Exhibit C - Report under Health and Safety Code Section 33433	pg. 76
12	Sacramento City Financing Authority Resolution	pg. 78



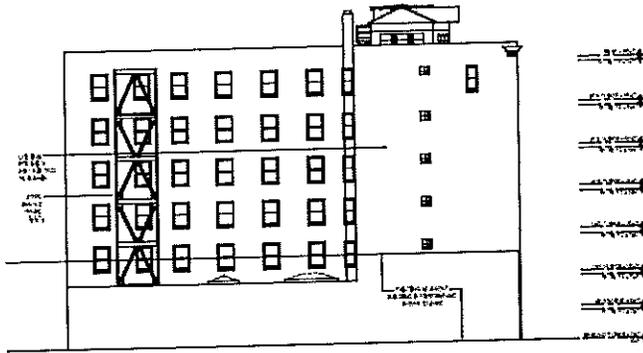
Hotel Berry Merged Downtown Redevelopment Project Area



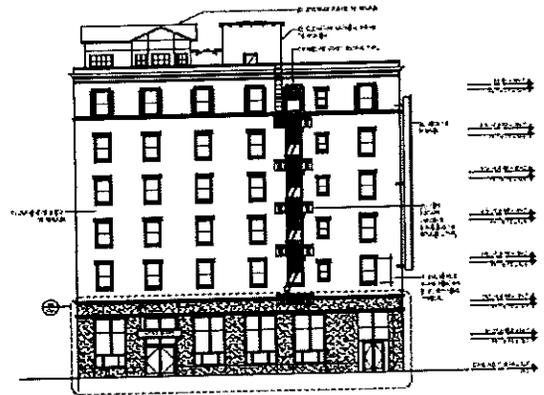
- Downtown Redevelopment Area
- 729 L St - Hotel Berry
- Agency Owned



Hotel Berry Site Map

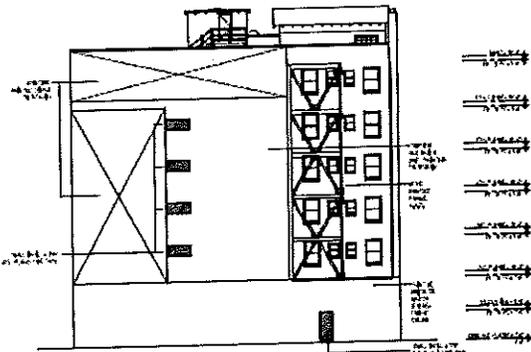


4 Site Elevation

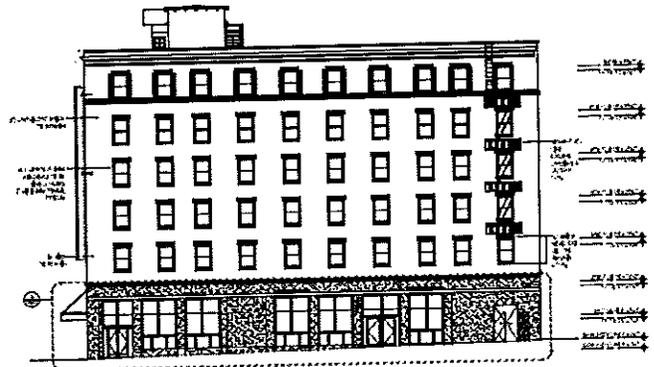


3 1st Street Elevation

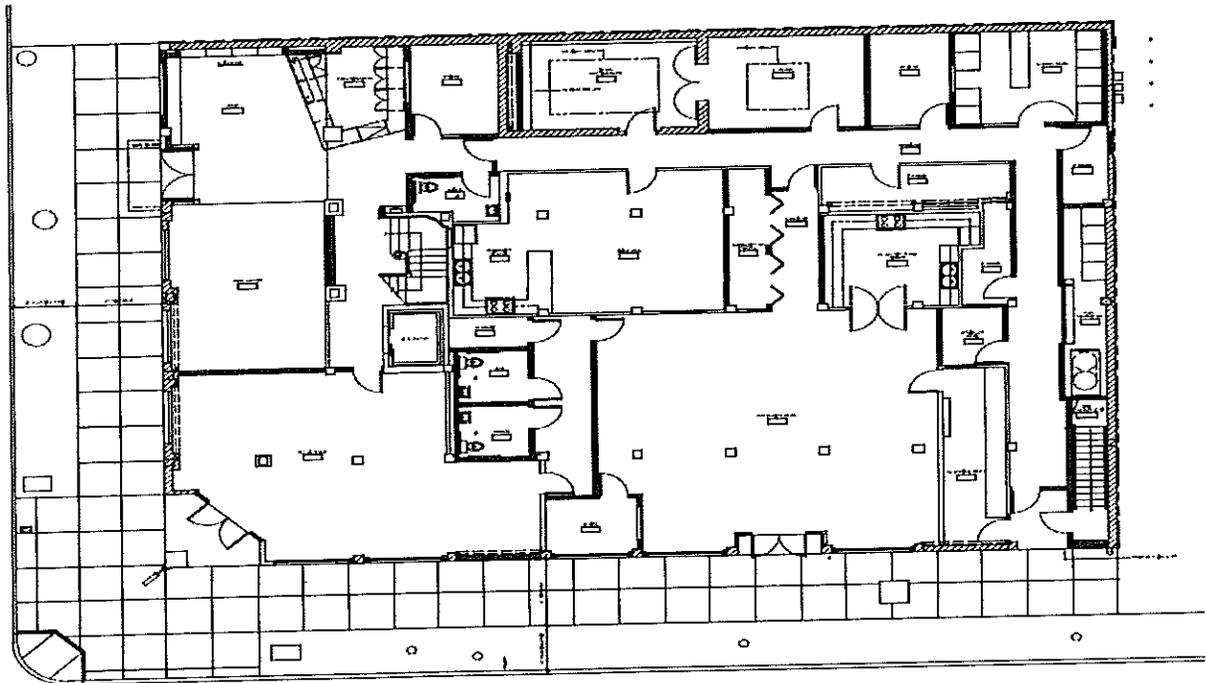
NOTES:
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



2 Site Elevation



1 2nd Street Elevation



1 Ground Floor Plan

Background Information – Hotel Berry

Background

The Hotel Berry, located at 729 L Street, was constructed in 1929 and has been operated as a residential hotel for low-income tenants. The property is a six-story, mixed-use building currently consisting of 110 Single Room Occupancy (SRO) residential hotel units. It was the first project to come forward under the \$15 million Single Room Occupancy (SRO) Replacement and Preservation Strategy approved by City Council in 2006. The SRO Strategy included the adoption of a City ordinance that included a "No Net Loss" policy of retaining 712 SRO units which the Hotel Berry is included.

In 2007, the Agency approved \$6.1 million in financing to The Trinity Housing Foundation for property acquisition. The property was purchased by Trinity in December 2007, received a tax credit allocation in 2008 but did not proceed due to the market collapse. In March 2009, the Agency acquired the property and approved a \$2.3 million budget to permanently relocate residential tenants, stabilize and hold the property.

In June 2009, the Agency approved the submission of a nine percent tax credit application by the Norwood Avenue Housing Corporation to the Tax Credit Allocation Committee (TCAC) to take advantage of one-time affordable housing stimulus funds being allocated by the TCAC.

Description of Development

The proposed project consists of property acquisition and rehabilitation of 104 SRO units. A limited partnership has been formed which has applied for LIHTC in order to undertake the substantial renovation of the property. The proposed rehabilitation scope of work is based on a third party assessment of the Hotel Berry's capital improvement needs for enhanced building performance and reduced operating costs over the long-term. Proposed architectural modifications are meant to improve space programming and building mobility in a functional and cost effective manner.

Key building improvement principles include:

- Upgrade health and life safety systems
- Improve compliance with Uniform and California Building Codes
- Improve physical mobility and 'accessibility' for disabled persons
- Improve building systems to promote long-term operations and reduce cost

For reuse as supportive housing, the ground floor will be reconfigured to provide enhanced common area space for housing staff and residents. A corner retail store will remain. A new exit stair providing direct access to the street, trash chute and compactor, and new electrical meter and building service will reorganize the north end of the ground floor. The proposed ground floor reconfiguration will also include a larger

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

lobby and resident lounge space, new offices, reception desk and security vestibule, library/meeting room, TV lounge; and conversion of the existing restaurant space into community space which will include a resident community kitchen with dining area and a community room with a small kitchen and office. Unit interior upgrades will include the addition a full bathroom, kitchenette and new fixtures and finishes. The renovation plans contain sustainable green building features such as energy efficient HVAC, lighting and appliances, new dual paned windows, low flow toilets and showers, green flooring and the recycling of construction waste material.

Ownership/Developer Structure

The ownership structure of the Hotel Berry is a limited partnership, the 729 L Street Limited Partnership, formed especially for this Project. The managing general partner will be Norwood Avenue Housing Corporation (NAHC) who will oversee the development and management of the project. NAHC is an affiliated 501(c)(3) nonprofit public benefit corporation of the Sacramento Housing and Redevelopment Agency (SHRA). NAHC has acted as the developer and general partner of the Norwood Avenue Family Apartments, Phoenix Park I, and Phoenix Park II all of which are Low Income Housing Tax Credit projects. NAHC will act as the developer and general partner for purposes of the tax credit application.

Property Management

This project will be professionally managed by the John Stewart Company, who has been managing the Hotel Berry since 2007. Comprehensive housing management is the foundation of the John Stewart Company's diversified housing services goal to provide secure, service oriented, well-maintained and professionally managed housing that serves the interests of residents and owners alike. The John Stewart Company is the largest private manager of supportive housing and "special needs" housing in California. These properties provide both affordable housing and specialized supportive services to a wide range of target populations. They are experienced with the requirements of the many federal and state housing program and occupancy guidelines, such as the Low Income Housing Tax Credit program, assures full compliance with Regulatory Agreements and Fair Housing requirements.

Supportive Services Plan

Supportive Services will be provided by Transitional Living and Community Support (TLCS). Tenants will access TLCS services through a full-time, Resident Services Coordinator (Coordinator) who will be responsible for assessing the needs and monitoring the progress of all tenants in need of mental health and social services. Although participation in these programs will be voluntary and free, the on-site Coordinator will implement a proactive tenant engagement and outreach program to encourage tenants to participate in TLCS service programs. The Resident Services Coordinator will be funded from the operations of the property, but will be an employee of TLCS.

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Transitional Living and Community Support, Inc. (TLCS) has been providing support services and housing in Sacramento for 25 years. Its mission is to promote independent and successful community living for people with psychiatric and other disabilities. Since 2001, TLCS has operated the SRO Collaborative Project, a program whose design incorporates practices implemented in several Bay-Area counties under the Health, Housing and Integrated Services Network (HHISN) model developed by the Corporation for Supportive Housing. The SRO Collaborative is designed to support Sacramento residents living at selected downtown SRO hotels through the delivery of a range of quality, accessible services.

In addition to the TLCS Resident Services Coordinator, 10 units will be set-aside for Mental Health Services Act (MHSA) residents who are at risk of chronic homelessness. MHSA clients will receive case management services from a full service provider selected by the County Department of Mental Health.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Attachment 4

HOTEL BERRY FINANCING PLAN**Purpose**

The purpose of this financing plan is to detail how the Hotel Berry project will be financed and specify the steps necessary to achieve project feasibility.

Affordability Restrictions

Under the proposed financing plan, all units excluding the one manager units will remain affordable to those earning between 30 percent Area Median Income (AMI) and 45 percent AMI. The following charts display the proposed income targeting of the project.

Income Targeting for the Project

% AMI	# of Units	% Total
30%	11	11%
35%	11	11%
40%	70	66%
45%	11	11%
Manager's Unit	1	1%
Total	104	100%

Agency Acquisition and Development Financing

Acquisition and development financing has been structured to leverage previously committed and new Agency assistance necessary for tax credit competitive purposes and to minimize additional Agency assistance.

The table below summarizes the 2009 Financing Plan sources and uses structure:

Sources	Previously Committed Agency Funds	New Agency Funds	2009 Financing Plan	Ineligible Costs	Type	Uses
2005 Downtown TE Bonds	X		\$ 2,851,574		Grant	Acquisition
2007 Loan Forgiveness	X		\$ 1,130,862		Grant	Acquisition
2005 Downtown TE Bonds	X		\$ 2,017,564		Loan	Acquisition
2005 Downtown TE Bonds	X		\$ 1,980,862		Loan	Acquisition
2005 Downtown Taxable Bonds	X		\$ 108,188		Loan	Acquisition
Total Acquisition			\$8,089,050			
2009 Downtown TI Housing Set-Aside		X	\$ 324,000		Loan	Capital
Total Capital			\$ 324,000			
2009 Downtown TI Housing Set-Aside		X	\$ 1,250,000		Grant	Operating
MHSA One-Time Funds	X		\$ 450,000		Grant	Operating
Total Operating			\$1,700,000			
2005 Downtown Taxable Bonds	X			\$341,812	N/A	Operating
Total Ineligible				\$341,812		
PROJECT TOTAL			\$10,113,050	\$341,812		

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Please note that \$341,812 of previously committed resources are not included in the sources and uses associated with the 2009 Financing Plan because the resources were spent on ineligible operating costs under the TCAC regulations.

The financing terms of the seller carry back financing provided for the acquisition of the property and grants providing operating reserve assistance to the Hotel Berry project in the 2009 Financing Plan structure is described in more detail below.

\$3,982,436 Agency grant to fund acquisition costs of the Hotel Berry, including land donation for disposition purposes. No repayment is required.

\$2,017,564 Agency seller carry back loan to fund the building acquisition cost of the Hotel Berry. This seller carry back loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$2,413,050 Agency seller carry back loan to fund acquisition and development costs. This loan consists of \$2,089,050 of previously committed Agency funds (\$1,980,862 TE Bonds and \$108,188 Taxable Bonds) and \$324,000 of new Agency assistance. The loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$1,250,000 Agency grant will capitalize an operating reserve that will fund operating deficits associated with 94 of the units for a 15 year period, starting from the project's placed in service date. The funds will be drawn down as needed each year to cover costs of the operating deficit. No repayment is required.

\$450,000 MHSAs grant will capitalize an operating reserve that will fund operating deficits associated with 10 MHSAs units in the Hotel Berry for a 20 year period, starting from the project's placed in service date. No repayment is required.

Reissuance of Bonds

The Sacramento City Financing Authority 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) (Bonds) were originally issued by the Authority as tax-exempt bonds for federal tax purposes. The Bonds were originally issued for multiple purposes, including the financing of certain costs associated with the Hotel Berry project. As described in the Financing Plan approximately \$6,850,000 of the proceeds of the Bonds has been or will be spent on costs associated with the Hotel Berry project. To maintain the tax-exempt status of the Bonds after the transfer of the Hotel Berry Project as contemplated in the Financing Plan, the portion of the Bonds allocable to the Hotel Berry project will be deemed to be reissued for federal tax purposes as "Qualified 501(c)(3) Bonds."

