

RESOLUTION NO. 2010-009

Adopted by the Redevelopment Agency
of the City of Sacramento

February 9, 2010

APPROVAL OF DEPOT PARK REVITALIZATION PROGRAM AND AUTHORIZATION TO ALLOCATE AND DISBURSE ANNUAL FUNDING TO U.S. NATIONAL LEASING FOR IMPROVEMENTS AT DEPOT PARK IN THE ARMY DEPOT REDEVELOPMENT PROJECT AREA

BACKGROUND

- A. U.S. National Leasing, LLC (USNL), operates City-owned Depot Park under an Industrial Development Lease and Option to Purchase agreement.
- B. In February 2006, the Redevelopment Agency of the City of Sacramento (Agency) and the USNL entered into a Master Project Agreement (MPA) to provide Annual Funding, when available, for eligible capital improvement and other projects at Depot Park including the development, redevelopment, installation, repair, demolition, replacement or rehabilitation of buildings, infrastructure, landscaping, lighting and signage.
- C. Army Depot Redevelopment Project Area Tax Increment funds provide the funding source for the Annual Funding in the MPA to be disbursed through the Depot Park Revitalization Program (Program).
- D. The Program is consistent with the goals in the Army Depot Redevelopment Plan and Implementation Plan to eliminate blight, promote new private sector investment and strengthen the economic base by redevelopment and rehabilitation of structures and installation of needed site improvements. The Program is in accord with the MPA between USNL and the Agency and is also consistent with the City's Strategic Plan Goal to enhance and preserve the economic vitality of Sacramento's business and industrial sector.
- E. The proposed action does not constitute a project subject to environmental review under the California Environmental Quality Act (CEQA) per CEQA guidelines Section 15378(b)(4), which exempts government financing mechanisms that do not involve a commitment to any specific project. The National Environmental Policy Act (NEPA) does not apply.

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

Section 1. The findings as stated above are approved.

- Section 2. The Depot Park Revitalization Program Guidelines, a copy of which is attached to this resolution as Exhibit A, is hereby approved.
- Section 3. The Owner Participation Agreement Template, a copy of which is attached to this resolution as Exhibit B, is hereby approved.
- Section 4. The Executive Director, or her designee, is authorized to amend the 2010 Agency Budget and allocate Annual Funding, beginning with the 2008-2009 fiscal year property assessments and annually as required, to the Depot Park Project fund from Army Depot Tax Increment development assistance funds when Net Tax Increment Revenue is above the base year value for parcels covered in the MPA to construct or rehabilitate eligible improvements at Depot Park.
- Section 5. The Sacramento Housing and Redevelopment Commission is authorized to approve all applications for eligible projects between \$100,000 and \$500,000 and sign all agreements, certificates and other documents which might be deemed necessary to carry out the Depot Park Revitalization Program.
- Section 6. The Executive Director, or her designee, is authorized to approve all applications for eligible projects up to \$100,000 and sign all agreements, certificates and other documents which might be deemed necessary to carry out the Depot Park Revitalization Program.

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Exhibit A: Depot Park Revitalization Program Guidelines

Exhibit B: Owner Participation Agreement Template

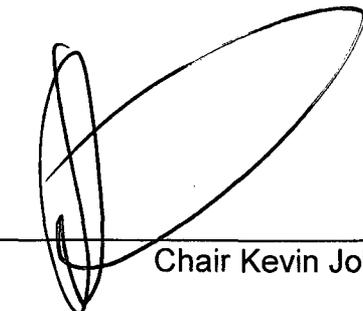
Adopted by the Redevelopment Agency of the City of Sacramento on February 9, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Chair Kevin Johnson

Attest:


Shirley Concolino, Secretary

DEPOT PARK REVITALIZATION PROGRAM REBATE GUIDELINES

The Redevelopment Agency of the City of Sacramento's (Agency) Depot Park Revitalization Program (Program) provides rebates to U.S. National Leasing LLC (USNL) for improvements in Depot Park. The Program is consistent with, and furthers, the goals and objectives of the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Project will eliminate the following blighting influences: buildings which are unsafe or unhealthy due to age, deterioration and dilapidation, inadequate and faulty utilities including without limitation inadequate traffic circulation and access, inadequate storm drains and sewers, inadequate water and power service; and similar factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots; incompatible adjacent uses; depreciated or stagnant property values. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: (1) conversion of existing military facilities to effective, economic public and private use. The creation and development of local job opportunities and the preservation of the existing employment base; (2) the elimination and prevention of the spread of blight and deterioration, and the conservation and rehabilitation of the Project Area in accordance with the General Plan, applicable specific plans, and local codes and ordinances; and (3) the promotion of new private sector investment and strengthening of the economic base of the Project Area by redevelopment and rehabilitation of structures and installation of needed site improvements.

Rebates are only available when the Depot Park budget has available Annual Funding, per the Master Project Agreement (MPA) dated February 1, 2006 between the Agency and USNL. The Program will be in effect for the duration of the Army Depot Redevelopment Plan.

Eligible Areas

Improvements may be made on the real property situated in the County of Sacramento, State of California, described in Attachment 1.

Parcels may change from time to time and as of December 2009 the following parcels in Depot Park are eligible:

APN
062 0010 032 0000
062 0010 033 0000
062 0010 034 0000
062 0010 035 0000
062 0010 036 0000

Project Rebate

USNL may undertake eligible improvements described in the MPA and may receive a rebate in the amount of available Annual Funding for the costs. Projects require completion of a Funding Agreement, signed by the Executive Director, in order to be eligible for a rebate.

An executed Funding Agreement may be in effect for up to five years, concurrently with the Army Depot Five Year Implementation Plan, in which USNL may request rebates for reimbursement of costs paid by USNL for a completed project using available Annual Funding each year the Funding Agreement is active. Agency disbursement obligations under the Funding Agreement shall expire with the adoption of a new Five Year Implementation Plan for the Redevelopment Project Area.

The following types of improvements are eligible for rebate per the MPA: development, redevelopment, installation, repair, demolition, replacement or rehabilitation of buildings, infrastructure, landscaping, lighting and signage.

