



**REPORT TO COUNCIL,  
HOUSING AUTHORITY AND  
REDEVELOPMENT AGENCY**

**City of Sacramento**

**915 I Street, Sacramento, CA 95814-2671**

**[www.CityofSacramento.org](http://www.CityofSacramento.org)**

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Consent

**March 9, 2010**

**Honorable Mayor and Members of the City Council  
Chair and Members of the Redevelopment Agency and Housing Authority Boards**

**Title: Approval of the 626/630 I Street Rehabilitation Project; Acceptance of the American Recovery Reinvestment Act (ARRA) Competitive Grant Award; approval of local funds to leverage project financing and authorization to Select and Award Construction Contracts**

**Location/Council District: 626/630 I Street/Council District 1**

**Recommendation:** Adopt 1) a **City Council Resolution**; a) Authorizing the Sacramento Housing Redevelopment Agency to amend the Agency budget and defund \$3.2 million in Home Investment Partnership Program (HOME) funds previously allocated to the 626 I Street Modernization Project and reallocate those funds to the HOME Multifamily Housing Loan Funds, b) authorizing the Sacramento Housing and Redevelopment Agency to accept \$500,000 of Community Development Block Grant (CDBG) funding for the 626/630 I Street Project as approved in the CDBG 2010 Mid-Year Action Plan amendment and up to \$1 million should the CDBG 2010 entitlement be increased by HUD; 2) a **Redevelopment Agency Resolution** authorizing the Executive Director to: a) defund \$3.2 million in Downtown Tax Exempt Housing Set-Aside funding (TI) from the SRO Residential Hotel Project b) amend the Agency budget to appropriate \$3.2 million in Downtown Tax Exempt Housing Set-Aside (TI) funds for the 626/630 I Street Rehabilitation Project c) approve a conditional grant comprised of \$3.2 million Tax Increment Housing Set Aside funds for the 626/630 I Street Project; and d) execute an Owner Participation Agreement (OPA) with the Housing Authority of the City of Sacramento for the 626/630 I Street Project; and 3) a **Housing Authority Resolution** a) authorizing the Executive Director or her designee to amend the Housing Authority budget to accept and expend the award of \$10,000,000 under the American Recovery Reinvestment Act (ARRA) Capital Funds Recovery Competition (CFRC) Grant for Public Housing Agencies (PHA) for the 626/630 I Street Project, b) authorizing the Executive Director or her designee to amend the Housing Authority budget to accept and expend up to \$4,200,000 in conditional grant funds to be used for the 626/630 I Street Project, c) authorizing the Executive Director or her designee to accept an OPA for up to \$4,200,000 Conditional Grant and related documents for this project, d) authorizing the Executive Director or her designee to issue a request for

## Approval of 626 I Street Project

conditional grant funds to be used for the 626 I Street Project, c) authorizing the Executive Director to execute an OPA with the Redevelopment Agency of the City, d) authorizing the Executive Director to issue a Request for Qualifications for a General Contractor to provide pre-construction, construction, and construction management services for the rehabilitation and modernization of the 626 I Street Project, e) authorizing the Executive Director to award a construction contract to the selected General Contractor, and f) authorizing the Executive Director to transfer project cost savings, if any, to other priority capital needs identified in the 2009 Kitchell Capital Needs Assessment.

**Contact:** Nick Chhotu, Assistant Director of Public Housing, 440-1334, Cecette Hawkins, Management Analyst, 449-6218

**Presenters:** Nick Chhotu, Assistant Director of Public Housing

**Department:** Sacramento Housing and Redevelopment Agency

### Description/Analysis

**Issue:** The 626 I Street Project is a 12-story mixed-use building, constructed in 1975 for the Housing Authority. The first three floors are office/commercial, while floors four through 12 provided 108 housing units for elderly and/or disabled families. In 2007, the Housing Authority relocated the residents to prepare to substantially renovate the building. Late last year, SHRA moved its offices to 801 12<sup>th</sup> Street to completely vacate the building. Over the years, reduced federal funding and insufficient annual public housing capital funds delayed the renovation of major systems including roof, plumbing, electrical and asbestos abatement. In May 2009 a Capital Needs Assessment (CNA) identified \$14.6 million in repairs to bring the property up to current market standards.