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Permanent Financing

The Hotel Berry project will be primarily financed using equity raised from 9% Low Income Housing Tax Credits (LIHTC), Agency funds, MHSA funds, and a deferred developer's fee. A nine percent tax credit application to the Tax Credit Allocation Committee (TCAC) was submitted on June 9, 2009. The TCAC is scheduled to announce tax credit awards in September 2009.

The chart below summarizes the permanent sources of financing for the project.

Sources	Permanent
Tax Credit Equity	\$11,865,933
TCAP ARRA Award	\$1,695,133
Long-Term Agency Loans	\$4,430,614
Agency Acquisition Grant	\$3,982,436
Agency Operating Grant	\$1,250,000
MHSA Operating Grant	\$450,000
Deferred Developer Fee	\$331,359
Total	\$24,005,475

A sources and uses summary for the project including construction and permanent financing has been compiled. Please refer to Attachment 5.

Ownership/Limited Partnership Structure

The ownership structure of the Hotel Berry is a limited partnership, the 729 L Street Limited Partnership, formed especially for this Project. It has a managing general partner and a limited partner. The role of the managing general partner is to oversee the development and management of the project.

The Partnership has been structured so that Norwood Avenue Housing Corporation (NAHC), an Agency-affiliated non-profit corporation, will act as the developer and general partner for purposes of the tax credit application.

Site Control & Property Disposition

State regulations require that a project owner must show evidence of site control when submitting a tax credit application. Currently, the Redevelopment Agency of the City of Sacramento owns the Hotel Berry. The Agency must indicate its intent to dispose its interest in the property by executing a disposition and development agreement (DDA) to transfer ownership of the land, building and all other Agency development interests in the project to the limited partnership.

The DDA specifies that the Agency will make a seller carry back loan for \$2,017,564 for the purchase of the building, a grant for \$3,982,436 for a land donation and the balance of acquisition costs, and a \$2,089,050 seller carry back loan for the Agency's development interests in the project. The DDA is contingent upon an award of nine percent tax credits. A copy of the DDA is provided in Attachment 11 - Exhibit A. Although the Agency will not retain legal ownership of the Hotel Berry, the Agency will remain involved in the project. In addition, the Agency has entered into a contract with

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

729 L Street Limited Partnership to provide administrative services related to the project to ensure its success.

Project Feasibility

The financial feasibility of this project is dependent and contingent upon receipt of an allocation of Low Income Housing 9% Tax Credits from the California Tax Credit Allocation Committee (TCAC) for the Hotel Berry. This year's TCAC funding round is expected to be highly competitive due to the affordable housing stimulus funding and the fact there is only one application cycle.

Additional Funding Opportunities

The Agency is actively seeking additional stimulus funding sources to replace internal resources as allowed by the TCAC regulations. If such outside funding is received, they will replace or augment the Agency's financing assistance as appropriate.

Summary

The proposed Hotel Berry Financing Plan is structured to leverage previously committed funds and new Agency assistance necessary to help the project achieve a tax credit award and to minimize the amount of additional Agency funding requested.

Hotel Berry Project Summary

Address	729 L Street			
Number of Units	104			
Year Built	1929			
Acreage	.17 acres			
Affordability	11 units at or below 30% of Area Median Income (AMI)			
	11 units at or below 35% of AMI			
	70 units at or below 40% of AMI			
	11 units at or below 45% of AMI			
	1 Manager's Units unrestricted			
Unit Mix and Rents	(30% AMI)	(35% AMI)	(40% AMI)	(45% AMI)
SRO Studio	11	11	70	11
Square Footage	<u>Residential</u>	<u>Community</u>	<u>Commercial</u>	<u>Total</u>
Total	28,802	2,873	830	32,505
Resident Facilities	Rehabilitation includes a ground floor reconfiguration which will include a larger lobby/lounge, new offices, reception desk/security vestibule, TV lounge, library/meeting room, laundry room; and conversion of existing restaurant space into community space which will include a resident community kitchen and dining area and a community room with a small kitchen and office.			
Estimated Sources		<u>Total</u>	<u>Per Unit</u>	<u>Per SF</u>
Tax Credit Equity	\$	13,561,066	\$ 130,395	\$ 417
Agency Seller Carry Back Grant	\$	3,982,436	\$ 38,293	\$ 123
Agency Seller Carry Back Loan	\$	2,017,564	\$ 19,400	\$ 62
Agency Seller Carry Back Loan	\$	2,089,050	\$ 20,087	\$ 64
(New Agency \$) Gap Financing Loan	\$	324,000	\$ 3,115	\$ 10
(New Agency \$) Operating Reserve Grant	\$	1,250,000	\$ 12,019	\$ 38
MHSA Operating Reserve Grant	\$	450,000	\$ 4,327	\$ 14
Deferred Developer Fee Note	\$	331,359	\$ 3,186	\$ 10
TOTAL SOURCES	\$	24,005,475	\$ 230,822	\$ 739
Estimated Uses		<u>Total</u>	<u>Per Unit</u>	<u>Per SF</u>
Acquisition		6,000,000	\$ 57,692	\$ 185
Construction		8,263,173	\$ 79,454	\$ 254
Building Permits		180,929	\$ 1,740	\$ 6
Architecture, Engineering, Survey		818,566	\$ 7,871	\$ 25
Construction Contingency		1,100,000	\$ 10,577	\$ 34
Financing Costs		1,249,466	\$ 12,014	\$ 38
Operating Reserve		1,700,000	\$ 16,346	\$ 52
Predevelopment/Operating Capital		542,988	\$ 5,221	\$ 17
Relocation		800,000	\$ 7,692	\$ 25
Developer Fee		1,972,000	\$ 18,962	\$ 61
Third Party Reports, Marketing, Other		1,378,352	\$ 13,253	\$ 42
TOTAL USES		\$ 24,005,475	\$ 230,822	\$ 739
Management / Operations	John Stewart Company			
Property Management Company:				
Operations Budget:	\$554,338			\$5,330 per unit
Replacement Reserves:	\$31,200			\$300 per unit

Hotel Berry
Cash Flow Pro Forma

Unit Type	AMI	Number Units	Approx. Sq. Feet	Total Sq. Feet	Gross Rent	Utility Allowance	Net Rent	Annual Rent					Monthly Rent				
								2011 Year 1	2012 Year 2	2013 Year 3	2014 Year 4	2015 Year 5		2020 Year 10	2023 Year 15		
SRO (MSHA)	30%	10	200	2,000	255	\$0	\$255	\$30,600	\$2,550								
SRO	30%	1	200	200	382	\$0	\$382	\$4,584	\$382								
SRO	35%	11	200	2,200	446	\$0	\$446	\$58,872	\$4,906								
SRO	40%	70	200	14,000	510	\$0	\$510	\$428,400	\$35,700								
SRO	45%	11	200	2,200	573	\$0	\$573	\$75,636	\$6,303								
SRO	Mgr Unit	1	200	200	\$0	\$0	\$0	\$0	\$0								
	Total	104		20,800			\$ 598,092	\$ 49,841									
Rental Income					\$598,092	\$613,044	\$628,370	\$644,080	\$660,182	\$746,935	\$845,088						
Other Income - Commercial					18,000	18,450	18,911	19,384	19,869	22,480	25,434						
Total Gross Potential Income					\$616,092	\$631,494	\$647,282	\$663,464	\$680,050	\$769,414	\$870,522						
Less Vacancy - Residential	10.00%				(59,809)	(61,304)	(62,837)	(64,408)	(66,018)	(74,693)	(84,509)						
Less Vacancy - Commercial	10.00%				(1,800)	(1,845)	(1,891)	(1,938)	(1,987)	(2,248)	(2,543)						
Effective Gross Income					\$554,483	\$568,345	\$582,553	\$597,117	\$612,045	\$692,473	\$783,470						
Total Income					\$554,483	\$568,345	\$582,553	\$597,117	\$612,045	\$692,473	\$783,470						
Operating Expenses					\$554,338	\$573,740	\$593,821	\$614,604	\$636,116	\$755,506	\$897,304						
Total Operating Expenses					\$554,338	\$573,740	\$593,821	\$614,604	\$636,116	\$755,506	\$897,304						
Net Operating Income					\$145	(\$5,395)	(\$11,267)	(\$17,487)	(\$24,070)	(\$63,033)	(\$113,834)						
Replacement Reserves					(\$31,200)	(\$31,200)	(\$31,200)	(\$31,200)	(\$31,200)	(\$31,200)	(\$31,200)						
NOI Adjusted for Reserves					(\$31,055)	(\$36,595)	(\$42,467)	(\$48,687)	(\$55,270)	(\$94,233)	(\$145,034)						
Debt Service and Cash Flow Fees					\$331,359	\$33,136	\$33,136	\$33,136	\$33,136	\$33,136	\$33,136						
Deferred Developer Fee					(\$64,191)	(\$69,731)	(\$75,603)	(\$81,823)	(\$88,406)	(\$127,369)	(\$145,034)						
Net Cash Flow					\$267,168	\$268,614	\$266,947	\$268,494	\$278,909	\$265,339	\$248,398						
Asset Management Fee	2.50%				(5,000)	(5,125)	(5,253)	(5,384)	(5,519)	(6,244)	(7,065)						
Partnership Management Fee	2.50%				(5,000)	(5,125)	(5,253)	(5,384)	(5,519)	(6,244)	(7,065)						
Total Net Operating Loss					(\$74,191)	(\$79,981)	(\$86,109)	(\$92,592)	(\$99,444)	(\$139,857)	(\$159,164)						
Total Draw from Capitalized Operating Reserves					\$74,191	\$79,981	\$86,109	\$92,592	\$99,444	\$139,857	\$159,164						
Total Net Cash Flow					\$0	\$0	\$0	\$0	\$0	\$0	\$0						

MAXIMUM RENT AND INCOME LEVELS 2009
(Rents @ 30%, 35%, 40%, and 45% of AMI where applicable)

Maximum Income Limits:				
Family Size	30% AMI Max Income	35% AMI Max Income	40% AMI Max Income	45% AMI Max Income
1 person	\$15,300	\$17,850	\$20,400	\$22,950
2 person	\$17,500	\$20,370	\$23,280	\$26,190
Maximum Rent Limits: 9% Low-Income Housing Tax Credit Program				
Unit Size	Gross Rent 30% AMI	Gross Rent 35% AMI	Gross Rent 40% AMI	Gross Rent 45% AMI
Studio/SRO	\$382	\$446	\$510	\$573
Maximum Rent Limits: TI Program				
Unit Size	Gross Rent 30% AMI	Gross Rent 35% AMI	Gross Rent 40% AMI	Gross Rent 45% AMI
Studio/SRO	\$382	\$446	\$510	\$573

August 5, 2009

729 L Street Limited Partnership
630 I Street 3rd Floor
Sacramento, CA 95835

RE: Conditional Funding Commitment, Hotel Berry

Dear 729 L Street Limited Partnership:

On behalf of the Sacramento Housing and Redevelopment Agency and Redevelopment Agency of the City of Sacramento ("Agency"), we are pleased to advise you of its commitment of acquisition, permanent and operating assistance to in the form of both loans and grants from the Project Area Tax Increment Funds and Mental Health Service Act (MHSA) one-time funds for the purpose of financing the acquisition and rehabilitation of that certain real property located at 729 L Street, Sacramento California ("Property"). Agency's decision is based on your application, and all representations and information supplied by you to it. If these representations and information change in a material manner without written approval of Agency, this commitment is void. Agency's obligation to make the Loan is subject to satisfaction of all the following terms and conditions and Borrower's/Grantee's execution of documentation that is in a form and in substance satisfactory to the Agency.

The loans and grant shall be made on standard Agency loan/grant documents. No loan terms not in this funding commitment and the attached loan document forms shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the loan documents, the terms stated in the commitment letter shall be deemed to be terms of this commitment.

Unless otherwise agreed in writing by the Agency in exercise of its absolute discretion, the following shall be considered conditions to Agency approval of a financing commitment. The Agency may, in exercise of its absolute discretion, modify its requirements upon written notice to Borrower/Grantee given at least sixty days prior to close of escrow for the Property.

This commitment will expire December of 2010.

1. PROJECT DESCRIPTION: The project is a 104 unit single room occupancy (SRO) residential hotel located at 729 L Street, Sacramento, CA.
2. BORROWER: The name of the Borrower is 729 L Street Limited Partnership.
3. GRANTEE: The name of the Grantee is 729 L Street Limited Partnership.
4. PURPOSE OF LOANS/GRANTS: The Loans/Grants are to be used by Borrower/Grantee solely to pay the costs of acquisition, rehabilitation, and operations or

for such other purposes as Agency expressly agrees to in the loan and grant agreements, and such other agreements as may be generally required by the Agency for the use of the funding source for the Loans/Grants.

5. PRINCIPAL AMOUNT: The Agency's Loan and Grant commitments are as follows:

- a) \$3,982,436 grant will be to fund acquisition costs of the Hotel Berry, including land donation. No repayment is required
- b) \$2,017,564 seller carry-back loan will fund the building acquisition cost of the Hotel Berry. The loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6.00% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.
- c) \$2,413,050 seller carry-back loan will fund the acquisition of project interests and development costs. It has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6.00% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.
- d) \$1,250,000 Agency grant will capitalize an operating reserve that will fund operating deficits associated with 94 of the units in the hotel for a 15 year period, starting from the project's placed in service date. The funds will be drawn down as needed each year of to fund the project's operating deficit.
- e) \$450,000 MHSA grant will capitalize an operating reserve that will fund operating deficits associated with 10 MHSA units in the Hotel Berry for a 20 year period, starting from the project's placed in service date.

6. SOURCE OF LOAN/GRANT FUNDS: Agency is making the Loans/Grants from the following sources of funds, and the loans and grant are subject to all requirements related to the use of such, whether Agency requirements or otherwise: Low-Moderate Tax Increment and Mental Health Service Act (MHSA) one-time funds . The Loans and Grants are conditioned upon Borrower's/Grantee's acceptance of Agency's requirements and conditions related to the funding sources, including among others, the required forms of agreements for the Loans/Grants; the requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements.

Borrower/Grantee acknowledges that, as a condition of the Agency's making of the Loans/Grants, the Property will be subject to restrictions on future sales and rentals which may result in less income to Borrower/Grantee than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.

_____ (Borrower/Grantee Initial)

Borrower/Grantee acknowledges that every contract for new construction or rehabilitation construction of housing that includes 12 or more units assisted with HOME funds will contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor

pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); (24 C.F.R. 92.354). Borrower/Grantee also acknowledges that any project containing a "subsidy" may be subject to state prevailing wages, which are the responsibility of the Borrower/Grantee and Borrower/Grantee's contractor.