Plan Review

All improvements must conform to the City of Sacramento Building Code and must be consistent with provisions of the Redevelopment Plan, the Owner Participation and Preference Rules adopted pursuant thereto, and the Community Redevelopment Law. All projects must comply with the California Environmental Quality Act (CEQA).

DEPOT PARK REVITALIZATION PROGRAM PROCEDURES **APPLICATION PROCESS**

APPLICATION:

1. SHRA receives a completed application including plans, scope of development/rehabilitation, budget and general schedule.
2. All required drawings and Plans will be provided at the applicant's expense. These fees, along with other soft costs, can be reimbursed in the amount of available Annual Funding after the project has been approved and the Agency issues a Notice to Proceed.
3. Applicant provides to the Agency construction estimates for the project.
4. Once information is received, staff will review and validate costs for reasonableness.

PROJECT APPROVAL PROCESS:

5. Staff prepares a report describing the project, its costs, its need for redevelopment financing, and its benefits to the Army Depot Redevelopment Project Area. This report is submitted for management approval.
6. Each Project or any other funding under this Program shall be subject to review under CEQA by the Agency, in the exercise of its independent judgment. No project may be approved by the Agency unless it has first been determined that the proposed project has no significant impact on the environment; that any impacts it has on the environment have or upon completion of an adopted mitigation plan will be mitigated to less than significance; that the Agency has prepared, reviewed and adopted an environmental impact report and overriding considerations which support the Agency action; or that the project is exempt from CEQA.

7. If the project is proposed pursuant to an existing Funding Agreement, the Executive Director will approve the project if the improvements are consistent with the provisions of the Redevelopment Plan, the Owner Participation and Preference Rules adopted pursuant thereto, and the Community Redevelopment Law. The project approval process will be completed in no less than 30 working days.
8. If the proposed project is not specified in an existing Funding Agreement, Agency and Applicant shall enter into a new Funding Agreement for the proposed project.
9. Funding Agreements identifying projects with Annual Funding rebate requests over \$100,000 will require approval by the Sacramento Housing and Redevelopment Commission. Funding Agreements identifying projects with Annual Funding rebate requests over \$500,000 will require approval by the Board of Directors of the Redevelopment Agency of the City of Sacramento. Projects that will cause a significant impact on the environment shall require approval by the Board of Directors of the Redevelopment Agency of the City of Sacramento.

DISBURSEMENT APPROVAL PROCESS:

Rebates will be made after project is completed. Payment of the rebate is subject to an inspection by Agency staff and the submission of the following items:

1. a payment request form
2. invoices and/or contracts
3. the applicant's canceled checks or receipts, showing the costs have been paid in full
4. copies of building permits, if any are required
5. all contractor's waivers of liens, if any contractors are involved
6. project Notice of Completion for a portion or all improvements; and
7. photographs of completed improvements.

DEPOT PARK
METES AND BOUNDS LEGAL DESCRIPTION OF LEASED PREMISES

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN SECTION 26, TOWNSHIP 8 NORTH, RANGE 5 EAST, MOUNT DIABLO MERIDIAN AND BEING PARCEL 4 AND A PORTION OF PARCEL 5 AS SHOWN ON THE "RECORD OF SURVEY OF SACRAMENTO ARMY DEPOT" FILED IN BOOK 53 OF SURVEYS AT PAGE 25, SACRAMENTO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 5 OF SAID RECORD OF SURVEY, THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 5, SOUTH 00°43'53" EAST, 3717.34 FEET; THENCE LEAVING SAID EASTERLY LINE, SOUTH 89°18'35" WEST, 2334.28 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 2 OF SAID RECORD OF SURVEY; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 2 SOUTH 00°41'25" EAST 436.80 FEET; THENCE NORTH 89°18'35" EAST 82.05 FEET; THENCE SOUTH 00°41'25" EAST 379.13 FEET TO THE NORTH LINE OF PARCEL 1 OF SAID RECORD OF SURVEY; THENCE ALONG THE NORTH LINE OF SAID PARCEL 1 SOUTH 89°24'55" WEST 1208.85 FEET TO THE WEST LINE OF SAID PARCEL 5; THENCE ALONG THE WEST LINE OF SAID PARCEL 5 NORTH 16°40'08" WEST 4506.87 FEET; THENCE LEAVING SAID WESTERLY LINE NORTH 89°04'35" EAST 134.85 FEET THENCE NORTH 00°55'25" WEST 199.16 FEET TO THE NORTH LINE OF SAID PARCEL 5; THENCE ALONG THE NORTH LINE OF SAID PARCEL 5 AND PARCEL 4 NORTH 89°04'35" EAST 4565.04 FEET TO THE POINT OF BEGINNING

AND EXCEPTING FROM THE AFOREMENTIONED DESCRIPTION ALL THAT CERTAIN REAL PROPERTY LYING WITHIN SECTION 26, TOWNSHIP 8 NORTH, RANGE 5 EAST, MOUNT DIABLO MERIDIAN AND BEING A PORTION OF PARCEL 5 AS SHOWN ON THE "RECORD OF SURVEY OF SACRAMENTO ARMY DEPOT" FILED IN BOOK 53 OF SURVEYS AT PAGE 25, SACRAMENTO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

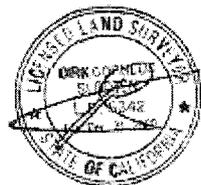
BEGINNING AT A POINT IN THE WEST LINE OF MARSHALL AVENUE FROM WHICH THE U.S.C.E. BRASS DISC STAMPED "126-1 1990" SHOWN ON SAID RECORD OF SURVEY BEARS THE FOLLOWING TWO (2) COURSES:

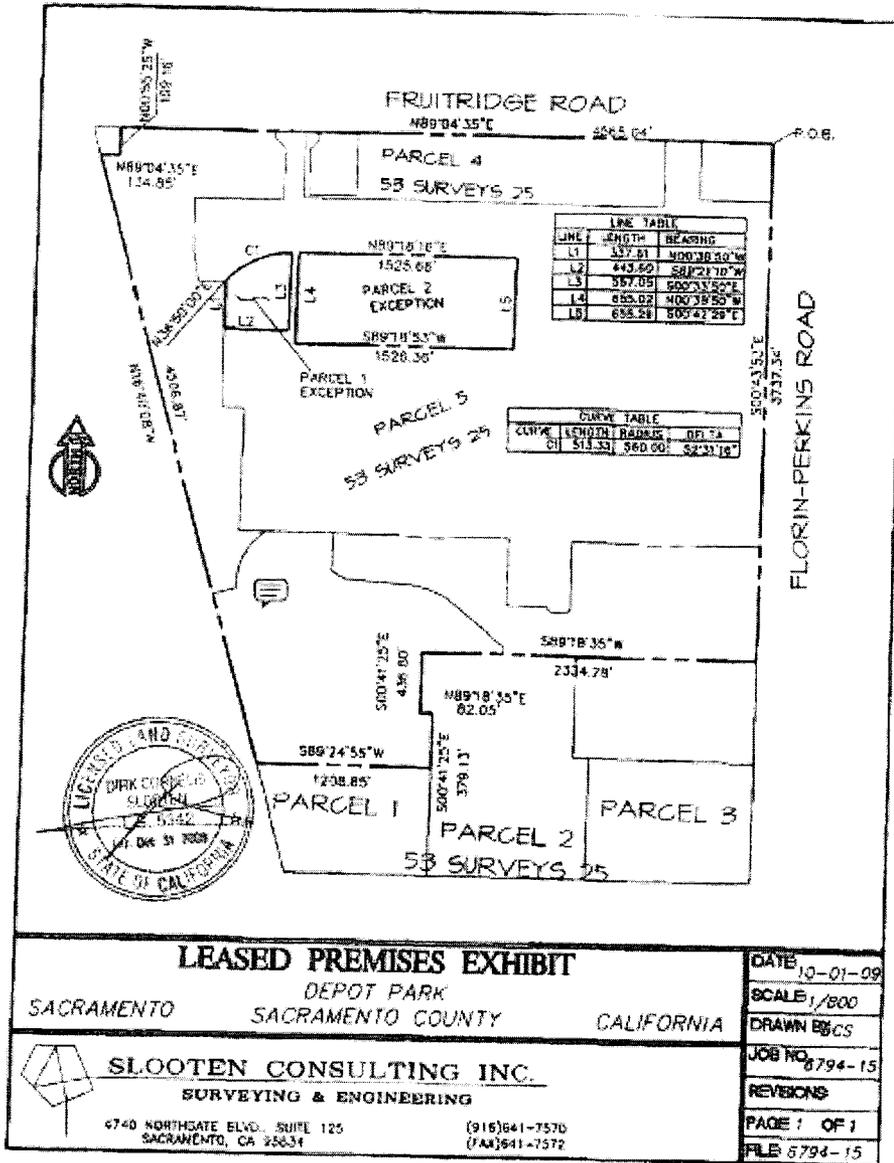
(1) NORTH 89°13'07" EAST 3289.45 FEET AND (2) NORTH 00°46'53" WEST 914.06 FEET DISTANT; THENCE, FROM SAID POINT OF BEGINNING, SOUTH 89°21'10" WEST 443.60 FEET; THENCE, NORTH 00°38'50" WEST 337.81 FEET; THENCE, ALONG THE ARC OF A CURVE TANGENT TO A LINE BEARING NORTH 16°50'00" EAST, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 560.00 FEET AND A CENTRAL ANGLE OF 57°31'16", AN ARC DISTANCE OF 513.33

FEET TO A POINT IN SAID WEST LINE OF MARSHALL AVENUE. THENCE, ALONG SAID WEST LINE, SOUTH 00°33'50" EAST 557.05 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT WHICH THE U.S.C.E. BRASS DISC STAMPED "126-1 1990" SHOWN ON SAID RECORD OF SURVEY BEARS THE FOLLOWING TWO (2) COURSES: (1) NORTH 89°13'07" EAST 1633.32 FEET AND (2) NORTH 00°46'53" WEST 1012.96 FEET DISTANT; THENCE, FROM SAID POINT OF BEGINNING, SOUTH 89°18'53" WEST 1526.36 FEET TO THE EAST LINE OF MARSHALL AVENUE; THENCE, ALONG SAID EAST LINE, NORTH 00°38'50" WEST 655.02 FEET; THENCE, NORTH 89°18'16" EAST; 1525.66 FEET; THENCE, SOUTH 00°42'29" EAST 655.29 FEET TO THE POINT OF BEGINNING.





LEASED PREMISES EXHIBIT

DEPOT PARK
 SACRAMENTO SACRAMENTO COUNTY CALIFORNIA

SLOOTEN CONSULTING INC.
 SURVEYING & ENGINEERING

6740 NORTHSATE BLVD., SUITE 125 (916)641-7570
 SACRAMENTO, CA 95834 (FAX)641-7572

DATE 10-01-09
 SCALE 1/800
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 JOB NO. 8794-15
 REVISIONS
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 FILE 8794-15

**OWNER PARTICIPATION AGREEMENT
DEPOT PARK REVITALIZATION REBATE PROGRAM**

Term	Definition
"Agency"	Redevelopment Agency of the City of Sacramento
"Agency Address"	630 I Street, Sacramento, California 95814
"Master Project Agreement"	Master Project Agreement between the Redevelopment Agency of the City of Sacramento and U. S. National Leasing, LLC entered into on February 1, 2006
"Settlement Agreement"	City Agreement No. 2006-0098 dated January 31, 2006
"Participant"	U.S. National Leasing, LLC
"Participant Legal Status"	
"Participant Address"	
"Project Area or Target Area"	Army Depot Redevelopment Area
"Effective Date"	
"Funding Source"	Annual Funding pursuant to the Master Project Agreement