The Federal Government, as part of the American Recovery and Reinvestment Act of 2009 (ARRA), recognizes that housing authorities have long needed additional capital renovation funds to modernize much of the nation's public housing. Last year the Housing Authority received (by formula) \$4.6 million for the renovation of 2025 units. In addition, in June 2009, the Housing Authority received Council approval to seek funding for the 626 I Street project through a competitive ARRA Capital Funds Recovery Competition (CFRC) Grant. The ARRA competitive grant required a 25 percent match of non-public housing funds. In September 2009, the Housing Authority was awarded the maximum grant of \$10 million for the substantial rehabilitation of the 626 I Street Project. The Housing Authority of the City of Sacramento was the only entity in California to be awarded funds through this grant and the awarded amount constitutes 20 percent of the national funding allocation.

## Approval of 626 I Street Project

The Housing Authority and City Council had previously adopted resolutions declaring their intent to pursue additional funds to finance the 626 I Street project subject to award of the competitive grant. This report recommends a number of actions to facilitate the renovation and expedite the use of the funds as required by ARRA. The actions include the Executive Director's authority to: execute contracts to renovate 626 I Street, replace committed HOME funds with a conditional grant of up to \$4.2 million in Merged Downtown Tax Increment Housing Set-Aside Bond funds, recommit and possibly increase Community Development Block Grant funds, execute an Owner Participation Agreement (OPA) for the rehabilitation and financing of 626 I Street Modernization Project and procure construction services through an expedited process.

The scope of work will include roof repair, window and window wall system replacement, water penetration prevention measures, building sealants, replacement of utility infrastructure (water, sewer, storm drain, and natural gas), and new electrical and mechanical systems. The project when completed will consist of 108 units for occupancy by extremely low income elderly persons in September 2012.

**Policy Considerations:** This action furthers the commitment of the City through the 2008-2013 Housing Element to preserve and rehabilitate existing affordable housing and to provide housing for extremely low income households. Specifically, these actions support policies H-3.1.1 related to extremely low income housing needs, policy H-4.4 regarding the preservation of affordable housing, and Program 74 which confirms the City's commitment to the Housing Authority Asset Repositioning Strategy. The property's renovation and the use of Tax Increment funds is also consistent with Downtown Redevelopment Area Implementation Plan goal which seeks to provide a range of housing opportunities for all family types, eliminate blight, and promote the rehabilitation and preservation of the existing housing stock near the JKL corridor. As an affordable public housing project, the 626 I Street Modernization Project is exempt from the Art in Public Places requirements usually associated with projects funded with TI.

To meet expedited timelines to obligate the ARRA funds, Housing Authorities have been directed by the US Department of Housing and Urban Development to waive state and local procurement rules, but still must follow federal guidelines. Generally, Housing Authority's will procure construction with a lump sum public bid process from a general contractor. For this project, the Agency is proposing an alternative procurement process that is consistent with federal requirements. The Housing Authority will select a general contractor through a competitive qualification based selection process to provide construction management services and then the selected general contractor will procure the construction trade work through a public competitive bid process which will include requiring minimum qualification standards for each sub-contractor.

Approval of 626 I Street Project

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The proposed action is exempt from environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15301(a) and (d).

**National Environmental Policy Act (NEPA):** The proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA) per 24 CFR Section 58.35(a) (3)(ii) & (iii), which excludes rehabilitation of multifamily residential buildings and non-residential structures provided that there is no change in land use, and no significant changes in density or capacity, and the cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. This project converts to exempt, per section 58.34 (a) (12) because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license.

**Sustainability Considerations:** The recommended actions would position the Housing Authority to achieve the goal within the City's Sustainability Master Plan to replace or renovate obsolete energy or resource inefficient infrastructure (buildings, facilities, systems, etc).

**Committee/Commission Action:** *Sacramento Housing and Redevelopment Commission:* At its March 3, 2010 meeting, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. Staff will brief the Council on the outcome of their vote on March 9, 2010.

**Rationale for Recommendation:** Currently the units at 626 I Street cannot be occupied because there is an immediate need to repair the roof, plumbing system, and hot water boiler. Proposed improvements will also prevent water intrusion into the interior of the building, replace outdated and unserviceable fire, life and safety systems, and assist in refurbishing the residential units. The project's access to the federal funding award will substantially modernize the 626 I Street residential units, provide housing opportunities for very low-income households, and offer increased construction employment opportunities.