_____ (Borrower/Grantee Initial)

7. SECURITY: The loans shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the fee and/or leasehold interest in the Property and Improvements. The loan in the amount of \$2,017,564 for building acquisition shall be a first lien and the loan in the amount of \$2,413,050 for acquisition of development project interests shall be a second lien upon the Property and Improvements subject only to Liens senior to Agency's lien and such other items as the Agency may approve in writing. The Loan shall also be secured by security agreements. The grants shall be secured by a performance deed of trust against the interest in the Property and Improvements, which shall be a third lien upon the Property and Improvements subject only to Liens senior to Agency's lien and such other items as the Agency may approve in writing. The Agency may subordinate said deed of trust in order to accommodate completion of rehabilitation of the Property.
8. LEASE AND RENTAL SCHEDULE: All leases of the Property and Improvements shall be subject to Agency's approval prior to execution. Borrower/Grantee shall not deviate from the rental schedule presented in Borrower's/Grantee's application for the Loan without Agency's prior written approval.
9. PROOF OF EQUITY: Borrower/Grantee shall provide proof of equity for the Property and Improvements in the amount of \$11,865,933 in Tax Credit Equity and \$1,695,133 of Tax Credit Assistance Program (TCAP) ARRA funds or \$13,561,066 of cash in the event that no tax credit equity investor is secured and the Project exchanges its tax credit allocation for cash under the TCAC ARRA program. Agency may consider alternative Low Income Housing Tax Credit financing as proposed by the California Tax Credit Allocation Committee (TCAC) in conformance with the American Recovery and Reinvestment Act of 2009 (ARRA), provided the terms and conditions of said alternative financing are acceptable to Agency.
10. OTHER FINANCING: Borrower/Grantee, as a requirement of the Loan, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower/Grantee has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior or subordinate to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:

Construction Financing from a private lender(s) in an amount(s) sufficient to complete rehabilitation of the Property according to a scope of work as approved by Agency and made for a term not less than that specified in the Schedule of Performances for

completion of construction, and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.

Such commitments for financing shall not require modification of Agency loan documents, or any term of this commitment letter.

Such commitments shall not be based upon sources and uses of Project funds that are different from those approved by Agency for the project or be subject to conditions which require amendment of the DDA, OPA or other agreements.

11. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan or grant proceeds, Borrower/Grantee must demonstrate evidence of adequate and assured funding to complete the development of the Project in accordance with the Agency's requirements. Borrower's/Grantee's evidence of available funds must include only one or more of the following: a) Borrower/Grantee equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its absolute discretion; and c) Agency's contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
- 12.. SOILS AND TOXIC REPORTS: Borrower/Grantee must submit to Agency a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-93) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower/Grantee must, as a condition of disbursement of Loan funds, give assurances satisfactory to the Agency that hazardous materials are not present on the Property or that any hazardous materials on the Property have been remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
13. LOAN IN BALANCE: Borrower/Grantee will be required to maintain the Loan "in balance". The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower/Grantee and the loan funds from other project lenders are sufficient, in the sole judgement of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the Loan is not "in balance", the Agency may declare the Loan to be in default.
14. PLANS AND SPECIFICATION: Final plans and specifications for the project must be in accord with the proposal approved as part of the Loan application. Final plans and specifications will be subject to Agency's final approval prior to the disbursal of Agency Loan or Grant funds. Borrower/Grantee must obtain Agency's prior written consent to any change in the approved plans and specifications or any material deviation in construction of the project.
15. ARCHITECTURAL AGREEMENT: The architectural agreement ("Agreement") for the preparation of the plans and specifications and other services shall be subject to Agency's

approval. Agency may require an assignment of Borrower/Grantee's interest in and to the Agreement as security for the Loan.

16. CONSTRUCTION CONTRACT: The construction contract ("Contract"), and any change orders issued thereunder, and the contractor ("Contractor") to be retained by Borrower/Grantee to construct the Improvements shall be subject to Agency's approval. Agency may require an assignment of Borrower/Grantee's interest in and to the Contract as security for the Loan. Agency shall require Contractor to provide a performance and payment bond in a form acceptable to Agency for the amount of the Contract.
17. RETENTION AMOUNT: The Agency shall retain ten percent (10%) as retention from each disbursement, not to exceed a total of ten percent (10%) of the total amount of grants and loans provided.
18. COST BREAKDOWN: Borrower/Grantee shall deliver to Agency for Agency's approval prior to commencement of work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Improvements, which breakdown conforms to the project plans and specification and the budget approved with this commitment. Borrower/Grantee shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements. If required by the Agency, Borrower/Grantee shall also submit copies of all bids received for each item of work to be performed as well as copies of executed contracts and subcontracts with acceptable bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to Agency's approval prior to close of the Loan. Agency also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable to Agency.

Agency shall make disbursements of the Loans/Grants based on a cost breakdown that lists line items in cost categories. Agency shall require that Borrower/Grantee provide documentation supporting all requests for disbursement of Loan/Grant funds, including proof of work done and actual expenditure. Agency shall conduct inspections of the Property to assure that the work was done before making a disbursement

19. COST SAVINGS. At completion of construction, borrower shall submit to Agency a cost certification prepared by a qualified, independent auditor acceptable to Agency, which cost, shall indicate the amounts actually spent for each item in the cost breakdown. If there is an aggregate savings in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the Agency, the Agency shall withhold one-half of such savings from the amount of retention then held by the Agency, and the Loan balance shall be reduced by the amount so withheld, provided that the tie-breaker score on the TCAC tax credit application is not negatively impacted. The proceeds the Agency receives will be reinvested to additionally capitalize the operating reserve. The Agency, in its sole discretion, shall determine any reduction and/or repayment of the Agency loan based upon this cost certification and the original approved budget for the project. Disbursements from the operating reserve will require

the Grantee provide documentation providing prior year actual, and projected next year, income and expenses for the period the reserve draw is requested.

20. START OF CONSTRUCTION: Borrower/Grantee shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than March 1, 2010.
21. COMPLETION OF CONSTRUCTION: Borrower/Grantee shall complete the construction of the Improvements no later than December 12, 2012.
22. HAZARD INSURANCE: Borrower/Grantee shall procure and maintain fire and extended coverage insurance or in lieu of such insurance, Builder's Risk completed value insurance in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower/Grantee shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).
23. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower/Grantee must procure and maintain public liability and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: (1) Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better with limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project; (2) Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; (3) Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$1,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and (4) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower/Grantee must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
24. TITLE INSURANCE: Borrower/Grantee must procure and deliver to Agency a 1970 or 1987 ALTA LP-10 Lender's Policy of Title Insurance, together with such endorsements as Agency may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of the Loan, that Agency's Deeds of Trust constitutes first, second, third and fourth lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.

25. ORGANIZATIONAL AGREEMENTS: Borrower/Grantee must submit to Agency certified copies of all of Borrower's/Grantee's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's/Grantee's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as Agency may request. If it is a corporation, Borrower/Grantee must submit a corporate borrowing resolution referencing this Loan. If Borrower/Grantee is other than a corporation, Borrower/Grantee must submit such proof of authority to enter this Loan as may be required under the organizational documents.
26. PURCHASE OF PROPERTY: Borrower/Grantee shall provide Agency with copies of all documents relating to Borrower/Grantee's purchase of the Property.
27. FINANCIAL INFORMATION: During the term of the Loan, Borrower/Grantee shall deliver to Agency within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower/Grantee. Prior to close of the Loan and during its term, Borrower/Grantee must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower/Grantee must deliver to Agency a monthly rent-roll including household composition information and operating statements with respect to the Property and Improvements, as Agency may request.
28. MANAGEMENT AGREEMENT: Prior to execution, Borrower/Grantee must submit to Agency any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to Agency Approval.
24. LOW INCOME HOUSING TAX CREDITS("LIHTC"): Borrower/Grantee represents that as a condition of closing the Loans/Grants it is applying for an allocation of LIHTCs and agrees to perform all actions and to meet all requirements to maintain the LIHTC allocation if granted. Furthermore, closing of the Loans/Grants is predicated on receipt of a tax credit allocation.
30. SECURITY AND LIGHTING: Project shall include a security camera system approved by the Agency and lighting adequate to properly illuminate all common spaces. In addition, project will include security patrol if necessary.
31. SOCIAL SERVICES PLAN: Borrower/Grantee shall provide Agency with a detailed social services plan including, but not limited to, the following information: 1) identification of all entities responsible for providing social services to Project tenants and each entity's role in the provision of those services; 2) the services will be provided for a minimum of 40 hours per week; 3) a description of the programs to be offered, and; 4) a proforma social services budget.

32. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loans/Grants, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower/Grantee must promptly deliver to Agency any further documentation that may be required by Agency.
33. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower/Grantee shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply, in all respects, with this commitment letter.
34. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
35. ARRA FUNDS REQUIREMENT. If the Project receives an award of ARRA (American Recovery and Reinvestment Act) Funds from the TCAC in connection with an allocation of 9% tax credits, the Developer will comply with all of the federal requirements associated with the use of ARRA Funds for the Hotel Berry Project.
36. ACCEPTANCE OF THIS COMMITMENT: Borrower's/Grantee's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's/Grantee's acceptance.

Yours truly,

Lisa Bates, Deputy Executive Director

The undersigned acknowledges and accepts the foregoing Commitment and its terms and conditions.

Dated:

BORROWER/GRANTEE:

By: _____
729 L Street Limited Partnership

RESOLUTION NO. 2009 - _____

Adopted by the Sacramento City Council

on date of

APPROVING THE DEEMED REISSUANCE BY THE SACRAMENTO CITY FINANCING AUTHORITY OF NOT TO EXCEED \$10,000,000 AGGREGATE PRINCIPAL AMOUNT OF ITS PREVIOUSLY ISSUED 2005 TAX ALLOCATION REVENUE BONDS, SERIES A (MERGED DOWNTOWN AND OAK PARK PROJECTS)

BACKGROUND

- A. The Sacramento City Financing Authority (the "Authority") previously issued its 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) (the "Bonds") as tax-exempt bonds under the Internal Revenue Code of 1986 (the "Code") for the purpose, among others, of making a loan (the "Loan") to the Redevelopment Agency of the City of Sacramento (the "Agency") for the financing by the Agency of certain redevelopment projects located within the Agency's Merged Downtown Redevelopment Project Area.
- B. A portion of the proceeds of the Loan has been used to make a grant to the original developer of, and to pay certain other costs associated with, a project located at 729 L Street in the City of Sacramento, California and commonly known as the Hotel Berry (the "Project").
- C. The Agency has acquired ownership of the Project from the original developer and now proposes to transfer ownership of the Project to an organization as described in Section 501(c)(3) of the Code or a partnership comprised of two or more of such organizations.
- D. In order to maintain the tax-exempt status of the Bonds under the Code following such transfer of the Project, the Authority and the Agency propose that the portion of the Bonds allocable to the Project in an aggregate principal amount not to exceed \$10,000,000 (the "Allocable Bonds") be deemed reissued by the Authority for federal tax purposes as "Qualified 501(c)(3) Bonds" under the Code.
- E. Pursuant to Section 147(f) of the Code, the Allocable Bonds will be treated for federal tax purposes as reissued by the Authority and must be approved by the City because the Project is located within the territorial limits of the City.
- F. The City Council of the City (the "City Council") is the elected legislative body of the City and is one of the applicable elected representatives required to approve the deemed reissuance of the Allocable Bonds by the Authority under Section 147(f) of the Code.

- G. The Authority and the Agency have requested that the City Council approve the deemed reissuance of the Allocable Bonds by the Authority in order to satisfy the public approval requirement of Section 147(f) of the Code.
- H. Pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the deemed reissuance of the Allocable Bonds by the Authority, and now desires to approve the deemed reissuance of the Allocable Bonds by the Authority.

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

- Section 1. The City Council hereby approves the deemed reissuance of the Allocable Bonds by the Authority. It is the purpose and intent of the City Council that this Resolution constitute approval of the Project and the reissuance of the Allocable Bonds by the Authority for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, in accordance with said Section 147(f).
- Section 2. The officers of the City, each acting alone, are hereby authorized and directed to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this Resolution and the transaction approved hereby.
- Section 3. This Resolution shall take effect from and after its passage and adoption.

RESOLUTION NO. 2009 –

Adopted by the Sacramento City Council

on date of

HOTEL BERRY: APPROVAL OF REPORT 33433 FOR THE DISPOSITION OF AGENCY-OWNED PROPERTY LOCATED AT 729 L STREET, SACRAMENTO.

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento (Agency) owns certain real property that includes one tax parcel in the Downtown Redevelopment Project Area located at 729 L Street, Sacramento. APN Number: 006-0096-012-0000 ("Property").
- B. The Agency is seeking redevelopment of the Property as a Single Room Occupancy (SRO) development that would have a mix of commercial and residential uses, with 104 residential units serving extremely-low and very-low income households.
- C. A report under Health and Safety Code Section 33433 has been prepared, filed with the Agency Clerk, and made available for public review pursuant to Section 33433.
- D. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.
- E. Approval of the disposition of the Hotel Berry Property is required under 33433.

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

- Section 1. The proposed action meets the requirements of the California Environmental Quality Act ("CEQA").
- Section 2. The Report as required under Health and Safety Code Section 33433 is hereby approved.
- Section 3. The disposition of the Hotel Berry Property is hereby approved.

RESOLUTION NO. 2009 -

Adopted by the Redevelopment Agency of the City of Sacramento

on date of

HOTEL BERRY: AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT, APPROVING THE FINANCING PLAN, AUTHORIZING THE FUNDING AGREEMENTS ASSOCIATED WITH 729 L STREET LIMITED PARTNERSHIP FOR AGENCY-OWNED PROPERTY LOCATED AT 729 L STREET, APPROVING THE DEEMED REISSUANCE OF NOT TO EXCEED \$10,000,000 AGGREGATE PRINCIPAL AMOUNT OF PREVIOUSLY ISSUED SACRAMENTO CITY FINANCING AUTHORITY 2005 TAX ALLOCATION REVENUE BONDS, SERIES A (MERGED DOWNTOWN AND OAK PARK PROJECTS) AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento ("Agency") owns certain real property that includes one tax parcel in the Downtown Redevelopment Project Area ("Project Area") located at 729 L Street, Sacramento, APN Number: 006-0096-012-0000 ("Property").
- B. The Agency is seeking redevelopment of the Property as a Single Room Occupancy ("SRO") development that would have a mix of commercial and residential uses, with 104 residential units serving very-low and extremely-low income individuals.
- C. In February 2009 the Agency authorized the Executive Director to expend \$2.3 million of Downtown Tax Increment Set-aside funds ("Downtown TI") for the acquisition and related cost of the Property. The availability of federal stimulus funds creates an opportunity to redevelop the Property. It is necessary to reallocate previously approved funding to prepare the site for development.
- D. The project has requested \$1,574,000 of Downtown TI from the Agency.
- E. Use of Downtown TI for the development of the Property will benefit the Project Area by rehabilitating an old SRO hotel that will ultimately provide quality affordable housing to downtown residents.
- F. The 729 L Street Limited Partnership has been formed for the development and ownership of the Project.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

- G. The Agency is seeking authorization to execute a Disposition and Development Agreement ("DDA") to transfer ownership of the property to the Developer with the purpose of developing the Property.
- H. The Agency is seeking authorization to dispose the property for \$8,089,050 and provide carry-back financing in the way of both grants and loans in a manner consistent with the attached financing plan.
- I. A report under Health and Safety Code Section 33433 has been prepared and is attached hereto as Exhibit A filed with the Agency Clerk, and made available for public review pursuant to Section 33433.
- J. Proper notice of this action is required and a public hearing is required to be held in accordance with Health and Safety Code Sections 33431 and 33433.
- K. The Sacramento City Financing Authority ("Authority") previously issued its 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) ("Bonds") as tax-exempt bonds under the Internal Revenue Code of 1986 ("Code") for the purpose, among others, of making a loan to the Agency for the financing by the Agency of certain redevelopment projects located within the Project Area, including the Property.
- L. In order to maintain the tax-exempt status of the Bonds under the Code following the disposition of the Property to 729 L Street Partnership, the Authority and the Agency propose that the portion of the Bonds allocable to the Property in an aggregate principal amount not to exceed \$10,000,000 ("Allocable Bonds") be deemed reissued by the Authority for federal tax purposes as "Qualified 501(c)(3) Bonds" under the Code.
- M. In order to effectuate the deemed reissuance of the Allocable Bonds it will be necessary for the Agency to execute and deliver a Supplemental Tax Certificate (the "Supplemental Tax Certificate") supplemental to that certain Tax Certificate, dated December 7, 2005, executed by the Authority and the Agency and certain other documents or certificates.