Agency and Participant enter into this Owner Participation Agreement (hereinafter "FUNDING AGREEMENT") as of the Effective Date. [For purposes of this FUNDING AGREEMENT, the capitalized terms shall have the meanings assigned in the above table and in Section 11.2. Terms not defined in this FUNDING AGREEMENT shall have the meaning assigned to them in the Master Funding Agreement]

RECITALS

- A. Participant is the owner of a leasehold interest in, and is the lawful possessor of, the site in the City of Sacramento formerly known as the Sacramento Army Depot, and presently known as Depot Park located in the Army Depot Redevelopment Project Area in the City of Sacramento, California, more particularly described in Exhibit 1: Legal Description, incorporated herein by this reference.
- B. Agency is a redevelopment agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*)
- C. This document is entered into pursuant to the Settlement Agreement and the Master Project Agreement and is governed by the Community Redevelopment Law.
- D. The Funding Source, which is the Annual Funding provided for in Section 6.1.1 of the Master Project Agreement (as defined in the Master Project Agreement) has been or will be set aside by the Agency in a separate account exclusively for payment to Participant.
- E. This FUNDING AGREEMENT is made in accordance with the Settlement Agreement and is consistent with provisions of the Redevelopment Plan for participation by Participants in the redevelopment of the Project Area (adopted in accordance with California Health & Safety Code Section 33339). This FUNDING AGREEMENT is also consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it will meet the following goals of the current "Implementation Plan" adopted for the Project Area: (1) conversion of existing military facilities to effective, economic public and private use. The creation and development of local job opportunities and the preservation of the existing employment base; (2) the elimination and prevention of the spread of blight and deterioration, and the conservation and rehabilitation of the Project Area in accordance with the General Plan, applicable specific plans, and local codes and ordinances; and (3) the promotion of new private sector investment and strengthening of the economic

base of the Project Area by redevelopment and rehabilitation of structures and installation of needed site improvements. The FUNDING AGREEMENT is intended to implement the Master Project Agreement.

AGREEMENT

NOW THEREFORE, in furtherance of and consistent with the Settlement Agreement and Master Project Agreement 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. **PURPOSE.** The purpose of this FUNDING AGREEMENT is to provide for the disbursement of Annual Funding pursuant to the Settlement Agreement and the Master Project Agreement and for the Agency to thereby purchase Participant's covenant to make, and maintain for not less than three (3) years, certain improvements to the Premises in accordance with the Plans. The Agency represents that the improvement of the Premises and the completion of the Project, under this FUNDING AGREEMENT, and the fulfillment generally of this FUNDING AGREEMENT, are: (1) in the vital and best interests of the City and the health, safety, morals and welfare of its residents; (2) for the purpose of community improvement and welfare; (3) for the benefit of the Project Area and in accordance with the Agency's Redevelopment Plan; and (4) consistent with the Settlement Agreement, Master Project Agreement, Redevelopment Plan and Implementation Plan. Participant represents and agrees that its promise to improve the Site under the FUNDING AGREEMENT is not intended for speculation in land holding.
2. **TERM.** This FUNDING AGREEMENT shall commence as of the date first written above and shall terminate upon the occurrence of all of the following:
 - 2.1 Completion of the Project(s) in accordance with the FUNDING AGREEMENT and Plans;
 - 2.2 Fulfillment by the parties of their obligations under this FUNDING AGREEMENT; and
 - 2.3 Issuance of a Notice of Completion for all activities identified within this FUNDING AGREEMENT.
3. **PREDEVELOPMENT OBLIGATIONS.**
 - 3.1 Agency Approval of Plans. This FUNDING AGREEMENT is a financing document of the Agency and not a land use or planning document. Approval of the Project(s) under this FUNDING AGREEMENT by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project(s), or the aesthetic design of the Project(s) except as an approval by the Agency of the Project(s) design concept to effect the purpose of this FUNDING AGREEMENT. Participant shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. Agency's approval of Plans is not an assurance of their adequacy or correctness. Agency has reserved approval rights solely (a) to assure that the Plans further the Redevelopment Plan; and (b) to assure that the Project(s) is developed as intended by this FUNDING AGREEMENT under the Depot Park Revitalization Rebate Program and the Master Project Agreement. The Participant shall provide the Agency with Plans in connection with a Rebate Application Form, attached as Exhibit 2: Rebate Application Form, and incorporated herein by this reference. The Agency shall have the right to approve or reject the Plans and the Rebate Application Form only if the Improvements proposed therein are inconsistent with the provisions of the Redevelopment Plan, the Owner Participation and Preference Rules adopted pursuant thereto, and/or the Community Redevelopment Law. If Agency disapproves the Plans, in whole or in part, the Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the terms of the Master Project Agreement, the Redevelopment Plan, the Owner Participation and Preference Rules adopted pursuant thereto, and the Community Redevelopment Law. The Agency shall review the Plans concurrently with the execution of this FUNDING AGREEMENT, or upon separate submission of a Rebate Application Form. The Agency shall review the Plans within thirty (30) days after their proper delivery to the Agency.

- 3.2 Zoning and Condition of the Premises. As between the Agency and Participant, Participant is solely responsible for investigating the condition of the Premises for construction (including zoning and Hazardous Materials conditions) and for placing the Premises in a suitable condition for construction.
- 3.3 Environmental Review. Each Project or Rebate Application Form under this FUNDING AGREEMENT shall be subject to a determination by the Agency, in the exercise of its independent judgment, as to whether the Project is subject to or exempt from review under the California Environmental Quality Act ("CEQA"). In the event that the Project is not exempt from CEQA, the Agency shall complete the appropriate level of environmental review prior to approving the Project.
- 3.4 Conditions Precedent to Construction. Participant shall not begin construction until the following conditions precedent have been satisfied:

3.3.1. Agency has approved Participant's rebate application and issued a Notice To Proceed to Participant.

3.3.2 Participant has obtained a building permit and all other permits required for construction, if any;

3.3.3 Participant has submitted the Subcontractors List to Agency, if any;

3.3.4 Participant has submitted to Agency the certificates of insurance required by Section 8;

3.3.5 Participant's approved construction contracts, if any, have been fully executed with a licensed general contractor; and

3.3.6. Participant has issued a notice to proceed under the executed construction contracts.

4. **PROJECTS.** The Participant shall carry out construction and manage the approved Projects, listed on Exhibit 3: Projects attached, according to the requirements established in this FUNDING AGREEMENT, the Plans, and in conformity with all applicable laws, including without limitation all applicable building codes and labor standards. Participant shall promptly begin, diligently prosecute and timely complete the construction of the Project.