**Financial Considerations:** This report recommends that \$3.2 million in HOME funds currently committed to the project to be replaced with an allocation of \$3.2 million in Merged Downtown Tax Increment Housing Set-Aside funds from the SRO Residential Hotel Project Fund. In addition the 2010 Mid Year CDBG Action Plan amendment authorizes \$500,000 of CDBG capital reserve funds and an additional \$500,000 in CDBG funds should HUD increase the City's 2010 Entitlement amount. These funds will serve as the required local match for the \$10 million of Capital Funds Recovery Competition (CFRC) Grant funds. The use of Tax Increment funds requires an Owner's Participation Agreement (OPA) with is included as Attachment 5.

Approval of 626 I Street Project

The previously authorized \$3.2 million of HOME funds will return to the HOME Multifamily Housing program and are anticipated to be used on a Downtown SRO housing project. Staff recommends the use of TI funds for the project match as the expenditure will assist the Agency in meeting its very low income housing production requirement and because TI funds are more compatible with the CFRC funds.

The sources for the project are as follows:

Source	Amount	Notes
ARRA Capital Funds	\$10 million	Competitively awarded
Downtown Low Moderate	\$ 3.2 million	In exchange for HOME funds
CDBG	\$ .5 million	Previously committed
CDBG Additional	\$ .5 million	Contingent upon additional funding from HUD
<b>Total</b>	<b>\$14.2 million</b>	

The anticipated budget for the project is as follows:

Construction Costs \$12,256,000  
 Contingency \$ 861,000  
 Soft Costs \$ 1,157,500

**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:   
 LASHELLE DOZIER  
 Executive Director

Recommendation Approved:

  
 GUS VINA  
 Acting City Manager

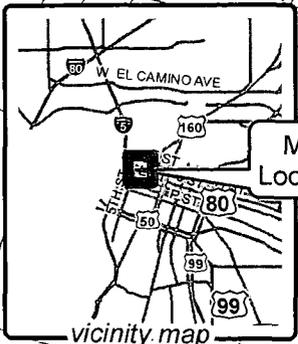
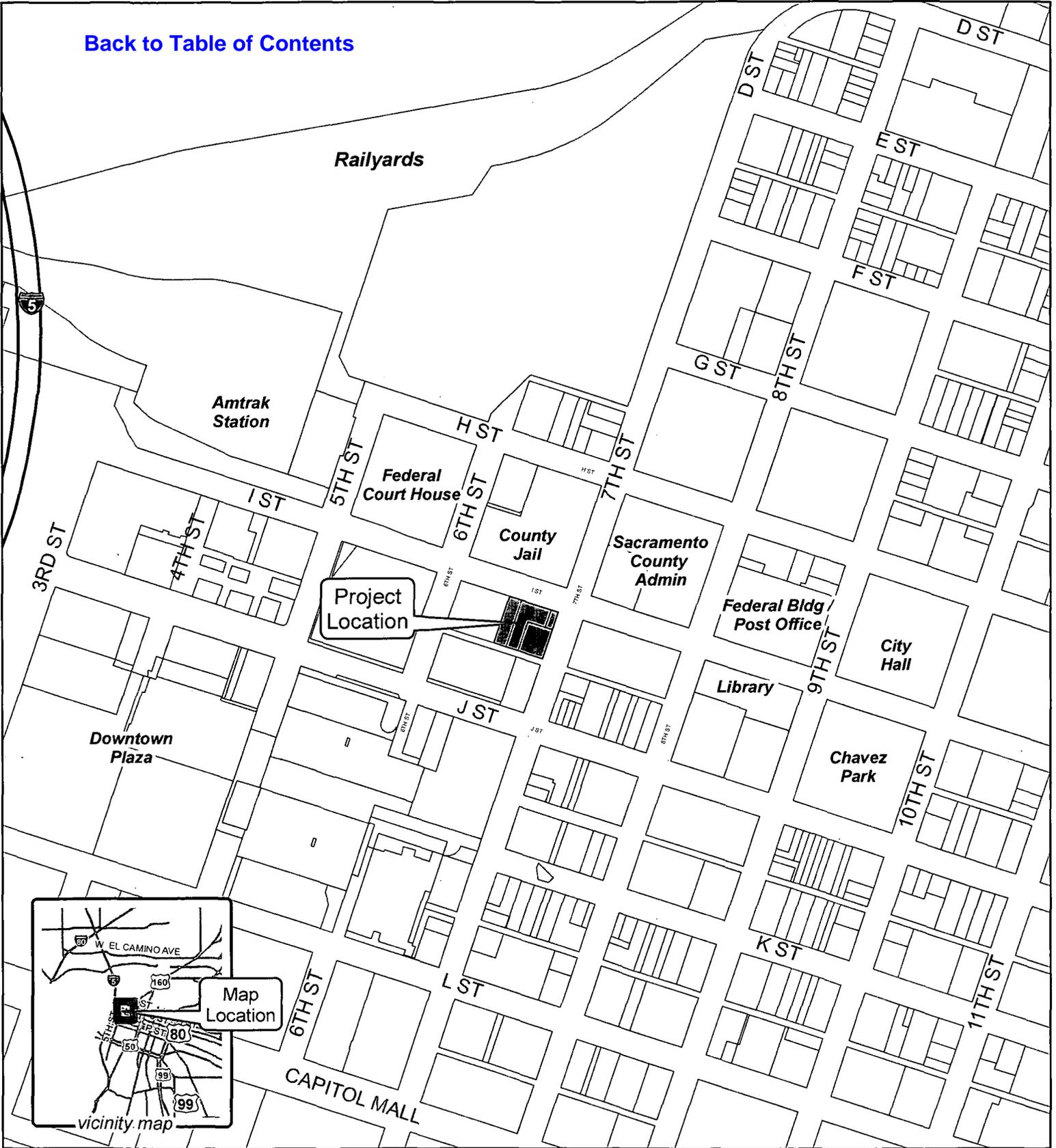
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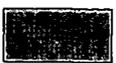