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

- Section 1. It is found and determined that the use of Downtown TI to develop the Project will benefit very-low and extremely-low income individuals and will increase or preserve the supply of affordable housing.
- Section 2. The Executive Director, or her designee, is authorized to reallocate and expend remaining Downtown TI funds, previously approved for Property acquisition and related cost, to prepare the Property for development, consistent with California Community Redevelopment Law.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

- Section 3. The Executive Director, or her designee, is authorized to enter into a Development Disposition Agreement (DDA), attached to and incorporated in this resolution by this reference, in the name of the Redevelopment Agency of the City of Sacramento to transfer ownership of the property and execute the documents related to the DDA with 729 L Street Limited Partnership, each in a form approved by Agency Counsel.
- Section 4. The Financing Plan for construction and permanent financing, attached to and incorporated in this resolution by this reference, for financing the Project in the amount of \$10,113,050 (the combination of the \$8,089,050 seller carry back financing, \$1,574,000 of new Agency funding, and \$450,000 of Mental Health Service Act (MHSA) funding) is approved, and the Executive Director, or her designee, is authorized to execute and transmit the Funding Agreements and related documents to the 729 L Street Limited Partnership.
- Section 5. The Agency budget is amended to transfer up to \$1,574,000 in Downtown TI to the Project.
- Section 6. The Agency hereby approves the deemed reissuance for federal tax purposes of the Allocable Bonds as "Qualified 501(c)(3) Bonds" under the Code.
- Section 7. The Executive Director, or her designee, is authorized to enter into and execute other documents (including, but not limited to, the Supplemental Tax Certificate) and perform other actions necessary to fulfill the intent of this resolution and the staff report and the Financing Plan that accompany this resolution, in accordance with their respective terms, and to ensure proper repayment of the Agency funds including without limitation, subordination, extensions, and restructuring of such a loan, and with the staff report that accompanies this resolution and any such actions heretofore taken by such officers are hereby ratified, confirmed and approved.
- Section 8. The Executive Director, or her designee, is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Loan Commitment, with Agency policy, with this resolution, with good legal practices for making of such a loan, and with the staff report that accompanies this resolution.
- Section 9. The Agency's disposition of the Property for construction of the Project is consistent with the Downtown Redevelopment Project Area goal to rehabilitate and preserve 104 Single Room Occupancy residential hotel units. The disposition of the Property will assist in the elimination of blight

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

as stated in the 33433 Report, attached to and incorporated in this resolution by this reference.

Section 10. The consideration for the Agency's conveyance of the Property to the 729 L Street Limited Partnership is the developer obligations under the DDA, and the fair reuse value of the Property with the covenants, conditions, restrictions required by the DDA, which fair reuses value, is approximately \$3,170,000 as established in the 33433 Report.

Section 11. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

Table of Contents

Exhibit A - Disposition and Development Agreement

Exhibit B - Financing Plan

Exhibit C - Report under Health and Safety Code Section 33433

August 11, 2009
Approval of the Hotel Berry Disposition and Development Agreement and Financing
Plan

EXHIBIT A

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

DISPOSITION AND DEVELOPMENT AGREEMENT
729 L STREET, SACRAMENTO, CA
MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

729 L STREET LIMITED PARTNERSHIP

Effective Date

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

DISPOSITION AND DEVELOPMENT AGREEMENT

729 L Street, Sacramento, CA
Merged Downtown Sacramento

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and 729 L STREET LIMITED PARTNERSHIP also called Agency and Developer, respectively, enter into this Disposition and Development Agreement, also called DDA, as of _____. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 16.

RECITALS

A. Agency is the owner of real property located at 729 L Street, Sacramento, CA in the City of Sacramento, State of California, more particularly described in the Property Description.

B. The Property is located in the Merged Downtown Sacramento Redevelopment Project Area and is subject to the redevelopment plan for the Project Area. Further, Developer acknowledges that Developer is purchasing the Property from Agency which is a Redevelopment Agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*) and that this document is governed by the Community Redevelopment Law. This DDA is consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it meets the following implementation plan goals: To improve and expand the community's supply of housing, including low- and moderate-income housing; to eliminate environmental deficiencies in the Project area, including: obsolete, aged and deteriorated building types; to preserve and/or restore, where feasible, historically or architecturally significant structures.

C. The primary purpose of this DDA is the elimination of the following blighting influences: low values and impaired investment, high vacancy rates and vacant parcels and deficient buildings. In order to accomplish such purpose, the DDA provides that the Agency will transfer the Agency's interests in the Property to Developer upon the express condition that Developer will redevelop the Property for the uses described in this DDA. This DDA is intended to assure that the Developer will redevelop the Property and that the Developer is not merely speculating in land.

D. Developer desires to purchase and develop the Property, and Agency desires to sell the Real Property, the Property Improvements and the Project Interests for development, on the terms and conditions in this DDA.

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

AGREEMENT

NOW THEREFORE, the parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and 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. **PERFORMANCE.** The parties shall perform their obligations at the times and in the manner specified in this DDA. The time for performance is stated in this DDA and in the Schedule of Performances; provided, however that such times shall be extended for periods of Unavoidable Delay.
2. **PROJECT DESCRIPTION.** Agency is entering into this DDA and conveying the Property to Developer solely for the purposes of developing the Project. The Project shall be the following: Disposition and rehabilitation of a mixed-use single room occupancy (SRO) residential hotel to provide 104 SRO units with supportive services. The scope of work consists of replacement or upgrades to the building's major systems, seismic reinforcement, renovation of all residential units, green building features and reconfiguration of the ground floor to provide new management and resident services offices, a community room and kitchen, and enlarged common area space.
3. **PURCHASE AND SALE.** Agency agrees to sell and Developer agrees to purchase the Real Property, the Property Improvements, and the Project Interests subject to the terms and conditions in this DDA. This DDA, if executed by Developer only, constitutes Developer's offer to purchase the Real Property, the Property Improvements and the Project Interests on the terms and conditions contained in this DDA and subject to the covenants, conditions and restrictions contained in the Regulatory Agreement to be executed by the Agency and Developer and recorded on the Property upon conveyance of the Real Property, the Property Improvements, and Project Interests to Developer.
4. **PURCHASE PRICE.** The Purchase Price for the Property Improvements shall be Two Million Seventeen Thousand Five Hundred Sixty-Four Dollars and No Cents (\$2,017,564.00), the Purchase Price for the Real Property shall be Three Million Nine Hundred and Eighty Two Thousand Four Hundred Thirty-Six Dollars and No Cents Dollar (\$3,982,436); and the Purchase Price for Project Interests shall be Two Million Eighty-Nine Thousand and Fifty Dollars (\$2,089,050). The Purchase Price shall be paid prior to the conveyance of the Property Improvements, Real Property and Project Interests to Developer as a condition precedent to their conveyance. Payment of acquisition price will be evidenced by execution of an Agency seller carry-back loan and grant agreement; and payment for the project interests will be evidenced by an Agency seller-carry back loan. The Hotel Berry Loan and Grant Agreements as required by the Agency are consistent with the Financing Plan.

4.1. **ESCROW.** Developer and Agency have opened, or within ten (10) days after the Effective Date, shall open, the Escrow account subject to the provisions of the Escrow Instructions. Agency and Developer shall execute and deliver the Escrow Instructions to Title Company within ten (10) days after the Effective Date.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

4.2. CONDITIONS TO AGENCY'S PERFORMANCE. Agency's obligation to perform under this DDA is subject to all of the following conditions:

4.2.1. Developer has performed all of the obligations that it is required to perform pursuant to this DDA, including without limitation, obtaining all required approvals of the Plans; obtaining building permits sufficient to commence Project construction; providing all required budgets, reports and evidence of funding and insurance; and providing required construction contracts.

4.2.2. The closing conditions as defined in the Escrow Instructions are fulfilled as of Close of Escrow.

4.2.3. Developer's representations and warranties in this DDA are true and correct as of the date of this DDA and as of the Close of Escrow.

4.2.4. The DDA is in full force and effect, no default on the part of Developer having occurred under the DDA, and no event having occurred, which, with the giving of notice or the passage of time, will constitute default by Developer under the DDA.

4.3. CONDITIONS TO DEVELOPER'S PERFORMANCE. Developer's obligation to perform under this DDA is subject to satisfaction of all of the following conditions:

4.3.1. Agency has performed all of the obligations that it is required to perform pursuant to this DDA.

4.3.2. The closing conditions as defined in the Escrow Instructions are fulfilled as of Close of Escrow.

4.3.3. Agency's representations and warranties in this DDA are true and correct as of the date of this DDA and as of the Close of Escrow.

4.3.4. The DDA is in full force and effect, no default on the part of Agency having occurred under the DDA, and no event having occurred, which, with the giving of notice or the passage of time, will constitute default by Agency under the DDA.

4.4. GENERAL COVENANTS AND REPRESENTATIONS AND WARRANTIES. The parties make the following covenants, representations and warranties regarding the Property and the Project.

4.4.1. **AGENCY'S REPRESENTATIONS AND WARRANTIES.** Agency represents and warrants to Developer that as of the date of this DDA and as of the Close of Escrow, the date for which is set forth on the Schedule of Performances, to the knowledge of Agency's legal department, its Executive Director, and its staff with responsibility for development of the Property:

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

a) Agency has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are in violation of any applicable laws regarding Hazardous Substances, or informing Agency that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property.

b) Agency has caused a Phase I environmental study to be performed for Property. Agency has provided Developer with a copy of said study and Developer agrees that as to this study, Developer acquires no rights against either the Agency or those individuals or firms who prepared the study. To the extent, if any, that Developer relies on the study, Developer does so at Developer's own risk.

c) To the best of Agency's knowledge, there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property or with respect to Agency that would affect the Property.

d) This DDA and all other documents delivered for the Close of Escrow have been duly authorized, executed, and delivered by Agency; are binding obligations of Agency; and do not violate the provisions of any agreements to which Agency is a party.

4.4.2. AGENCY'S COVENANTS. Commencing with the full execution of this DDA by both parties and until the Close of Escrow:

a) Agency shall promptly notify Developer of any facts that would cause any of the representations contained in this DDA to be untrue as of the Close of Escrow.

b) Agency shall not permit any liens, encumbrances, or easements to be placed on the Property, other than the approved exceptions named as acceptable in the Escrow Instructions or as identified and approved in this DDA.

c) Agency shall not, without Developer's written consent, enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Developer or the Property after the Close of Escrow without the prior written consent of Developer, except as otherwise agreed in this DDA.

d) Agency shall not permit any act of waste or act that would tend to diminish the value of the Property for any reason, other than ordinary wear and tear.

e) Agency shall convey the Property, including any portion of the Property being acquired by the Agency, to Developer pursuant to the terms and conditions contained in this DDA.

4.4.3. DEVELOPER'S REPRESENTATIONS AND WARRANTIES. Developer, for itself and its principals, represents and warrants to Agency that as of the date of this DDA and as of the Close of Escrow:

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

a) Developer has reviewed the condition of the Property, including without limitation, the physical condition of the Property (above and below the surface) and issues regarding land use and development of the Property, and if Developer closes Escrow for the acquisition of the Property, Developer shall be deemed to be satisfied that the Property is suitable in all respects for its intended development and uses.

b) Developer's agreement to close the Escrow for the acquisition of the Property serves as Developer's representation that Developer has obtained all additional information regarding the Property that Developer considers necessary for its due diligence in acquiring the Property.

c) To the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other legal or governmental action with respect to Developer which would affect its ability to fulfill its obligations under this DDA and acquire the Property or which may constitute a lien against Developer's equity or Developer's interests in the Property, now or in the future.

d) Any information that Developer has delivered to Agency, either directly or through Developer's agents, is, to the best of Developer's knowledge, accurate, and Developer has disclosed all material facts concerning the operation, development, or condition of the Property.

e) Developer has the financial capacity, the equity and the financing necessary to fulfill its obligations under this DDA and acquire the Property. Developer represents that any equity and funding commitments represented by Developer to Agency as available to the Project are unencumbered and that Developer has not represented to any other party that it will use such funds for any purpose other than the Project (and covenants that it will not use them for any other purpose) without prior written Agency consent.

f) This DDA and all other documents delivered for the Close of Escrow have been duly authorized, executed, and delivered by Developer; are binding obligations of Developer; and do not violate the provisions of any agreements to which Developer is a party.

4.4.4. DEVELOPER'S COVENANTS. Commencing with the full execution of this DDA by both parties and until the Close of Escrow:

a) Developer covenants by and for itself and assigns, and all persons claiming under or through it, that it shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Property and the Project.

b) Developer shall promptly notify Agency of any facts that would cause any of the representations contained in this DDA to be untrue as of the Close of Escrow.

c) Developer shall not cause any liens, encumbrances, or easements to be placed on the Property prior to Close of Escrow, except as otherwise permitted by this DDA or approved in writing by Agency.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

d) Developer shall not cause any act of waste or act that would tend to diminish the value of the Property for any reason, except that caused by ordinary wear and tear.

e) Developer shall complete the development of the Project at Developer's cost and without requesting or receiving additional Agency or City contributions to the Project other than as provided in this DDA.

f) Developer shall comply with all provisions of the Regulatory Agreement, and cause any subsequent purchaser of the property to so comply.

4.4.5. CLOSE OF ESCROW. The Escrow shall not close, and the Property shall not be conveyed to Developer unless the preceding conditions have been satisfied together with all other conditions stated in the Escrow Instructions for Close of Escrow. The Escrow shall close on or about the date shown on the Schedule of Performances.