4.1 Public Safety Protections. Participant 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 Premises or Participant's activities in connection with the Premises, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

4.2 Antidiscrimination During Rehabilitation. The Participant for itself and its successors and assigns, agrees that the following provisions shall apply to, and be contained in, all contracts and subcontracts for the construction of the Project. (For purposes of this Section 4.2, Participant shall also mean Contractor or Subcontractor.)

4.2.1 Employment. Participant, its successors and assigns shall not discriminate on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. The Participant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layout or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Participant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

4.2.2 Advertising. The Participant shall, in all solicitations or advertisements for employees placed by or on behalf of the Participant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability.

- 4.3 Minority/Women's Business Enterprises Requirements. Participant shall comply with applicable laws related to minority-owned and women-owned business enterprises .
- 4.4 Lead-Based Paint. Participant shall not use lead-based paint in the construction.
- 4.5 Hazardous Materials. If "Hazardous Substances" are known to be or discovered on the Premises, Participant shall remediate all Hazardous Substances on the Premises 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. Participant shall bear all costs related to such remediation.
- 4.6 Changes in the Work. Participant shall, prior to its occurrence, notify Agency of all changes in the construction which result in a net increase in cost, alter the scope of the work, or extend the period for construction beyond the Completion Date. Agency shall have the right to approve or reject such changes. Agency shall make such approval or rejection in writing within a reasonable time.
- 4.7 Notification of Contractors, Architects and Engineers. Participant shall ensure that the Construction Contract, if required, shall fully comply with this FUNDING AGREEMENT. Participant shall notify his/her Project Contractors, architects and engineers of the requirements of this FUNDING AGREEMENT. Participant shall include, where applicable, the provisions of this FUNDING AGREEMENT in contracts and subcontracts for the Project, and Participant shall enforce such provisions.
- 4.8 Agency Inspection and Access to Premises. Agency shall have the right to inspect all books and records of Participant related to the Project during normal business hours to assure Participant's compliance with the provisions of this FUNDING AGREEMENT and Plans. Participant shall permit Agency representatives access, without charge, to the entire Premises at any time during normal business hours and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under this FUNDING AGREEMENT. Purposes for Agency entry may include, without limitation, inspection of all work being performed in connection with the rehabilitation of the Premises.
- 4.9 Supervision of the Work. Participant shall be solely responsible for monitoring all construction, ensuring that the Project is completed in a workmanlike manner, and enforcing the terms of this FUNDING AGREEMENT and any construction contracts. Agency inspection of the Project shall be solely for the purpose of monitoring disbursements of Agency funds and assuring Participant's performance under this FUNDING AGREEMENT.
- 4.10 Prevailing Wages. Participant shall comply with the provisions of Section 5.1 of the Master Project Agreement.
5. Disbursement Procedures. The payments shall be disbursed to Participant consistent with Section 6 of the Master Project Agreement and as follows:
- 5.1 Conditions Precedent. Agency shall not be obligated to make any disbursement of the Purchase Price unless and until the following conditions precedent have been met:
- 5.1.1 Participant is not in default of any provision of this FUNDING AGREEMENT;
- 5.1.2 Participant has provided Agency with documentation of the cost of the Improvements for which payment is requested: and
- 5.1.3 The Agency has inspected the Premises and determined that Participant has completed the Project in accordance with the Plans and Participant's obligations under this FUNDING AGREEMENT related to construction of the Project **and issued a Notice of Completion**. If the Participant fails to complete the Project in accordance with the Plans and obligations under this FUNDING AGREEMENT, the Agency shall, within (15) days after inspection of the Premises, provide the Participant with a written statement, indicating in adequate detail in what respect the Participant has failed to complete the Project in accordance with the provisions of the FUNDING AGREEMENT and the rebate

application, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Participant to take or perform in order to obtain the **Notice of Completion**.

- 5.2 **Limitation on Disbursements**. Developer may obtain disbursements for a completed Project for eligible costs for up to five years from the Effective Date, or the expiration of the Agency's Implementation Plan for the Project Area, whichever occurs first.

6. COVENANTS REGARDING MAINTENANCE, USE, AND NONDISCRIMINATION.

- 6.1 **Maintenance**. Participant shall maintain for not less than three (3) years from the date of the Notice of Completion, the completed improvements to the Premises in accordance with the Plans and the Rebate Application Form.

- 6.2 **Nondiscrimination**. Participant, its successors and assigns shall not discriminate on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease or rental or in the use or occupancy of the completed Improvements to the Premises.

- 6.3 **Use**. Participant shall use the completed Improvements to the Premises in accordance and conformity with the Redevelopment Plan.

7. INDEMNIFICATION

- 7.1 **Indemnification**. Participant shall indemnify, protect and defend the Agency, its officers, directors, employees and agents, and hold them harmless from any and all claims and liability for bodily injury, death and property damage caused by or resulting from the acts or omissions of Participant, its officers, employees, agents or independent contractors and for any and all costs incurred by the Agency in defending against such claims, including investigator's, witness' and attorney's fees and court costs. This Section 7.1 shall survive the termination of this FUNDING AGREEMENT, irrespective of the reason for its termination.

- 7.2 **Indemnification of Agency for Hazardous Materials**. Participant acknowledges that the Agency is not and has not been the owner of, or in possession of, all or any part of the Premises. Participant shall indemnify, protect and defend Agency and hold Agency harmless from any and all costs, fees, penalties and claims related to the existence of Hazardous Materials on the Premises and to the removal or discharge of Hazardous Materials from the Premises by Participant, or its employees, agents or contractors. The indemnity provisions regarding Hazardous Materials set out in this Section 7.2 shall survive the expiration or other termination of this FUNDING AGREEMENT, irrespective of the reason for its termination.