# ARRA Public Housing Transformation Project (Riverview Apartments)

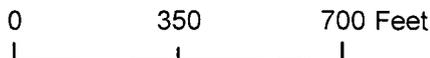
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Map Location



626 / 630 I St



SHRA GIS  
February 19, 2010

Approval of 626 I Street Project

**RESOLUTION NO.**

**Adopted by the Sacramento City Council**

On date of

**APPROVAL OF THE 626 I STREET REHABILITATION PROJECT; ACCEPTANCE OF THE AMERICAN RECOVERY REINVESTMENT ACT (ARRA) COMPETITIVE GRANT AWARD; AND APPROVAL OF LOCAL FUNDS TO LEVERAGE PROJECT FINANCING**

**BACKGROUND**

- A. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA).
- B. ARRA included a \$4 billion appropriation of Capital Fund for Public Housing Agencies (PHAs) to carry out capital and management activities, as authorized under Section 9 of the United States Housing Act of 1937. One billion was awarded to PHAs through the Capital Funds Recovery Competition (CFRC) Grants process.
- C. On, June 23, 2009, \$3.2 million of HOME funds were allocated to support the Housing Authority of the City of Sacramento CFRC application.
- D. On September 9, 2009 the Housing Authority of the City of Sacramento (Housing Authority) was awarded a \$10 million CFRC grant to be used to renovate the Riverview Apartments, located at 626 I Street.
- E. To provide the local fund leverage that is compatible with the CFRC grant award (federal funding), it is necessary to replace the allocation of HOME funds with alternative local funding.
- F. The proposed action is exempt from environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15301(a) and (d). The proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA) per 24 CFR Section 58.35(a) (3)(ii), which excludes rehabilitation of multifamily residential buildings.

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

- Section 1. After due consideration of the facts presented, the findings, including the environmental findings regarding this action stated above, are approved.

**Approval of 626 I Street Project funding**

- Section 2. The Sacramento Housing and Redevelopment Agency is authorized to defund \$3.2 million Home Investment Partnership Program (HOME) funds and reallocate the funds to the HOME Multifamily Housing Loan Funds back to the Agency budget.
- Section 3. To provide a conditional grant to the 626 I Street Modernization project, of up to \$1 million in Community Development Block Grant (CDBG) Funds; \$500,000 of CDBG Capital Reserve, as approved in the 2010 Mid-Year Action Plan Amendment, and up to an additional \$500,000 should the CDBG 2010 entitlement amount be increased by US Department of Housing and Urban Development.