4.5. DAMAGE, DESTRUCTION AND CONDEMNATION BEFORE CLOSE OF ESCROW. If, prior to the Close of Escrow: (a) damage occurs to any portion of the Property by earthquake, mudslide, fire, release of or exposure to any Hazardous Substances, or any other casualty (other than any damage caused by Developer or its employees, agents, Contractor or subcontractors) resulting in repairs or remediation costs that will exceed twenty percent (20%) of the Purchase Price; or (b) any portion of the Property is taken by eminent domain or otherwise, or is the subject of a threatened or pending taking action resulting in a twenty percent (20%) or more decrease in the after-taking value of the Property, Agency shall notify Developer in writing of the damage, destruction or condemnation. Developer may, within fifteen (15) days after such notice, elect to terminate this DDA by written notice to Agency.

4.5.1. If this DDA is to continue in full force and effect after any such damage or destruction, Agency shall do one of the following:

a) Agency shall pay or assign to Developer any amount due from or paid by any insurance company or any other party as a result of the damage; and the amount of any deductible under Agency's insurance policy; or

b) Agency shall pay to Developer through credit in Escrow against the cash portion of the Purchase Price for the cost of repairing or correcting such damage not covered by insurance, provided, however, that the amount of any payment of such credit against the Purchase Price pursuant to this clause shall not exceed thirty percent (30%) of the Purchase Price. If this DDA is to continue in full force and effect after such condemnation action, Agency shall pay any amounts received on account of, and assign to Developer all of Agency's rights regarding, any awards for such taking.

4.5.2. **COMMISSIONS.** Agency is not responsible, by this DDA or otherwise, to pay commissions on this transaction or any related transaction.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

5. **AGENCY FUNDING.** The Agency shall provide funding for the Project as provided in the Funding Agreements. All terms regarding Agency funding are in the Funding Agreements, including without limitation, the source and use of funds.

6. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** Pursuant to this DDA, as part of the Project Interests, Agency is conveying all of its interests in the preliminary plans and other predevelopment contracts to Developer. Hereafter, the Agency shall have the right, but not the obligation, to review Final Plans to assure their conformity with the provisions of this DDA. The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this DDA. Based upon such review the Agency shall have the right to approve or reject the Plans for reasonable cause.

6.1. **EXTENT AND CHARACTER OF PLAN REVIEW.** 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 neither a representation of nor 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 Plans; and (c) to assure that Agency's purposes are fulfilled and any Agency funds which may be obligated under this DDA are used as intended by the Agency. This DDA is a financing document and not a land use or planning document. Approval of the Project and Plans under this DDA is only an approval by Agency of the Project design "concept" as presented in this DDA. Such approval by Agency is not and shall not be considered an approval of land use entitlements, structural design of the Project, or the aesthetic design of the Project. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of its respective jurisdiction, including without limitation, departments, staff, boards and commissions of the City.

6.2. **CONCURRENT REVIEW.** Agency agrees that its review of the Final Plans shall occur before or concurrently with City's review of such plans, so as not to delay the commencement and progress of Project development.

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

6.4. **PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the construction of the Project. Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to this DDA, including without limitation, Plans and the Scope of Development. To the extent that the DDA has insufficient detail or is unclear, the DDA shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable laws, regulations, zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this DDA. The Final

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Plans shall incorporate all related mitigation measures required for compliance with approvals under CEQA and any conditions of City approval of the project, unless otherwise fulfilled. Developer agrees that it will comply with the requirements of the City of Sacramento Design Review/Preservation Board to the extent of its jurisdiction.

6.5. DELIVERY. Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the City of Sacramento Economic Development Department, which is staff to the Agency for Project Area at the address for notices and shall have clearly marked on its exterior "URGENT: HOTEL BERRY PROJECT PLAN REVIEW" or the equivalent.

6.5.1. DEEMED APPROVAL. If duly marked and delivered, the Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within thirty (30) days after their proper delivery to Agency.

6.5.2. 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 that the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with this DDA, including without limitation, the Plans, the Final Plans, the Scope of Development and with any items previously approved in accordance with this DDA. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this DDA 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.

6.6. 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 disagrees with the required change, they shall reasonably cooperate with the agency requiring the change in efforts to develop a mutually acceptable alternative.

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

6.7.1. 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:

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

- a) Material changes in the layout, elevation design, functional utility or square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Any change that reduces the effectiveness of any mitigation measure required for CEQA approval of the Project.
- d) Material changes in site development items for the Property that are specified in the Final Plans.
- e) Material changes in the type, location, visibility, accessibility, size, design or artist for any artwork shown in the Final Plans or otherwise accepted by the Agency under the Art in Public Places Program.
- f) Material changes in quality of project or landscaping materials.
- g) Any change in public amenities specified in the Final Plans.
- h) Any changes requiring approval of, or any change required by, any city, county or state board, body, commission or officer.
- i) Any change that would preclude or materially reduce the ability to use the Project as intended by this DDA.

6.7.2. 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.

7. DEVELOPMENT PROVISIONS. As stated in detail in this Section 7, Developer shall construct and manage the Project according to the requirements established in this DDA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this DDA, 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.

7.1. NOTICE TO PROCEED. Developer shall not enter the Property or begin work on the Project until the Agency has issued to Developer a written notice to proceed with the work. Agency will issue a notice to proceed after Agency approval of the Final Plans, City's issuance of a building permit for substantially more than the Project foundations, Developer's compliance

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

with all governmental requirements for start of construction, Developer's provision of required policies of insurance, and Developer's provision of proof of construction financing in an amount adequate to begin the Project work.

7.2. CONSTRUCTION CONTRACTS. Developer shall submit to Agency the construction contract or contracts for the Project. Agency's review of the construction contract shall be only for determining its compliance with this DDA. If the cost of construction of the Project or any part of the Project exceeds the costs projected by Developer, Developer shall, nevertheless, bear the responsibility to complete, at Developer's cost, the construction of the Project in accordance with this DDA. If the property is revested in the Agency pursuant to Section 13.1, Developer shall assign all rights under the construction contracts to Agency.

7.3. GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this DDA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this DDA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the City's Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable. Conditions to the project imposed by the City shall be considered obligations of the Developer under this DDA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

7.4. ART IN PUBLIC PLACES WAIVER. The Project improves and increases the stock of affordable housing in the community. Imposition of the Art in Public Places Program would increase the cost of the Project substantially and reduce either the number of affordable units available in the Project or the affordability of those units. Therefore, the Agency waives its Aesthetic Improvement Policy requirements.

7.5. 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 6.7, without Agency approval of such changes as provided in Section 6.7.

7.6. 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. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Agency shall cooperate in securing certifications and permits which require consent of the owner of the property. 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.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

7.7. PREVAILING WAGES. Unless stated otherwise above, Agency advises Developer that the Project is subject to the payment of prevailing wages under California law. Developer shall inform the Contractor and shall require the Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Agency's determination of the applicability of California prevailing wage requirements. Developer and Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Developer 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 the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them.

7.8. 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.

7.9. NO DISCRIMINATION DURING CONSTRUCTION. Developer for itself, the general contractor and their respective successors and assigns, agrees that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the construction of the Project.

7.9.1. EMPLOYMENT. Developer shall not discriminate against any employee or applicant for employment because of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation. 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.

7.9.2. 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.

7.9.3. MONITORING PROVISIONS. Developer, Contractor and subcontractors shall comply with the requirements of the Agency for monitoring the anti-discrimination and all applicable labor requirements.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

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

7.11. **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 DDA. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the construction of the Project.

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

7.13. **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 DDA, the Agency will furnish the Developer with the Certificate of Completion certifying such completion. The Agency's issuance of the Certificate of Completion shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the DDA with respect to the obligations of the Developer to construct the Project as of the Completion Date specified in the Schedules of Performances, subject to any qualifications or limitations stated in such certification. Agency shall prepare and execute the Certificate of Completion in a form suitable for recording in the Official Records of Sacramento County.

7.13.1. The Certificate of Completion 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. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any provision of this DDA that is not related to construction of the Project.

7.13.2. 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 DDA, 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.

7.14. **CONSTRUCTION PERIOD EXTENSION FEE.** If Developer does not complete the construction of the Project on or before the completion date set forth 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 said completion date, a construction period extension fee of Twenty-Five Dollars and No Cents (\$ 25.00) for each day by which the completion of construction is delayed beyond said completion date. Such construction period

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

extension fee 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. The number of days used in computation of the construction period extension fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay such construction period extension fee when due is a material default of this DDA. 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 DDA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to such unpaid construction extension fee and to declare Developer in material default of this DDA. In any event, such construction extension fees shall not be accepted for a time period greater than six (6) months excluding any period of Unavoidable Delay, at which time Developer shall be deemed in material default of this DDA.

7.15. **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.

7.16. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure notification of the Project contractors, architects and engineers for the Project of the requirements of this DDA. Developer shall include, where applicable, the provisions of this DDA in construction contracts, subcontracts, materials and supplies contracts and services and consulting contracts for the Project, and Developer shall undertake the enforcement of such provisions.

7.17. **PROPERTY CONDITION.** Developer, at Developer's expense, shall conduct any Property investigation beyond those provided by Agency under this DDA and which Developer may consider necessary to determine the condition of the Property for the development of the Project. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of such investigations. Except as provided in this DDA, 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. Agency shall not be responsible for removing any surface or subsurface obstructions, or structures of any kind on or under the Property.

7.18. **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 DDA.

7.19. **HAZARDOUS SUBSTANCES.** Agency has obtained a Phase I assessment, and has delivered them to Developer. In any event, Developer shall obtain such Hazardous Substances assessments as Developer deems reasonably necessary to assure the development of the Project in accordance with all applicable laws, rules and regulations; provided, however that such assessments are prepared by a qualified environmental specialist in accordance with nationally recognized standards to determine the existence of and to quantify the extent of Hazardous

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Substances on the Property. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of any Hazardous Substances investigations obtained by Developer. If Hazardous Substances are known to be on the Property, Developer shall remediate such Hazardous Substances on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer, Developer shall remediate all Hazardous Substances on the Property as and to the extent required by any federal, state or local agency having jurisdiction regarding Hazardous Substances standards or remediation and as may be necessary to avoid incurring liability or further liability under any federal, State and local law or regulation. If Hazardous Substances are discovered on the Property after conveyance to Developer and have not been released on the Property after conveyance to Developer and the cost to remediate such Hazardous Substances is reasonably estimated to exceed Five Hundred Thousand Dollars (\$500,000), Developer may elect to terminate this DDA, upon reconveyance of the Property to Agency and return of all monies and properties delivered pursuant to or in furtherance of this DDA. Developer shall bear One Hundred percent of the costs related to such remediation.

7.20. DEVELOPER ACCESS TO PROPERTY. Prior to the conveyance of the Property by Agency to Developer, the Agency shall permit representatives of Developer to have access, without charge, to the Property, at all reasonable times for the purpose of obtaining data and making various tests necessary to carry out Developer's obligations under the DDA; provided, however, that Developer shall not enter the Property except (a) after execution by Developer and Agency of Agency's standard "Permit for Entry" and (b) after Developer has obtained insurance coverage then required by Agency. No work shall be performed on the Property until a "Notice of Nonresponsibility" has been recorded and posted in accordance with applicable laws, assuring that Agency interest in the Property shall not be subject to mechanic's liens related to such work. Developer shall not commence any work on the Property without Agency's written approval of the work to be done, and in any event, Developer shall not commence any work which might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

8. RELOCATION. Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Developer shall comply fully with all relocation laws that are the obligation of Agency or are otherwise applicable to the Project. Developer's compliance with the relocation requirements as stated in this Section 6 is a material element of this DDA. Developer's failure to comply with the relocation requirements as stated in this Section 8 is an Event of Default, subject to Developer's opportunity to cure in accordance with applicable law.

8.1. RELOCATION COSTS. Unless otherwise stated in this Agreement, any amounts paid by Agency for relocation costs and services shall be considered advances under the Agency funding.

8.2. COOPERATION AND ACCESS. Developer shall cooperate fully with Agency in complying with such relocation laws, including without limitation, providing Agency access to all tenants of

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

the Property, to all books and records related to the tenants of the Property and to all properties offered for temporary or permanent relocation. Prior to taking any action with respect to relocation of tenants, Developer shall meet with Agency to establish reasonable protections for tenants and related reporting requirements for Developer.

8.3. DEVELOPER AS RELOCATION AGENT. With the approval of Agency, Developer may act as Agency's agent in accomplishing such relocation. Agency and Developer by memorandum in writing shall establish their respective duties related to such relocation. If Agency and Developer agree that Developer will act as Agency's agent for purposes of this DDA, Developer may enter into agreements for the provision of relocation services, or Developer may perform such services directly. Developer shall, by provisions in its agreements or by direction to its staff, assure that the entity performing the relocation services: (a) complies with all applicable laws; (b) fully informs Agency of all relocation activities; (c) makes all requests for direction or clarification to Agency; and (d) responds to and follow the Agency's instruction and direction.

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

9.1. REQUIREMENT FOR 2009 CREDIT CEILING AWARD. The feasibility of the Project resulting from this DDA is predicated on the receipt of a 2009 Credit Ceiling Award (9% tax credits) from the Tax Credit Allocation Committee (TCAC). TCAC awards funds on a competitive basis and the 2009 competition is forthcoming. In the event the Developer is not successful in obtaining a Credit Ceiling Award, the obligations and benefits of this DDA by and for each party are terminated and the Agency and Developer will bear their own costs.

9.2. ARRA FUNDS REQUIREMENT. If the Project receives an award of ARRA (American Recovery and Reinvestment Act) Funds from the TCAC in connection with an allocation of 9% tax credits, the Developer will comply with all of the federal requirements associated with the use of ARRA Funds for the Hotel Berry Project.

9.3. EVIDENCE OF AVAILABLE FUNDS. Unless otherwise approved by the Agency, Developer's evidence of available funds, as required in the preceding section, must include only the following: (a) Developer equity (as provided in Section 9.5); (b) firm and binding loan commitments (as provided in Section 9.4) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this DDA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

for evaluation of the actual availability of funds included in such evidence, including without limitation, requests for clarification, further evidence or audited financial reports.

9.4. COMMITMENT AND LOAN REQUIREMENTS. As a material obligation under this DDA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this DDA. 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 a construction loan term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this DDA, that require amendment of this DDA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

9.5. EVIDENCE OF DEVELOPER EQUITY. Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity in the amount of No Dollars and No Cents (\$0.00) by any one of the following actions: (a) deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely and proper completion; (c) Developer's provision of financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) of the amount of the required equity; or ; or (d) delivery to the Agency of a tax credit reservation letter for the project, if applicable evidence of TCAP (Tax Credit Assistance Program) or Exchange funds, and an executed copy of the Partnership Agreement at close of Escrow. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

10. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. Developer shall indemnify, protect and defend Agency, its officers, directors, council members and supervisors, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, fines, penalties and claims (including without limitation court, mediation or arbitration costs, attorneys' fees, witnesses' fees, and investigation fees) related to the existence of Hazardous Substances on the Property that were not on the Property prior to Agency's transfer of possession

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

of the Property to Developer or that were related to the removal or discharge of Hazardous Substances by Developer, or its employees, agents or contractors, during Developer's remediation of the Property pursuant to this Section.