8. INSURANCE AND PUBLIC SAFETY PROTECTIONS.

Participant shall promptly take steps to protect private contractors and their employees and the public from the risk of injury whether from the condition of the Premises or Participant's activities in connection with the Premises. As a condition of this Funding Agreement, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain, such insurance as required by the Master Project Agreement.

9. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.

Participant may assign any or all of its interests in this FUNDING AGREEMENT consistent with the Settlement Agreement and Section 14 of the Master Project Agreement.

10. DEFAULTS AND REMEDIES.

Subject to any extension of time permitted by this FUNDING AGREEMENT, a failure or delay by a party to perform any term or provision of this FUNDING AGREEMENT constitutes a default of this FUNDING AGREEMENT.

- 10.1 **Cure**. Except as otherwise provided in the FUNDING AGREEMENT, if either party shall default in, or breach, the FUNDING AGREEMENT, such party shall immediately commence and diligently proceed to cure such default or breach within ten (10) days after receipt of written notice from the other party of such default or breach. If the defaulting party does not promptly begin and diligently pursue a cure of the default

or fails to cure the default within a reasonable time, the aggrieved party may institute proceedings to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default. While Agency is not relieved of any obligation under this FUNDING AGREEMENT to give notice, mere failure of Agency to notify Participant shall not be deemed a waiver of Participant's default.

- 10.2 No Waiving by Delay. Any delay by a party in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive such party of, or limit, such rights in any way. Any waiver in fact made by a party with respect to any specific default shall not be considered as a waiver of the rights of such party with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.
- 10.3 Delay for Causes Beyond Control of Party. For the purposes of any of the provisions of the FUNDING AGREEMENT, neither Agency nor Participant shall be considered in breach of, or default in, its obligations with respect to the preparation of the Premises for rehabilitation, or the beginning, prosecution and completion of construction of the Improvements, if delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes 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 Agency and Participant 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 Participant has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

11. GENERAL PROVISIONS

- 11.1 Time for Actions. Agency and Participant shall each do the actions required of them, on or before the times specified in this FUNDING AGREEMENT. Unless otherwise provided, Agency shall give required approvals or disapprovals within thirty (30) days after submission of request for approval.
- 11.2 Definitions. The following definitions shall apply for the purposes of this FUNDING AGREEMENT:
- 11.2.1 "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 801 12th Street, Sacramento, California 95814. "Agency" as used in this FUNDING AGREEMENT includes the Redevelopment Agency of the City of Sacramento and any assignee of, or successor to, its rights, powers and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.
- 11.2.2 "Contractor" is the contractor or contractors, if any, with whom Participant has contracted for the construction, and "subcontractors" are those contractors or materialmen with whom Contractor has contracted or with whom another subcontractor has contracted for a portion of the construction. Contractor (and all subcontractors who must, by law, hold a contractor's license) shall have a current and valid contractor's license, issued by the California Contractors' State License Board, for the work they are performing.

- 11.2.3 "Hazardous Materials" shall include, but not be limited 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 Plans and Inventory) and 25281 (Underground Storage of Hazardous Substances); all applicable local regulations; and all regulations and promulgations pursuant to said laws.
- 11.2.4 "Improvements" are the works of improvement, including rehabilitation, to be constructed on the Premises in accordance with Project and pursuant to this FUNDING AGREEMENT.
- 11.2.5 Exhibit 4: "Map", is a map of the project site incorporated herein by this reference.
- 11.2.6 "FUNDING AGREEMENT" is this Owner Participation FUNDING AGREEMENT which includes this document and the Plans and referenced attachments to this FUNDING AGREEMENT which are incorporated in this FUNDING AGREEMENT as if set forth in full in the body of the FUNDING AGREEMENT. A default of any of the referenced attachments shall be deemed a default of this FUNDING AGREEMENT.
- 11.2.7 "Plans" are the budget for the Project(s), and scope of work, submitted to the Agency for Agency funding and which are on file with the Agency.
- 11.2.8 "Premises" is that real property described in Exhibit 1: Legal Description. The Premises includes all improvements described in the Plans.
- 11.2.9 "Project(s)" is/are the construction of specific improvements to the Premises listed in Exhibit 3: Projects as more particularly set out in the Plans and this FUNDING AGREEMENT.
- 11.2.11 "Participant" is U.S. National Leasing LLC. The principal office of the Participant is located at 16 Business Park Way, Sacramento, California 98102.
- 11.2.12 "Purchase Price" is the price Agency shall pay to Participant from available Annual Funding for the covenant to rehabilitate and maintain the Improvements, which shall not exceed \$100,000 per rebate request.
- 11.2.13 "Rebate Application Form" is the form of application, including plans and budget, to be completed by Participant pursuant to the Depot Park Revitalization Rebate Program in order to receive Annual Funding pursuant to the Master Project Agreement (see Exhibit 2: Rebate Application Form attached).
- 11.2.14 "Redevelopment Plan" is the Army Depot Redevelopment Plan (as it may be amended from time to time) as adopted by the City Council of the City of Sacramento of the County of Sacramento. References to the Redevelopment Plan include all rules, regulations, plans and strategies duly adopted in accordance with the Redevelopment Plan.
- 11.2.15 "Subcontractors List" is the list, prepared by Participant, of all subcontractors employed in the work of construction, if any, the work to be performed by each subcontractor, and the total amount to be paid to each subcontractor.
- 11.2.16 "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is beyond the control of such party. Unavoidable Delay is further defined in Section 10.3.