**Approval of 626 I Street Project funding**

**RESOLUTION NO. 2010 -**

**Adopted by the Redevelopment Agency of the City of Sacramento**

On date of

**APPROVAL OF THE 626 I STREET MODERNIZATION PROJECT  
OWNER PARTICIPATION AGREEMENT AND LOW MODERATE INCOME HOUSING  
SET ASIDE FUNDING TO LEVERAGE PROJECT FINANCING**

**BACKGROUND**

- A. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA).
- B. ARRA included a \$4 billion appropriation of Capital Fund for Public Housing Agencies (PHAs) to carry out capital and management activities, as authorized under Section 9 of the United States Housing Act of 1937. One billion was awarded to PHAs through the Capital Funds Recovery Competition (CFRC) Grants process.
- C. The Housing Authority of the City of Sacramento (Housing Authority) was awarded \$10 million in CFRC funding to be used to renovate the Riverview Apartments, located at 626 I Street.
- D. To provide the local fund leverage that is compatible with the CFRC grant award (federal funding), it is necessary to provide a conditional grant of \$3.2 million of Merged Downtown Tax Increment Housing Set Aside funds.
- E. The use of low moderate income housing funds as the local funding to be leveraged for the federal grant is an appropriate use of those funds as it preserves the community's supply of low income housing available at an affordable housing cost to persons that are extremely low, very low and low income households.
- F. The Agency finds that the Tax Increment set-aside funds that will be used to fund the Project are needed to make the housing units affordable. Therefore, the project is not required to provide Art in Public Places.
- G. The proposed action is exempt from environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15301(a) and (d). The proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA) per 24 CFR Section 58.35(a) (3)(ii) & (iii), which excludes rehabilitation of multifamily residential buildings, and commercial structures.

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

## **Approval of 626 I Street Project funding**

- Section 1. After due consideration of the facts presented, the findings, including the environmental findings as stated above, are approved.
- Section 2. The Executive Director, or her designee, is authorized to defund \$3.2 million in Downtown Tax Increment Housing Set-Aside funding (TI) from the SRO Residential Hotel Project and allocate \$3.2 million from Tax Increment Housing Set Aside funds for the 626 I Street Modernization Project.
- Section 3. The Executive Director, or her designee, is authorized to amend the Sacramento Housing and Redevelopment Agency (Agency) budget to appropriate and expend \$3.2 million in Merged Downtown Tax Increment Housing Set-Aside (TI) funds for the 626 I Street Modernization Project.
- Section 4. The Executive Director, or her designee, is authorized to execute an Owner Participation Agreement and prepare a conditional grant agreement with the Housing Authority of the City of Sacramento for the 626 I Street project.

Approval of 626 I Street Project

## **RESOLUTION NO. 2010 -**

**Adopted by the Housing Authority of the City of Sacramento**

on date of

### **APPROVAL OF THE 626 I STREET MODERNIZATION PROGRAM; ACCEPTANCE OF THE AMERICAN RECOVERY REINVESTMENT ACT (ARRA) COMPETITIVE GRANT AWARD; AND APPROVAL OF LOCAL FUNDS TO LEVERAGE PROJECT FINANCING AND AUTHORIZATION TO SELECT AND AWARD CONSTRUCTION CONTRACTS**

#### **BACKGROUND**

- A. The Housing Authority of the City of Sacramento (Housing Authority) applied for and received an allocation of Capital Fund Recovery Competition (CFRC) funds through the American Recovery and Reinvestment Act of 2009 (ARRA).
- B. The US Department of Housing and Urban Development - Office of Capital Improvements Recovery (OCI) announced the Capital Fund Recovery Competition - Notice of Fund Available (NOFA) of the American Recovery and Reinvestment Act of 2009, which provides additional Capital Funds to Public Housing Agencies participating in the public housing program throughout the nation.
- C. The Housing Authority was awarded \$10 million in CFRC funding to be used to renovate Riverview Apartments located at 626 I Street.
- D. To meet expedited timelines to obligate the funds, ARRA provides that any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. Housing Authority's shall instead follow the federal procurement requirements.
- E. All trade work for the 626 I Street Modernization project will be in compliance with federal procurement requirements and competitively bid by the selected General Contractor through a public process. This process will include requiring minimum qualification standards for each sub-contractor to be compensated for performing the work.
- F. The proposed action is exempt from environmental review under the California Environmental Quality Act (CEQA) per Guidelines Section 15301(a) and (d). The proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA) per 24 CFR Section 58.35(a) (3)(ii) & (iii), which excludes rehabilitation of multifamily residential buildings, and commercial structures.