Agency shall indemnify, protect and defend Developer, its officers, directors, employees, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims (including without limitation court, mediation or arbitration costs, attorneys' fees, witnesses' fees, and investigation fees) related to Hazardous Substances discharged on the Property during Agency's ownership of the Property or related to the removal or discharge of Hazardous Substances by Agency or its employees, agents or contractors.

11. 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.

12. LIABILITY INSURANCE. With regard to this DDA, the Developer shall obtain and maintain for the life of the Regulatory Agreements, and require the Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, 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 DDA.

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

12.1. **LIABILITY INSURANCE POLICY LIMITS.** Developer shall obtain all insurance under this Section 12 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Agency, and for limits of liability which shall not be less than the following:

12.2. **WORKER'S COMPENSATION.** Developer shall obtain and maintain worker's compensation coverage shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (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.

12.3. **COMMERCIAL GENERAL LIABILITY.** Developer shall obtain and maintain Commercial General Liability insurance in Insurance Services Office ("ISO") policy form CG 00 01 Commercial General Liability (Occurrence) or better. Such insurance shall have limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project.

12.4. **COMPREHENSIVE AUTOMOBILE LIABILITY.** Developer shall obtain and maintain comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having a combined single limit of not less than \$1,000,000.

12.5. **PROPERTY INSURANCE.** For the duration of the Regulatory Agreements, Developer shall obtain and maintain property insurance in ISO policy form CP 10 30 - Building and Personal Property Coverage - Causes of Loss - Special Form, to the full insurable value of the Property with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), Boiler and Machine to the extent necessary to obtain full insurance coverage, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project and the Property. 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.

12.6. **INSURANCE PROVISIONS.** Each policy of insurance required under this DDA shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of B++ VII, which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by Agency's legal counsel. Each policy shall contain the following provisions as applicable, unless otherwise approved by Agency's legal counsel in writing in advance:

12.6.1. **ADDITIONAL INSURED.** Developer shall obtain a policy in ISO form CG 20 33 or better, naming Agency as additional insured under the Commercial General Liability Policy.

12.6.2. **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

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective Contractor or subcontractor 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.

12.6.3. **CERTIFIED POLICY COPY.** Developer shall provide Agency with a certified copy of each required policy of insurance. Pending delivery of the certified policy, Developer shall provide Agency with a Certificate of Insurance for each policy on the applicable ACORD form. The ACORD form shall not substitute for the policy. ACORD 25-S "Certificate of Liability Insurance shall be used for liability insurance deleting the sentence in the top right-hand block immediately below the title (commencing "This certificate is issued as a matter of information . . .) and in the bottom right-hand box above the authorized representative signature, deleting the words "endeavor to" and "but failure to do so shall impose not obligation or liability of any kind upon the insurer, its agents or representatives."

12.6.4. **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.

12.6.5. **FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this DDA, 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.

12.6.6. **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 12 with respect to such insurance shall otherwise be satisfied by such blanket policy.

13. **DEFAULTS AND REMEDIES.** Except as otherwise provided in the DDA, if either party defaults in its obligations under this DDA, 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 DDA, a failure or delay by a

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

party to perform any term or provision of this DDA constitutes a default of this DDA. As a condition precedent to termination of the DDA 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 DDA, neither Agency nor Developer shall have any further rights against or liability to the other under the DDA except as expressly set forth in this DDA to the contrary.

13.1. REVESTING TITLE IN AGENCY. Notwithstanding any other provisions of this DDA and in addition to any other rights and remedies of the Agency, after conveyance of any part of the Property to Developer and prior to issuance of Certificate of Completion, if Developer defaults in its obligations related to the Project development, abandons or unreasonably suspends Project construction work, permits any unauthorized encumbrance or lien (including tax liens) and fails to discharge any such unauthorized lien or encumbrance, or permits any transfer of all or any part of the Property, then the Agency shall have, for a period of ten years following the Effective Date, the right to re-enter and take possession of the Property, or any part of the Property conveyed to Developer, and to terminate and re-vest in the Agency the estate so conveyed. It is the intent of this DDA that the conveyance of the Property to Developer shall be made upon, and that the Grant Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Developer specified in this Section, failure on the part of Developer to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in the DDA, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the rights and interest in the Property conveyed by the Grant Deed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interest to and in the Property, shall revert to the Agency. Such condition subsequent and any such re-vesting of title in the Agency shall always be subject to and limited by the lien or security interest authorized by the DDA, and any rights or interests provided in the DDA for the protection of the Lenders; and shall not apply to individual parts or parcels of the Property on which the Project have been completed in accordance with the DDA and for which a Certificate of Completion issued as provided in the DDA. Such condition subsequent shall conform to the provisions of Civil Code Sections 885.010 through 885.070.

13.1.1. RESALE OF REACQUIRED PROPERTY. Upon the re-vesting of title of the Property in the Agency, Agency shall use its best efforts to resell the Property, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the Redevelopment Plan and the Community Redevelopment Law, to a qualified and responsible party, as determined by the Agency, who will assume the obligation of completing the Project or such other improvements in their stead as shall be satisfactory to the Agency. Upon such resale of the Property, the resale proceeds (after repayment of any liens and encumbrances which have previously been approved by Agency in writing) shall be applied as follows:

13.1.2. AGENCY REIMBURSEMENT. Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Property (but less any net income derived by Agency from the Property after such re-vesting); all taxes, assessments, and water and sewer charges with respect to the Property (or,

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

in the event the Property is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have been payable if the Property were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Property at the time of such revesting or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to completion of the Project; and any amounts otherwise owing the Agency by the Developer.

13.1.3. DEVELOPER REIMBURSEMENT. After payment to Agency of the sum specified herein, said proceeds shall be paid to Developer to reimburse Developer in an amount not to exceed: (1) the sum of the purchase price paid by Developer for the Property and the cash actually expended by it in actual construction of any of the Project (including without limitation fees and expenses paid to any governmental agency on account of the Project, mitigation or development fees, the costs and expenses of all third-party architects, engineers, or similar design professionals, hard and soft costs of construction expended in construction of the Project, and Lender's interest, loan fees and other fees and charges on account of the Loan); less (2) any gains or income withdrawn or made by it from the DDA or the Property and any amounts, including interest on loans, then due from Developer to Agency.

13.1.4. BALANCE TO AGENCY. Any balance remaining after such reimbursements shall be retained by the Agency as its property.

13.2. LIQUIDATED DAMAGES. IF DEVELOPER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF DEVELOPER, AGENCY SHALL BE RELEASED FROM AGENCY'S OBLIGATION TO SELL THE PROPERTY TO DEVELOPER, AND AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW. IF THE PROPERTY HAS BEEN CONVEYED TO DEVELOPER, DEVELOPER HAS COMMITTED A DEFAULT SUFFICIENT FOR REVESTMENT OF THE PROPERTY UNDER SECTION 13.1, AND DEVELOPER HAS NOT VOLUNTARILY RECONVEYED THE PROPERTY TO AGENCY, AGENCY MAY REVEST THE PROPERTY OR TAKE ANY AVAILABLE ACTION TO RECONVEY THE PROPERTY TO THE AGENCY. IN SUCH EVENT, AGENCY MAY ALSO PROCEED AGAINST DEVELOPER UPON ANY CLAIM OR REMEDY THAT AGENCY MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION, DEVELOPER AND AGENCY AGREE THAT IN THE EVENT THAT DEVELOPER FAILS TO PURCHASE THE PROPERTY: (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES RELATED TO THE FAILURE TO PURCHASE THE PROPERTY; COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY TO AGENCY; (B) AN AMOUNT EQUAL TO THE DEPOSIT SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO AGENCY ON ACCOUNT OF THE FAILURE TO PURCHASE THE PROPERTY AND FOR AGENCY COSTS TO OBTAIN RECONVEYANCE OF THE PROPERTY (WITHOUT LIMITING AGENCY'S RIGHTS TO RECOVERY DAMAGES OR SEEK ANY OTHER REMEDY FOR ANY OTHER DEFAULT UNDER THIS DDA OR ITS CONSTITUENT DOCUMENTS); (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO AGENCY SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF AGENCY FOR THE FAILURE OF DEVELOPER TO PURCHASE THE PROPERTY; (D) AGENCY MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES; AND (E) 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

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

DAMAGES TO AGENCY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

_____ Developer's Initials
_____ Agency's Initials

13.3. **OTHER RIGHTS AND REMEDIES.** Upon the occurrence of any default not subject to the preceding liquidated damages provision, 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 DDA as allowed under this DDA, at law or in equity.

13.4. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable under this DDA 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 DDA.

13.5. **FEES AND COSTS ARISING FROM DISPUTE.** If an action is commenced between the parties, the Prevailing Party in that action shall be entitled to recover from the nonprevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; 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.

14. **ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS.** Before issuance of a Certificate of Completion, if Developer has obtained Agency's prior written approval, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this DDA, the Developer may 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. 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. 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 DDA in making the Loan and that Agency's obligations under this DDA are inducements to Lender's making of the Loan.

14.1. **NOTICES.** If the Agency gives any notice of default to Developer under this DDA, 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 such request for notice. Any such default notice that is not so delivered to Lender shall not be effective or

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

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 Disposition and Development Agreement dated _____ between the Redevelopment Agency of the City of Sacramento and **729 L Street Limited Partnership** ("DDA"). Lender requests, in accordance with the DDA, that if any default notice shall be given to Developer under the DDA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

14.2. ASSIGNMENTS AND TRANSFERS OF THE LOAN. Agency shall not be bound to recognize any assignment of Lender's 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 DDA. Thereafter, such assignee shall be considered a Lender with respect to the Loan and the related encumbrance on the Property.

14.3. LENDER NOT OBLIGATED TO CONSTRUCT. Notwithstanding any of the provisions of the DDA, Lender shall not be obligated by the provisions of the DDA to construct or complete the Project. Nothing in this Section or any other provision of the DDA 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 DDA.

14.4. LENDER'S OPTION TO CURE DEFAULTS. After any default of Developer's obligations under the DDA, 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 DDA. Any Lender who properly completes the Project as provided in the DDA shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency in a manner provided in the DDA. 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 DDA 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.

14.5. DEFAULT BY DEVELOPER. In the event of a default by Developer, Agency shall not terminate this DDA unless and until the Agency has given notice to Lender of such default, and Lender has failed to cure such default.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

14.5.1. 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 DDA) shall be tolled if and so long as, all of the following are true: (a) Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this DDA, 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; (b) 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; (c) 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 (d) upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default in accordance with this DDA.

14.5.2. 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.

14.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the loan of Lender, 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 Developer 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 DDA, provided that such purchaser or transferee expressly assumes each and every obligation of the Developer under this DDA (except for the obligation to pay damages except to the extent of any monies due and unpaid from Developer under this DDA) by assumption agreement satisfactory to the Agency. If any Lender or its designee acquires Developer's right, title and interest under this DDA as a result of a judicial or nonjudicial foreclosure under any power contained in such encumbrance, or any conveyance of the Property from the Developer 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 DDA to an assignee; provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this DDA.

14.7. **MODIFICATIONS.** No modification or amendment to the DDA 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.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

14.8. FURTHER ASSURANCES TO LENDERS. Agency and Developer shall in good faith consider making such reasonable modifications to this DDA 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 DDA and provided such modifications, instruments, and agreements serve a material economic purpose.

14.9. 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 DDA is in full force and effect and a binding obligation of the parties; (ii) this DDA has not been amended or modified, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this DDA, 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 Agency's designee shall be authorized to execute any such certificate requested by Developer from the Agency.

14.10. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER. In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this DDA 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 shall not relieve Developer, or any other party bound in any way by the DDA, from any of its obligations under the DDA. With respect to this provision, the Developer and the parties signing the DDA 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.

15. DOCUMENT INTERPRETATION. This DDA shall be interpreted in accordance with the following rules.

15.1. ENTIRE DDA; SEVERABILITY. This DDA 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 DDA shall, to any extent, be held invalid or unenforceable, the remainder of this DDA shall not be affected; provided that the intent of the DDA may then be reasonably fulfilled.

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

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

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.

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

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

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

15.6. TIME FOR PERFORMANCE. In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this DDA, 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.

15.7. GOVERNING LAW. This DDA shall be governed and construed in accordance with California law.

15.8. NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP. Nothing contained in this DDA or in any other document executed in connection with this DDA shall be construed as creating a joint venture or partnership between Agency and Developer. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between Agency and Developer other than that of a governmental entity regulating the development of private property, and the owner of such private property.

15.9. 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 DDA.

15.10. OWNERSHIP OF DATA. If this DDA 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.

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

15.11.1. Addresses for notices are as follows:

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

a) Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Jeree Glasser Hedrick.

b) Developer: 729 L Street Limited Partnership, 630 I Street, Sacramento, CA 95814, Attention: Katherine Klein McFadden.

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

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

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

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

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

15.12. **SUCCESSORS.** This DDA shall inure to the benefit of and shall be binding upon the parties to this DDA and their respective successors, and assigns.

16. **DEFINITIONS.** The following definitions shall apply for the purposes of this DDA:

16.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this DDA 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.

16.2. "Art in Public Places Program" is the commonly used name for the program implementing Agency's Aesthetic Improvement Policy. Aesthetic Improvement Policy is Agency's policy for the creation and display of artwork in public areas. The policy was adopted by Agency Resolution Number 2865, October 16, 1979. The policy as implemented is known as the Art in Public Places Program.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

16.3. "Certificate of Completion" is the certificate issued by the Agency certifying Developer's completion of the Project and termination of the revestment provisions.

16.4. "City" is the City of Sacramento in the State of California.

16.5. "Close of Escrow" is the time for the close of the Escrow as provided in the Escrow Instructions.

16.6. "Contractor" is the contractor or contractors with whom Developer has contracted for the construction of the Project.

16.7. "Completion Date" is the date for completion of construction of the Project to the satisfaction of the Agency, which date shall be not sooner than the issuance of a certificate of occupancy for the entire Project. The Completion Date is stated in the Schedule of Performances.

16.8. "DDA" is this Disposition and Development Agreement including the attachments to this DDA consisting of the exhibits named in and attached to this DDA, the Preliminary Plans the Final Plans and any other item expressly incorporated in this DDA, all of which are incorporated in this DDA as if included in full as provisions in the body of this DDA. A default of any of the items incorporated in the DDA by reference is a default of this DDA.

16.9. "Developer" is 729 L Street Limited Partnership, limited partnership. The principal office of the Developer is located at 630 I Street, Sacramento, CA 95814.

16.10. "Escrow" is the escrow for the transfer of the Property and for all requirements related to the transfer. The Title Company is the holder of the Escrow.

16.11. "Escrow Instructions" are the escrow instructions for the close of the Escrow for this DDA.

16.12. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under this DDA. The Final Plans 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 DDA. The Final Plans shall incorporate all applicable mitigation measures which may be required for compliance with approvals under the California Environmental Quality Act (commencing at Public Resources Code Section 21000) and the rules and regulations promulgated under such act. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this DDA. 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 DDA.