- 11.3 Fees, Commissions, Gifts or Interests. Agency shall not be liable for any real estate commissions, brokerage fees or finders fees which may arise from this FUNDING AGREEMENT. Agency and Participant each represent the neither has engaged any broker, agent or finder, and that neither claims such a commission or fee, in connection with this FUNDING AGREEMENT. Participant shall pay no fee or commission, make no gifts and provide no interest in the Loan to any employee or official of the Agency or the City of Sacramento.
- 11.4 Entire Agreement. This FUNDING AGREEMENT integrates all of the terms and conditions related or incidental to the distribution of Annual Funding to Projects, and is subject to the Settlement Agreement and the Master Project Agreement entered into pursuant thereto. In the event that any provision of this FUNDING AGREEMENT is determined to be inconsistent with the Settlement Agreement or the Master Project Agreement, the Settlement Agreement and Master Project Agreement shall control.
- 11.5 Waivers and Amendments. All waivers of the provisions of this FUNDING AGREEMENT must be in writing and signed by the appropriate authorities of the Agency or the Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Participant.
- 11.6 Nonliability of Agency Officials and Employees. No member, official or employee of the Agency shall be personally liable to the Participant, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Participant or its successors, or on any obligations under the terms of this FUNDING AGREEMENT.
- 11.7 Local, State and Federal Laws . The Participant 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, Participant 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. Participant shall permit only persons or entities that 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.
- 11.8 Notices And Demands. A notice, demand or other communication under the FUNDING AGREEMENT by either party to the other shall be in writing and shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address set out above, or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided for a Notice in this Section.

THIS AGREEMENT IS EXECUTED as of _____ in Sacramento, California.

PARTICIPANT:

By: _____

AGENCY:

REDEVELOPMENT AGENCY OF THE
CITY OF SACRAMENTO

By: _____
LASHELLE DOZIER
Executive Director

APPROVED AS TO FORM:

By: _____
Agency Counsel

DEPOT PARK
METES AND BOUNDS LEGAL DESCRIPTION OF LEASED PREMISES

ALL THAT CERTAIN REAL PROPERTY LYING WITHIN SECTION 26, TOWNSHIP 8 NORTH, RANGE 5 EAST, MOUNT DIABLO MERIDIAN AND BEING PARCEL 4 AND A PORTION OF PARCEL 5 AS SHOWN ON THE "RECORD OF SURVEY OF SACRAMENTO ARMY DEPOT" FILED IN BOOK 53 OF SURVEYS AT PAGE 25, SACRAMENTO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 5 OF SAID RECORD OF SURVEY, THENCE ALONG THE EASTERLY LINE OF SAID PARCEL 5, SOUTH 00°43'53" EAST, 3737.34 FEET; THENCE LEAVING SAID EASTERLY LINE, SOUTH 89°18'35" WEST, 2314.28 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 2 OF SAID RECORD OF SURVEY; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 2 SOUTH 00°41'25" EAST 436.80 FEET; THENCE NORTH 89°18'35" EAST 82.05 FEET; THENCE SOUTH 00°41'25" EAST 379.13 FEET TO THE NORTH LINE OF PARCEL 1 OF SAID RECORD OF SURVEY; THENCE ALONG THE NORTH LINE OF SAID PARCEL 1 SOUTH 89°24'55" WEST 1208.85 FEET TO THE WEST LINE OF SAID PARCEL 5; THENCE ALONG THE WEST LINE OF SAID PARCEL 5 NORTH 16°40'08" WEST 4506.87 FEET; THENCE LEAVING SAID WESTERLY LINE NORTH 89°04'35" EAST 134.85 FEET THENCE NORTH 00°55'25" WEST 199.16 FEET TO THE NORTH LINE OF SAID PARCEL 5; THENCE ALONG THE NORTH LINE OF SAID PARCEL 5 AND PARCEL 4 NORTH 89°04'35" EAST 4565.04 FEET TO THE POINT OF BEGINNING

AND EXCEPTING FROM THE AFOREMENTIONED DESCRIPTION ALL THAT CERTAIN REAL PROPERTY LYING WITHIN SECTION 26, TOWNSHIP 8 NORTH, RANGE 5 EAST, MOUNT DIABLO MERIDIAN AND BEING A PORTION OF PARCEL 5 AS SHOWN ON THE "RECORD OF SURVEY OF SACRAMENTO ARMY DEPOT" FILED IN BOOK 53 OF SURVEYS AT PAGE 25, SACRAMENTO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1

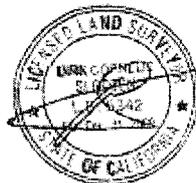
BEGINNING AT A POINT IN THE WEST LINE OF MARSHALL AVENUE FROM WHICH THE U.S.C.E. BRASS DISC STAMPED "126-1 1990" SHOWN ON SAID RECORD OF SURVEY BEARS THE FOLLOWING TWO (2) COURSES:

(1) NORTH 89°13'07" EAST 1209.45 FEET AND (2) NORTH 00°46'53" WEST 914.06 FEET DISTANT; THENCE, FROM SAID POINT OF BEGINNING, SOUTH 89°21'10" WEST 443.60 FEET; THENCE, NORTH 00°38'50" WEST 337.81 FEET; THENCE, ALONG THE ARC OF A CURVE TANGENT TO A LINE BEARING NORTH 16°50'00" EAST, CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 560.00 FEET AND A CENTRAL ANGLE OF 52°11'16", AN ARC DISTANCE OF 513.33

FEET TO A POINT IN SAID WEST LINE OF MARSHALL AVENUE; THENCE, ALONG SAID WEST LINE, SOUTH 00°33'50" EAST 537.05 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT WHICH THE U.S.C.E. BRASS DISC STAMPED "126-1 1990" SHOWN ON SAID RECORD OF SURVEY BEARS THE FOLLOWING TWO (2) COURSES: (1) NORTH 89°13'07" EAST 1613.32 FEET AND (2) NORTH 00°46'53" WEST 1012.96 FEET DISTANT; THENCE, FROM SAID POINT OF BEGINNING, SOUTH 89°18'53" WEST 1526.36 FEET TO THE EAST LINE OF MARSHALL AVENUE; THENCE, ALONG SAID EAST LINE, NORTH 00°38'50" WEST 655.02 FEET, THENCE, NORTH 89°18'16" EAST; 1525.66 FEET; THENCE, SOUTH 00°42'29" EAST 655.29 FEET TO THE POINT OF BEGINNING.