**Approval of 626 I Street Project funding**

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

- Section 1. All the evidence having been duly considered, the findings stated above, including the environmental findings, are approved.
- Section 2. The Executive Director or her designee is authorized to amend the Housing Authority budget to accept and expend the award of \$10 million under the American Recovery Reinvestment Act (ARRA) Capital Funds Recovery Competition (CFRC) Grant for Public Housing Agencies (PHA) for the 626 I Street Project.
- Section 3. The Executive Director or her designee is authorized to amend the Housing Authority budget to accept and expend up to \$4.2 million, comprised of \$3.2 million of Merged Downtown Tax Increment Housing Set-aside funds and up to \$1 million in Community Development Block Grant (CDBG) in the form a of conditional grant to be used for the 626 I Street Project.
- Section 4. The Executive Director or her designee is authorized to execute an OPA with the Redevelopment Agency of the City.
- Section 5. The Executive Director or her designee is authorized to issue a Request for Qualifications and select a General Contractor to provide pre-construction and construction management services for the rehabilitation and modernization of the 626 I Street Project.
- Section 6. The Executive Director or her designee is authorized to award a construction management contract to the selected General Contractor to manage the construction of all the competitively bid subcontractors for the trade work in compliance with federal procurement policy.
- Section 7. The Executive Director or her designee is authorized to transfer project cost savings, if any, to other priority capital needs identified in the 2009 Kitchell Capital Needs Assessment.
- Section 8. The Executive Director or designee is authorized to solicit and award contracts as necessary to complete improvements to 626 I Street to make it ready for occupancy, subject to the unencumbered Agency budget allocation for the Project.

**OWNER PARTICIPATION AGREEMENT**

**Using Funds from MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA Project Area Tax**

**Increment and Other:**

626 I Street Modernization (Riverview Apartments)  
626 I Street, Sacramento, CA 95814

**Redevelopment Agency of the City of Sacramento  
and  
Housing Authority of the City of Sacramento**

**OWNER PARTICIPATION AGREEMENT**

**Using Funds from** MERGED DOWNTOWN SACRAMENTO REDEVELOPMENT PROJECT AREA AND COMMUNITY DEVELOPMENT BLOCK GRANT  
626 I Street Modernization (Riverview Apartments)  
626 I Street, Sacramento, CA 95814

For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 13.

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and HOUSING AUTHORITY OF THE CITY OF SACRAMENTO also defined as Agency and Developer, respectively, enter into this Owner Participation Agreement (“OPA”), as of \_\_\_\_\_.

**RECITALS**

- A. Developer is the owner of real property located at 626 I Street Sacramento CA 95814, in the City of Sacramento, California, more particularly described in attached Exhibit 1: Legal Description, which is incorporated into this OPA by this reference. The Property is located in Merged Downtown Sacramento Redevelopment Project Area and is subject to the Project Area’s Redevelopment Plan.
- B. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by property owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 33339).
- C. The Agency is participating in this OPA because this OPA is consistent with, and furthers, the Redevelopment Plan and the Implementation Plan. Specifically and without limitation, the Agency has determined that the Project will increase and improve the supply of low- or moderate-income housing in the community.
- D. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this OPA. Therefore, Developer desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

**AGREEMENT**

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

- 1. **AGENCY FUNDING.** Agency is providing funding to the Project under the Agency Funding Agreement for development of the Project as described in Section 2. As a condition of

Owner Participation Agreement

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Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as described in Section 2, as well as other obligations and restrictions, including without limitation, use restrictions and restrictions on amounts that can be charged on sale or rental of the Property, as evidenced by the Regulatory Agreement.

2. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: Rehabilitation of 108 units of very low income elderly development located at 626 I Street, Sacramento, CA 95814.

3. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** This OPA is a financing document of the Agency and not a land use or planning document. Approval of the Project under this OPA by the Agency is not and shall not be considered an approval of land use entitlements or structural design of the Project, or the aesthetic design of the Project except as an approval by the Agency of the Project design concept as presented in this OPA. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of their respective jurisdictions, including without limitation, departments, staff, boards and commissions of the City. The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this OPA and approvals given under this OPA. Based upon such review, the Agency shall have the right to approve or reject the Plans for reasonable cause. Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications. Agency's approval of Plans is not an assurance of their adequacy or correctness. Agency has reserved approval rights solely: (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the Final Plans conform to the Preliminary Plans; and (c) to assure that any Agency funds which may be obligated under this OPA are used as intended by the Agency.

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

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

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

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

**3.4. DELIVERY.** Developer shall deliver 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 Downtown Enterprise Department, which is staff to the Agency for the Project Area and shall have clearly marked on its exterior "URGENT: 626 I Street Modernization PROJECT PLAN REVIEW" or the equivalent.

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

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

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

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

**3.6.1. SUBSTANTIAL CHANGE.** A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements. For purposes of this Section 3.6.1, a “material change” is a change that is material to the Agency in accomplishing its purposes under this OPA.

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

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

**4. DEVELOPMENT PROVISIONS.** As stated in detail in this Section 4, Developer shall construct and manage the Project according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this OPA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the Community Redevelopment Law shall control.

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

**4.2. GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are

Owner Participation Agreement

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

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

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

**4.5. PREVAILING WAGES.** The State of California Department of Industrial Relations has undertaken the aggressive and expansive enforcement of prevailing wage laws for redevelopment projects. The Agency has advised, and the Developer acknowledges, that the Project is subject to the payment of prevailing wages under the laws of the State of California. Developer has had the opportunity to meet with Developer's legal counsel and to request a determination from the State of California Department of Industrial Relations regarding the applicability of prevailing wage requirements to this Project. Developer has made its independent determination of the applicability of prevailing wage laws and has independently implemented such determination. Developer, therefore, indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from Developer's determinations and actions related to prevailing wage obligations for the work of this OPA. Developer acknowledges that this project is subject to the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and

Safety Standards Act (CWHSSA) and that all laborers and mechanics employed by contractors and subcontractors on this project are required to be paid the higher of Davis-Bacon prevailing wages or California State prevailing wages.

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

**4.7. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Developer for itself, any project manager, the Contractor, and the property manager engaged in connection with the Project or Property, 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.

**4.7.1. EMPLOYMENT.** Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

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

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

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

**4.10. PROJECT SIGN.** If Developer places a sign on the Property during construction stating the names of the Project participants, it shall also name "Sacramento Housing and

Redevelopment Agency” as a participant in the Project. The Agency name on the sign shall be in letters not less than size of letters used to name any of the other participants.

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

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

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

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

**4.13. MINORITY/WOMEN'S BUSINESS.** The provisions of this OPA related to the Property are subject to Agency's minority-owned and women-owned business enterprises (“M/WBE”) requirements and Developer shall comply with the requirements of the Agency's M/WBE Policy, a copy of which has been previously received by Developer.

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

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

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

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

**ADDITIONAL PROJECT PROVISIONS.** Developer acknowledges that this project is subject to the "Buy American" requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA); whereby, "all of the iron, steel, and manufactured goods used in the project are domestic." If Developer is unable to – provide domestic products for use on this project, Developer will provide proof, when requested, that: (1) it would be inconsistent with the public interest; or (2) domestic iron, steel and the relevant manufactured goods are not produced in sufficient and reasonably available quantities and of a sufficient quality; or (3) inclusions of such products will increase the cost of the overall project by more than 25%. "Made In America" products will be used on this project to the greatest extent feasible.

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

5.1. **EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 5.3); (b) firm and binding loan commitments (as provided in Section 5.2) from each Lender, in form and content acceptable to Agency; and (c) Agency contribution, if any, as specified in this OPA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual

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

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

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

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

**6.1. NONDISCRIMINATION.** Developer covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on the basis of race, color, religion, creed, sex, marital status, national origin, ancestry, familial status, or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property and the

Project, nor shall the Developer or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in Property and the Project. The foregoing covenants shall run with the land.