16.13. "Financing Plan" is the Financing Plan for the Hotel Berry adopted on August 11, 2009. The Financing Plan is attached as **Exhibit 4: Financing Plan**.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

16.14. "Grant Deed" is the grant deed for the transfer of the Property to Developer under this DDA. The Grant Deed contains covenants that run with the land, easements and a reverter provision.

16.15. "Hazardous Substances" as used in this DDA 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 rules and regulations promulgated pursuant to said laws.

16.16. "Hotel Berry Loan and Grant Agreements" or "Funding Agreements" are the agreements for the lending and granting of funds under the control or administration of the Agency to Developer for the Hotel Berry.

16.17. "Lender" shall mean all holders of any lien or encumbrance as security for a loan on all or any part of the Property which loan is made in accordance with this DDA or otherwise approved by Agency in writing.

16.18. "Plans" are the Project designs and elevations, prepared by the Project architect Gelfand Partners Architects and dated August 9, 2008, a portion of which (consisting of various elevations) is attached to the staff report for approval of this DDA. Agency has approved the Plans concurrently with the approval of this DDA.

16.19. "Project" is the development of the Property as described in this DDA for the uses stated in this DDA. The Project includes all improvements rehabilitated and constructed on the Property in accordance with this DDA.

16.20. "Project Interests" are all interests of the Redevelopment Agency in the Hotel Berry other than interests in the Property or Property Improvements, including without limitation all interests in work performed to create the development interests; entitlements and maps; architectural, predevelopment and financial administration; security; architectural and engineering work; plans and specifications, permits, fees and approvals; and leases and future rents. A description of the Project Interests is attached as **Exhibit 5: Project Interests.**

16.21. "Project Area" is the Merged Downtown Sacramento Area, as defined in the Redevelopment Plan.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

16.22. "Property" is the real property and real property interests to be developed under this DDA by Developer, as more particularly described in the Property Description. Property includes all Property Improvements.

16.23. "Property Improvements" are that portion of the Project that consist of all improvements currently on or hereafter constructed on the Property, including without limitation the building and its furniture, fixtures and equipment, all as more particularly described in the Legal Description.

16.24. "Property Description" is the legal description of the various parcels of real property and property improvements affected by this DDA. The Property Description is attached as **Exhibit 1: Property Description**.

16.25. "Purchase Price" is the purchase price for the Property as set out in Section 3.

16.26. "Real Property" is the real property and real property interests to be developed under this DDA by Developer, as more particularly described in the Property Description.

16.27. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time)

16.28. "Regulatory Agreement" is the agreement, which sets out the certain provisions of this DDA that shall survive the completion of the Project.

16.29. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this DDA must be performed and on which conditions must be satisfied. The Schedule of Performances is attached as **Exhibit 2: Schedule of Performances**.

16.30. "Scope of Development" is the detailed description of the construction parameters for the Project. The Scope of Development is attached as **Exhibit 3: Scope of Development**.

16.31. "Title Company" is First American Title. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 1610 Arden Way, Sacramento, CA.

16.32. "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 the parties shall be extended for the period of the enforced delay, as determined by the Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after it has or should have

August 11, 2009

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

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 DDA in Sacramento, California, on the following dates, effective as of the date first written above.

DEVELOPER : 729 L STREET LIMITED PARTNERSHIP

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

By:

LaShelle Dozier, President

Lisa Bates, Deputy Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Developer Counsel

Agency Counsel

[Notarized Acknowledgements]

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

EXHIBIT 1
PROPERTY DESCRIPTION

Real property in the City of Sacramento, County of Sacramento, State of California, described as follows:

PARCEL NO. 1:

A PORTION OF LOT 5 IN THE BLOCK BOUNDED BY "K" AND "L", SEVENTH AND EIGHTH STREETS OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL MAP OR PLAN OF SAID CITY OF SACRAMENTO, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT OF INTERSECTION OF THE WEST LINE OF 8TH STREET WITH THE NORTH LINE OF L STREET OF SAID CITY OF SACRAMENTO, SAID POINT BEING THE SOUTHEAST CORNER OF SAID LOT 5, SAID BLOCK, RUNNING THENCE NORTHERLY AND ALONG SAID WEST LINE OF 8TH STREET, A DISTANCE OF 100.19 FEET TO A POINT IN SAID WEST LINE OF 8TH STREET, WHICH POINT IS ALSO LOCATED 60.12 FEET SOUTHERLY (MEASURED ALONG SAID WEST LINE 8TH STREET) FROM THE NORTHEAST CORNER OF SAID LOT 5; AND WHICH SAID NORTHEAST CORNER OF SAID LOT 5 IS LOCATED 160.31 FEET NORTHERLY (MEASURED ALONG SAID WEST LINE OF 8TH STREET) FROM SAID SOUTHEAST CORNER OF SAID LOT 5; THENCE WESTERLY AND ALONG A LINE DRAWN PARALLEL WITH A DISTANCE OF 100.19 FEET NORTHERLY (MEASURED ALONG SAID WEST LINE OF 8TH STREET) FROM SAID NORTH LINE OF L STREET, A DISTANCE OF 72.66 FEET; THENCE SOUTHERLY A DISTANCE OF 100.19 FEET, MORE OR LESS TO A POINT IN SAID NORTH LINE OF L STREET, WHICH IS DISTANCE THEREON 72.59 FEET WESTERLY (MEASURED ALONG SAID NORTH LINE OF L STREET) FROM SAID POINT OF COMMENCEMENT; THENCE EASTERLY AND ALONG SAID NORTH LINE OF L STREET, A DISTANCE OF 72.59 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN SIX-STORY BRICK BUILDING KNOWN AS HOTEL BERRY LOCATED AT THE NORTHWEST CORNER OF 8TH AND L STREETS, IN SACRAMENTO CITY, STATE OF CALIFORNIA, WHICH SAID BEGINNING POINT IS ON THE NORTHERLY LINE OF L STREET AND DISTANCE 72.08 FEET WESTERLY FROM THE SOUTHEASTERLY CORNER OF LOT 5, IN THE BLOCK BOUNDED BY K AND L STREETS, AND 7TH AND 8TH STREETS, ACCORDING TO THE OFFICIAL PLAN OF SACRAMENTO CITY AND RUNNING THENCE ALONG THE WESTERLY LINE OF SAID SIX-STORY BRICK BUILDING, NORTHERLY FROM THE NORTHERLY LINE OF L STREET, 37.87 FEET TO THE NORTHWESTERLY CORNER OF SAID HOTEL BERRY SIX-STORY BRICK BUILDING; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF L STREET, TWO INCHES TO THE SOUTHWESTERLY CORNER OF THE HOTEL BERRY ONE-STORY ANNEX TO THE SAID SIX-STORY BRICK BUILDING; THENCE ALONG THE WESTERLY LINE OF SAID HOTEL BERRY ONE-STORY ANNEX NORTHERLY 47.80 FEET TO A JOG IN THE SAID WESTERLY LINE OF SAID HOTEL BERRY ONE-STORY ANNEX, AT A POINT WHICH IS DISTANCE SOUTHERLY 74.56 FEET FROM THE SOUTHERLY LINE OF THE ALLEY IN THE HEREINABOVE MENTIONED BLOCK AND 72.24 FEET WESTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF 8TH STREET; THENCE AMONG SAID JOG WESTERLY, PARALLEL WITH THE NORTH LINE OF L STREET 0.51 FEET TO THE DIVISION CORNER COMMON THE WEST WALL OF THE HOTEL BERRY ONE-STORY ANNEX ON THE EAST, AND THE EAST WALL OF THE TWO-STORY BERRY GARAGE ON THE WEST; THENCE SOUTHERLY 85.67 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF L STREET AT A POINT WHICH IS DISTANCE 72.59 FEET FROM THE SOUTHEASTERLY CORNER OF LOT 5, HEREINABOVE MENTIONED; AND THENCE ALONG THE NORTHERLY LINE OF L STREET, EASTERLY 0.51 FEET TO THE POINT OF BEGINNING, AND BEING AND CONSTITUTING A FRACTIONAL PART OF LOT 5 IN BLOCK K TO L STREET, 7TH AND 8TH, CITY OF SACRAMENTO, AND COMPRISING A STRIP OF LAND LYING ADJACENT TO AND WESTERLY OF THE WEST WALL OF THE BERRY HOTEL AND ANNEX AS IT EXISTS TODAY.

PARCEL NO. 2:

THAT PORTION OF LOT 5 IN THE BLOCK BOUNDED BY "K" AND "L", SEVENTH AND EIGHTH STREETS AND THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL MAP OR PLAT OF SAID CITY OF SACRAMENTO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF A PARCEL OF LAND CONVEYED BY CAPITOL PROPERTIES, INC., TO D. LAGAR, DESCRIBED AS PARCEL 1 IN DEED RECORDED OCTOBER 31, 1936, IN BOOK 594 OF OFFICIAL RECORDS OF SACRAMENTO COUNTY, AT PAGE 462, WHICH CORNER IS ALSO LOCATED 72.66 FEET WESTERLY OF THE WEST LINE OF 8TH STREET AND 60.13 FEET SOUTHERLY OF THE SOUTH LINE OF THE ALLEY; THENCE WESTERLY PARALLEL WITH THE NORTH LINE OF L STREET; THENCE SOUTHERLY, ALONG THE EAST LINE OF SAID WALL, A DISTANCE OF 14.43 FEET TO A JOG IN SAID WALL; CONVEYED TO D. LAGAR, THENCE NORTHERLY ALONG THE WEST LINE OF SAID PARCEL A DISTANCE OF 14.43 FEET TO THE POINT OF BEGINNING. APN: 006-0096-012-0000

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

**EXHIBIT 2
SCHEDULE OF PERFORMANCES**

<u>Tentative Dates</u>	<u>Activity</u>
June 2009	Developer submits application for 9% Low Income Housing Tax Credits (LIHTCs) to the California Tax Credit Allocation Committee (TCAC)
June 2009	City Council, City Redevelopment Agency and Sacramento City Financing Authority approve Disposition and Development Agreement and Financing Plan
September 2009	TCAC allocates 9% LIHTCs for the project
February 2010	Developer closes on construction financing
February 2010	Construction begins
February 2011	Construction completed
June 2011	Project units placed in service

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

**EXHIBIT 3
SCOPE OF DEVELOPMENT**

The Hotel Berry, located at 729 L Street, was constructed in 1929 and has been operated as a residential hotel for low-income tenants. The property is a six-story, mixed-use building currently consisting of 110 Single Room Occupancy (SRO) residential hotel units. It was the first project to come forward under the \$15 million Single Room Occupancy (SRO) Replacement and Preservation Strategy approved by City Council in 2006. The SRO Strategy included the adoption of a City ordinance that included a “No Net Loss” policy of retaining 712 SRO units which the Hotel Berry is included.

The scope of development consists of property acquisition and rehabilitation of 104 SRO units. A limited partnership has been formed which has applied for LIHTC in order to undertake the substantial renovation of the property. The proposed rehabilitation scope of work is based on a third party assessment of the Hotel Berry’s capital improvement needs for enhanced building performance and reduced operating costs over the long-term. Proposed architectural modifications are meant to improve space programming and building mobility in a functional and cost effective manner.

Key building improvement principles include:

- Upgrade health and life safety systems
- Improve compliance with Uniform and California Building Codes
- Improve physical mobility and ‘accessibility’ for disabled persons
- Improve building systems to promote long-term operations and reduce cost

Unit interior upgrades will include the addition a full bathroom, kitchenette and new fixtures and finishes. The renovation plans contain sustainable green building features such as energy efficient HVAC, lighting and appliances, new dual paned windows, low flow toilets and showers, green flooring and the recycling of construction waste material. Plumbing and electrical will be upgraded and/or replaced as needed to facilitate the necessary improvements.

The building is a steel frame structure with wood floors and self-supporting brick walls. It is expected to have the typical seismic concerns of the building type, and renovation plans include seismic and structural upgrades to strengthen the building.

For reuse as supportive housing, the ground floor will be reconfigured to provide enhanced common area space for housing staff and residents. A corner retail store will remain. A new exit stair providing direct access to the street, trash chute and compactor, and new electrical meter and building service will reorganize the north end of the ground floor. The proposed ground floor reconfiguration will also include a larger lobby and resident lounge space, new offices, reception desk and security vestibule, library/meeting room, TV lounge; and conversion of the existing restaurant space into community space which will include a resident community kitchen with dining area and a community room with a small kitchen and office.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

**EXHIBIT 4
HOTEL BERRY FINANCING PLAN**

Purpose

The purpose of this financing plan is to detail how the Hotel Berry project will be financed and specify the steps necessary to achieve project feasibility.

Affordability Restrictions

Under the proposed financing plan, all units excluding the one manager units will remain affordable to those earning between 30 percent Area Median Income (AMI) and 45 percent AMI. The following charts display the proposed income targeting of the project.

Income Targeting for the Project

% AMI	# of Units	% Total
30%	11	11%
35%	11	11%
40%	70	66%
45%	11	11%
Manager's Unit	1	1%
Total	104	100%

Agency Acquisition and Development Financing

Acquisition and development financing has been structured to leverage previously committed and new Agency assistance necessary for tax credit competitive purposes and to minimize additional Agency assistance. The table below summarizes the 2009 Financing Plan structure:

2009 Agency Financing Plan	Ineligible Costs	Type	Uses
\$ 2,851,574		Grant	Acquisition
\$ 1,130,862		Grant	Acquisition
\$ 2,017,564		Loan	Acquisition
\$ 1,980,862		Loan	Acquisition
\$ 108,188		Loan	Acquisition
\$8,089,050			
\$ 324,000		Loan	Capital
\$ 324,000			
\$ 1,250,000		Grant	Operating
\$ 450,000		Grant	Operating
\$1,700,000			
	\$341,812	N/A	Operating
\$10,113,050	\$341,812		

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Please note that \$341,812 of previously committed resources are not included in the 2009 Financing Plan because the resources were spent on ineligible operating costs under the TCAC regulations. The financing terms of the seller carry back financing provided for the acquisition of the property and grants providing operating reserve assistance to the Hotel Berry project in the 2009 Financing Plan structure is described in more detail below.

\$3,982,436 Agency grant to fund acquisition costs of the Hotel Berry, including land donation for disposition purposes. No repayment is required.

\$2,017,564 Agency seller carry back loan to fund the building acquisition cost of the Hotel Berry. This seller carry back loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$2,413,050 Agency seller carry back loan to fund acquisition and development costs. This loan consists of \$2,089,050 of previously committed Agency funds and \$324,000 of new Agency assistance. The loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$1,250,000 Agency grant will capitalize an operating reserve that will fund operating deficits associated with 94 of the units for a 15 year period, starting from the project's placed in service date. The funds will be drawn down as needed each year to cover costs of the operating deficit. No repayment is required.

\$450,000 MHSA grant will capitalize an operating reserve that will fund operating deficits associated with 10 MHSA units in the Hotel Berry for a 20 year period, starting from the project's placed in service date. No repayment is required.