DEPOT PARK REVITALIZATION PROGRAM



REBATE APPLICATION FORM

Sacramento Housing and Redevelopment Agency

630 I Street, Second Floor, Sacramento, CA 95814
Phone: (916) 440-1322

Staff Use Only:
Date
Application No.

		<input type="checkbox"/>
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Section 1 -- Application Information

Contact Name(s):

Phone Number: Fax Number:

Mailing Address:

Section 2 -- Project Information

General Project Description and Benefit:

Site Address:

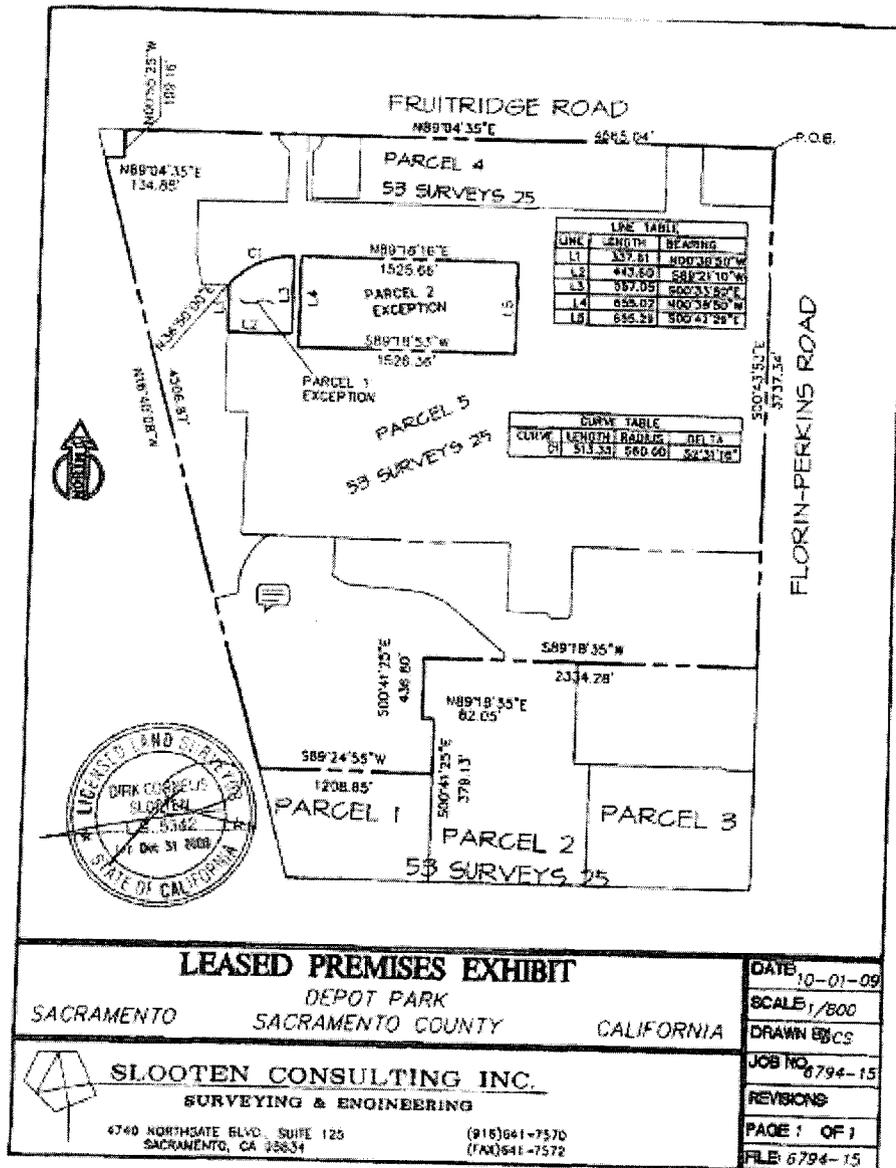
Assessor's Parcel Number and Building Number:

DEPOT PARK REVITALIZATION PROGRAM	
Section 3 -- Project Financing (Include the following information if available at time of application)	
REBATE APPLICATION FORM	
<u>Sources</u>	<u>Amount</u>
Conventional Loan	\$
Equity	\$
Other (Please Explain)	\$
Total Amount	\$
<u>Uses</u>	<u>Amount</u>
Construction Costs	\$
Construction Contingency	\$
<u>Predevelopment Costs</u>	<u>Amount</u>
Architectural and Engineering Fees	\$
Legal Fees	\$
Insurance and Bonding	\$
Loan Fees and Points	\$
Contractor Fees	\$
Total Amount	\$
Assessor's Parcel Number and	
Building Number:	

Detailed Project Descriptions and Plans to be submitted by Developer and approved by Agency concurrently with executed Agreements.

DEPOT PARK APPROVED PROJECTS

1. Improve energy efficiency of existing buildings through window replacements.
2. Improve energy efficiency of existing buildings through lighting replacements.
3. Improve traffic circulation and safety through the installation of road and roadside landscaping improvements.
4. Enhance green space and reduce carbon footprint through tree and shrub planting, improved irrigation, and the addition of park area and landscaped boundary buffer zones.
5. Restoration and enhancement of existing conference center and recreation facilities.
6. Restoration and enhancement of existing cafeteria facilities.
7. Building improvements and materials replacements necessary to obtain LEED certification of modifications to existing buildings.
8. Improvements necessary to accommodate and develop on-site renewable energy.
9. Relocation of power lines and poles to underground facilities.
10. Painting of existing structures to reduce visual impacts.



LEASED PREMISES EXHIBIT

SACRAMENTO DEPOT PARK SACRAMENTO COUNTY CALIFORNIA



SLOOTEN CONSULTING INC.
SURVEYING & ENGINEERING

4740 NORTHGATE BLVD., SUITE 125 (916)641-7570
SACRAMENTO, CA 95834 (FAX)641-7572

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