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

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

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

This indemnification provision shall survive the termination of this agreement.

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

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

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itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

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

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

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

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

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

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

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

**9.6.2. SINGLE PROJECT INSURANCE.** It is the intent of the parties that the Project have available all the specified insurance coverages. Developer shall not provide insurance coverages that are considered in aggregate with other Projects which Developer or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Developer or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Developer shall immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

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

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

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

**9.7. DEFAULTS AND REMEDIES.** Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or, if reasonable, such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party, provided that the defaulting party shall promptly begin and diligently pursue such cure to completion. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by this OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party. After such return of property and funds and termination of the OPA, neither Agency nor Developer shall have any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary.

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

9.9. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this OPA.

9.10. **ATTORNEY'S FEES AND RELATED COSTS.** If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. The term "prevailing party" shall include without limitation, the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law. In any event, the prevailing party shall mean the party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such party. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

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

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

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated \_\_\_\_\_ between the Redevelopment Agency of the City of Sacramento and Housing Authority of the City of Sacramento ("OPA"). Lender requests, in accordance with Section 21.1 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

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

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

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

**10.5. DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 13.5 and Lender has failed to cure such default as provided in Section 13.5 provided, however that if such default cannot practicably be cured by the Lender without

taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

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

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

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

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

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

10.7. **MODIFICATIONS.** No modification or amendment to the OPA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the

Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

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

**10.9. ESTOPPEL CERTIFICATE.** Any party may, at any time, request in writing of any other party to certify in writing that, to the knowledge of the certifying party, (i) this OPA is in full force and effect and a binding obligation of the parties; (ii) this OPA has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this OPA, or, if in default, describing the nature and extent of any such defaults. A party receiving such a request shall execute and return such certificate to the requesting party, or give a detailed written response explaining why it will not do so, within ten (10) days following its receipt. The City Manager (as Agency's designee) shall be authorized to execute any such certificate requested by Developer from the Agency.

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

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

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

unenforceable, the remainder of this OPA shall remain in full force and effect and the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

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

**11.3. WAIVERS AND AMENDMENTS.** All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

**11.4. CAPTIONS, GENDER AND NUMBER.** The section headings, captions and arrangement of this OPA are for the convenience of the parties to this OPA. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this OPA. The singular form shall include plural, and vice versa, and gender references shall be construed to include all genders.

**11.5. DRAFTER.** This OPA shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this OPA. All exhibits referred to in this OPA are attached to it and incorporated in it by this reference.

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

**11.7. TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Developer shall each do the actions required of them, promptly and when specified in this OPA, and that each action specified in the Schedule of Performances shall be performed by the responsible party on or before the date scheduled for its completion.

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

**11.9. NO JOINT VENTURE, PARTNERSHIP, OR OTHER RELATIONSHIP.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement 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

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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.

**11.10. NO THIRD PARTIES BENEFITED.** This OPA is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other Person will have any right of action or any rights to the benefits of this agreement or funds at any time on deposit in the Construction Account or the Impound Account, if established.

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

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

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

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

12.1. Addresses for notices are as follows:

12.1.1. Agency: Redevelopment Agency of the City of Sacramento, 801 12<sup>th</sup> Street, Sacramento, California 95814, Attention: Jeree Glasser-Hedrick.

12.1.2. Developer: Housing Authority of the City of Sacramento, 801 12th Street ; Attention: Cecette Hawkins.

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

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

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

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

12.2.4. Telecopy, if a copy of the notice is also sent the same day by United States Certified Mail, in which case notice shall be deemed delivered one (1) business day after transmittal by telecopier, provided that a transmission report is automatically generated by the

telecopier reflecting the accurate transmission of the notices to receiving party at the "Fax Number" given in the Escrow Attachment or to such other address as Developer or Agency may respectively designate by written notice to the other.

### 13. DEFINITIONS.

13.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 801 12th Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

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

13.3. "Agency Funding Agreement" is the Conditional Grant Agreement.

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

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

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

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

13.8. "Completion Date" is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is September 30, 2012.

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

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

13.11. "Developer" is Housing Authority of the City of Sacramento, Public Housing Authority. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided (i) that

the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at 801 12th Street .

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

13.13. "Escrow Instructions" means the escrow instructions for the close of the Escrow.

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

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

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

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