Permanent Financing

The Hotel Berry project will be primarily financed using equity raised from 9% Low Income Housing Tax Credits (LIHTC), Agency funds, MHSA funds, and a deferred developer's fee. A nine percent tax credit application to the Tax Credit Allocation Committee (TCAC) was submitted on June 9, 2009. The TCAC is scheduled to announce tax credit awards in September 2009. The chart below summarizes the permanent sources of financing for the project.

Sources	Permanent
Tax Credit Equity	\$11,865,933
TCAP ARRA Award	\$1,695,133
Long-Term Agency Loans	\$4,430,614
Agency Acquisition Grant	\$3,982,436
Agency Operating Grant	\$1,250,000
MHSA Operating Grant	\$450,000
Deferred Developer Fee	\$331,359
Total	\$24,005,475

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Ownership/Limited Partnership Structure

The ownership structure of the Hotel Berry is a limited partnership, the 729 L Street Limited Partnership, formed especially for this Project. It has a managing general partner and a limited partner. The role of the managing general partner is to oversee the development and management of the project. The Partnership has been structured so that Norwood Avenue Housing Corporation (NAHC), an Agency-affiliated non-profit corporation, will act as the developer and general partner for purposes of the tax credit application.

Site Control & Property Disposition

State regulations require that a project owner must show evidence of site control when submitting a tax credit application. Currently, the Redevelopment Agency of the City of Sacramento owns the Hotel Berry. The Agency must indicate its intent to dispose its interest in the property by executing a disposition and development agreement (DDA) to transfer ownership of the land, building and all other Agency development interests in the project to the limited partnership. The DDA specifies that the Agency will make a seller carry back loan for \$2,017,564 for the purchase of the building, a grant for \$3,982,436 for a land donation and the balance of acquisition costs, and a \$2,089,050 seller carry back loan for the Agency's development interests in the project. The DDA is contingent upon an award of nine percent tax credits. Although the Agency will not retain legal ownership of the Hotel Berry, the Agency will remain involved in the project. In addition, the Agency has entered into a contract with 729 L Street Limited Partnership to provide administrative services related to the project to ensure its success.

Project Feasibility

The financial feasibility of this project is dependent and contingent upon receipt of an allocation of Low Income Housing 9% Tax Credits from the California Tax Credit Allocation Committee (TCAC) for the Hotel Berry. This year's TCAC funding round is expected to be highly competitive due to the affordable housing stimulus funding and the fact there is only one application cycle.

Additional Funding Opportunities

The Agency is actively seeking additional stimulus funding sources to replace internal resources as allowed by the TCAC regulations. If such outside funding is received, they will replace or augment the Agency's financing assistance as appropriate.

Summary

The proposed Hotel Berry Financing Plan is structured to leverage previously committed funds and new Agency assistance necessary to help the project achieve a tax credit award and to minimize the amount of additional Agency funding requested.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

**EXHIBIT 5
PROJECT INTERESTS**

Project Interest	Total
3 rd Party Reports	\$59,927
Title & Recording	\$23,430
Architecture and Engineering	\$287,589
Permits and Fees	\$180,929
Relocation	\$800,000
Legal Fees	\$70,000
Tax Credit Fees	\$68,800
Predevelopment & Organization	\$413,591
Professional Fees	\$184,784
Total Project Interests	\$2,089,050

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Exhibit B

HOTEL BERRY FINANCING PLAN**Purpose**

The purpose of this financing plan is to detail how the Hotel Berry project will be financed and specify the steps necessary to achieve project feasibility.

Affordability Restrictions

Under the proposed financing plan, all units excluding the one manager units will remain affordable to those earning between 30 percent Area Median Income (AMI) and 45 percent AMI. The following charts display the proposed income targeting of the project.

Income Targeting for the Project

% AMI	# of Units	% Total
30%	11	11%
35%	11	11%
40%	70	66%
45%	11	11%
Manager's Unit	1	1%
Total	104	100%

Agency Acquisition and Development Financing

Acquisition and development financing has been structured to leverage previously committed and new Agency assistance necessary for tax credit competitive purposes and to minimize additional Agency assistance.

The table below summarizes the 2009 Financing Plan sources and uses structure:

Sources	Previously Committed Agency Funds	New Agency Funds	2009 Financing Plan	Ineligible Costs	Type	Uses
2005 Downtown TE Bonds	X		\$ 2,851,574		Grant	Acquisition
2007 Loan Forgiveness	X		\$ 1,130,862		Grant	Acquisition
2005 Downtown TE Bonds	X		\$ 2,017,564		Loan	Acquisition
2005 Downtown TE Bonds	X		\$ 1,980,862		Loan	Acquisition
2005 Downtown Taxable Bonds	X		\$ 108,188		Loan	Acquisition
Total Acquisition			\$8,089,050			
2009 Downtown TI Housing Set- Aside		X	\$ 324,000		Loan	Capital
Total Capital			\$ 324,000			
2009 Downtown TI Housing Set-Aside		X	\$ 1,250,000		Grant	Operating
MHSA One-Time Funds	X		\$ 450,000		Grant	Operating
Total Operating			\$1,700,000			
2005 Downtown Taxable Bonds	X			\$341,812	N/A	Operating
Total Ineligible				\$341,812		
PROJECT TOTAL			\$10,113,050	\$341,812		

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Please note that \$341,812 of previously committed resources are not included in the sources and uses associated with the 2009 Financing Plan because the resources were spent on ineligible operating costs under the TCAC regulations.

The financing terms of the seller carry back financing provided for the acquisition of the property and grants providing operating reserve assistance to the Hotel Berry project in the 2009 Financing Plan structure is described in more detail below.

\$3,982,436 Agency grant to fund acquisition costs of the Hotel Berry, including land donation for disposition purposes. No repayment is required.

\$2,017,564 Agency seller carry back loan to fund the building acquisition cost of the Hotel Berry. This seller carry back loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$2,413,050 Agency seller carry back loan to fund acquisition and development costs. This loan consists of \$2,089,050 of previously committed Agency funds (\$1,980,862 TE Bonds and \$108,188 Taxable Bonds) and \$324,000 of new Agency assistance. The loan has a 678 month term. During the first 18 months, the construction period, it bears simple interest at a 6% annual rate. For the remaining 660 months, the loan bears interest at a 0% interest rate with a balloon payment in the 678th month.

\$1,250,000 Agency grant will capitalize an operating reserve that will fund operating deficits associated with 94 of the units for a 15 year period, starting from the project's placed in service date. The funds will be drawn down as needed each year to cover costs of the operating deficit. No repayment is required.

\$450,000 MHSA grant will capitalize an operating reserve that will fund operating deficits associated with 10 MHSA units in the Hotel Berry for a 20 year period, starting from the project's placed in service date. No repayment is required.

Reissuance of Bonds

The Sacramento City Financing Authority 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) (Bonds) were originally issued by the Authority as tax-exempt bonds for federal tax purposes. The Bonds were originally issued for multiple purposes, including the financing of certain costs associated with the Hotel Berry project. As described in the Financing Plan approximately \$6,850,000 of the proceeds of the Bonds has been or will be spent on costs associated with the Hotel Berry project. To maintain the tax-exempt status of the Bonds after the transfer of the Hotel Berry Project as contemplated in the Financing Plan, the portion of the Bonds allocable to the Hotel Berry project will be deemed to be reissued for federal tax purposes as "Qualified 501(c)(3) Bonds."

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Permanent Financing

The Hotel Berry project will be primarily financed using equity raised from 9% Low Income Housing Tax Credits (LIHTC), Agency funds, MHSA funds, and a deferred developer's fee. A nine percent tax credit application to the Tax Credit Allocation Committee (TCAC) was submitted on June 9, 2009. The TCAC is scheduled to announce tax credit awards in September 2009.

The chart below summarizes the permanent sources of financing for the project.

Sources	Permanent
Tax Credit Equity	\$11,865,933
TCAP ARRA Award	\$1,695,133
Long-Term Agency Loans	\$4,430,614
Agency Acquisition Grant	\$3,982,436
Agency Operating Grant	\$1,250,000
MHSA Operating Grant	\$450,000
Deferred Developer Fee	\$331,359
Total	\$24,005,475

A sources and uses summary for the project including construction and permanent financing has been compiled. Please refer to Attachment 5.

Ownership/Limited Partnership Structure

The ownership structure of the Hotel Berry is a limited partnership, the 729 L Street Limited Partnership, formed especially for this Project. It has a managing general partner and a limited partner. The role of the managing general partner is to oversee the development and management of the project.

The Partnership has been structured so that Norwood Avenue Housing Corporation (NAHC), an Agency-affiliated non-profit corporation, will act as the developer and general partner for purposes of the tax credit application.

Site Control & Property Disposition

State regulations require that a project owner must show evidence of site control when submitting a tax credit application. Currently, the Redevelopment Agency of the City of Sacramento owns the Hotel Berry. The Agency must indicate its intent to dispose its interest in the property by executing a disposition and development agreement (DDA) to transfer ownership of the land, building and all other Agency development interests in the project to the limited partnership.

The DDA specifies that the Agency will make a seller carry back loan for \$2,017,564 for the purchase of the building, a grant for \$3,982,436 for a land donation and the balance of acquisition costs, and a \$2,089,050 seller carry back loan for the Agency's development interests in the project. The DDA is contingent upon an award of nine percent tax credits. A copy of the DDA is provided in Attachment 11 - Exhibit A. Although the Agency will not retain legal ownership of the Hotel Berry, the Agency will remain involved in the project. In addition, the Agency has entered into a contract with

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

729 L Street Limited Partnership to provide administrative services related to the project to ensure its success.

Project Feasibility

The financial feasibility of this project is dependent and contingent upon receipt of an allocation of Low Income Housing 9% Tax Credits from the California Tax Credit Allocation Committee (TCAC) for the Hotel Berry. This year's TCAC funding round is expected to be highly competitive due to the affordable housing stimulus funding and the fact there is only one application cycle.

Additional Funding Opportunities

The Agency is actively seeking additional stimulus funding sources to replace internal resources as allowed by the TCAC regulations. If such outside funding is received, they will replace or augment the Agency's financing assistance as appropriate.

Summary

The proposed Hotel Berry Financing Plan is structured to leverage previously committed funds and new Agency assistance necessary to help the project achieve a tax credit award and to minimize the amount of additional Agency funding requested.

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

Exhibit C

Report Regarding the Disposition of Property Acquired Directly or Indirectly with Tax Increment Funds (Health & Safety Code Section 33433)

I. Agreement

A copy of the Disposition and Development Agreement ("Agreement") disposing of an interest in Agency real property is attached to this Report.

II. Summary of Terms of Disposition

AGENCY'S COST OF ACQUIRING THE LAND, BUILDING AND PROJECT INTERESTS	
Purchase Price (or Lease Payments Payable During Agreement)	\$6,000,000
Commissions	
Closing Costs	\$10,029
Relocation Costs	\$800,000
Land Clearance Costs	
Financing Costs	
Improvement Costs (e.g. utilities or foundations added)	
Other Costs	\$1,279,021
TOTAL	\$8,089,050

ESTIMATED VALUE OF INTEREST CONVEYED	
Value of the property determined at its highest and best use under the redevelopment plan	\$3,170,000

ESTIMATED REUSE VALUE OF INTEREST CONVEYED	
Value of property determined with consideration of the restrictions and development costs imposed by the Agreement	\$3,170,000

VALUE RECEIVED ON DISPOSITION	
The purchase price or the total of the lease payments due to the Agency under the Agreement	\$8,089,050

Approval of the Hotel Berry Disposition and Development Agreement and Financing Plan

33433 Report

Page 2

III. Explanation of Disposition for Less than Full Value

Not applicable.

IV. Elimination of Blight

The subject site is located within the boundaries of the Merged Downtown Redevelopment Project Area Area. The proposed project is consistent with the Downtown Implementation Plan goals to eliminate environmental deficiencies by redevelopment of obsolete, aged and deteriorated building types and to provide a range of housing opportunities for all family types.

RESOLUTION NO. 2009 - _____

Adopted by the Sacramento City Financing Authority

on date of

**AUTHORIZING THE DEEMED REISSUANCE OF NOT TO EXCEED
\$10,000,000 AGGREGATE PRINCIPAL AMOUNT OF PREVIOUSLY
ISSUED SACRAMENTO CITY FINANCING AUTHORITY 2005 TAX
ALLOCATION REVENUE BONDS, SERIES A (MERGED DOWNTOWN
AND OAK PARK PROJECTS) AND CERTAIN OTHER ACTIONS IN
CONNECTION THEREWITH**

BACKGROUND

- A. The Sacramento City Financing Authority (the "Authority") is a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California.
- B. The Authority previously issued its 2005 Tax Allocation Revenue Bonds, Series A (Merged Downtown and Oak Park Projects) (the "Bonds") as tax-exempt bonds under the Internal Revenue Code of 1986 (the "Code") for the purpose, among others, of making a loan (the "Loan") to the Redevelopment Agency of the City of Sacramento (the "Agency") for the financing by the Agency of certain redevelopment projects located within the Agency's Merged Downtown Redevelopment Project Area.
- C. A portion of the proceeds of the Loan has been used to make a grant to the original developer of, and to pay certain other costs associated with, a project located at 729 L Street in the City of Sacramento, California and commonly known as the Hotel Berry (the "Project").
- D. The Agency has acquired ownership of the Project from the original developer and now proposes to transfer ownership of the Project to an organization as described in Section 501(c)(3) of the Code or a partnership comprised of two or more of such organizations.
- E. In order to maintain the tax-exempt status of the Bonds under the Code following such transfer of the Project, the Authority and the Agency propose that the portion of the Bonds allocable to the Project in an aggregate principal amount not to exceed \$10,000,000 (the "Allocable Bonds") be deemed reissued by the Authority for federal tax purposes as "Qualified 501(c)(3) Bonds" under the Code.

- F. Pursuant to Section 147(f) of the Code, the City Council of the City of Sacramento, as the applicable elected representative of the governmental unit having jurisdiction over the area in which the Project is located, has, following notice duly given, held a public hearing regarding the deemed reissuance of the Allocable Bonds by the Authority, and has approved the deemed reissuance of the Allocable Bonds by the Authority.
- G. In order to effectuate the deemed reissuance of the Allocable Bonds it will be necessary for the Authority to execute and deliver a Supplemental Tax Certificate (the "Supplemental Tax Certificate") supplemental to that certain Tax Certificate, dated December 7, 2005, executed by the Authority and the Agency and certain other documents or certificates.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE SACRAMENTO CITY FINANCING AUTHORITY RESOLVES AS FOLLOWS:

- Section 1. All of the above recitals are true and correct, and the Authority so finds and determines.
- Section 2. The Authority hereby authorizes the deemed reissuance for federal tax purposes of the Allocable Bonds as "Qualified 501(c)(3) Bonds" under the Code.
- Section 3. The officers of the Authority, each acting alone, are hereby authorized and directed to do any and all things and to execute and deliver any and all documents, including, without limitation, the Supplemental Tax Certificate, and any other documents as may be required or which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution, and any such actions heretofore taken by such officers are hereby ratified, confirmed and approved.
- Section 1. This resolution shall take effect from and after its passage and adoption.