Sacramento Housing & Redevelopment Agency

REPORT TO REDEVELOPMENT AGENCY
City of Sacramento

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

STAFF REPORT
April 10, 2007

Honorable Chair and Members of the Board

Title: Agreement: Owner Participation Agreement for 2001 Del Paso Boulevard

Location/Council District: North Sacramento Redevelopment Area (Council District 2)

Recommendation: Adopt a **Redevelopment Agency Resolution** authorizing the Executive Director or her designee to 1) amend the Sacramento Housing and Redevelopment Agency budget to allocate $3,000,000 of North Sacramento tax-exempt bond, tax increment, and Low-Moderate Housing funds to the 2001 Del Paso Boulevard project, and 2) execute an Owner Participation Agreement (OPA), grant agreements and related documents with New Faze Development for the construction of a mixed-use building.

Contact: Lisa Bates, Director, Community Development, 440-1322, Christine Weichert, Assistant Director, Community Development, 440-1353

Presenters: Christine Weichert, Assistant Director, Community Development

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: This report recommends Agency financial assistance for the development of a vacant site located at the northeast corner of Del Paso Boulevard and Fairfield Street in the North Sacramento Redevelopment Area. The site is currently owned by New Faze Development, Inc. (Developer), and they are seeking assistance to construct a mixed-use project, which will include retail, office and residential units. (See Attachment 1, Location and Site Map).

As proposed by the Developer, the six story building will provide a ground floor 4,982 square foot restaurant; five live/work lofts on the first and second level; 14,026 square feet of office space on the third level; and 22 residential units on the fourth through sixth levels, for a total size of approximately 59,443 square feet (see Attachment 2). In addition, a lift system will accommodate 50 automobiles

associated with the residential and office spaces (see Attachment 3). The office space occupant will be New Faze Development, currently located at 1825 Del Paso Boulevard. Their current office space will be leased to another professional firm. Additional information is offered in Attachment 4, Background Information, and Attachment 5, Operating Proforma.

The for-sale residential units and related parking are anticipated to cost $9.2 million to construct, which is approximately $4.3 million more than the anticipated $4.9 million in net sales they will generate. A $3 million Agency grant has been requested to fill this $4.3 million financing gap. The remaining gap will be absorbed by the Developer who will retain ownership of the ground floor retail and office space.

As a result of this financial assistance, the Developer is required to restrict a minimum of five units to sales prices which are affordable to buyers earning 120% of Area Median Income (i.e. $57,530 for a family of two). The Developer has agreed to restrict two additional units, for a total of seven affordable units. The restricted sales price for a one-bedroom unit must be $227,320 or less.

Policy Considerations: The recommended actions are consistent with community development goals listed in the North Sacramento Redevelopment Area 2005-2009 Implementation Plan. The plan emphasizes strategic development assistance to support business development and create an economically viable community. Further, the plan identifies this site as high priority for this purpose. The successful implementation of the project will stimulate additional desired private investment in the redevelopment area to provide neighborhood-serving shopping opportunities and revitalize commercial activity.

Environmental Considerations: The project is exempt from environmental review per the California Environmental Quality Act (CEQA) Guidelines Section 15332. National Environmental Protection Act (NEPA) does not apply.

Committee/Commission Action: *North Sacramento Redevelopment Advisory Committee (RAC):* At its March 15, 2007 meeting, the RAC voted to support the project and recommend approval of staff's financing recommendation. The votes were as follows:

AYES: Bergstrom, Clark, Curry, Mack, E. McCleary, J. McCleary, Veden

NOES: None

ABSENT: Armstrong, Harland, C. Mulligan

Sacramento Housing and Redevelopment Commission Action: At its meeting on March 21, 2007, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolutions. The votes were as follows:

AYES: Burns, Burruss, Chan, Gore, Hoag, Piatkowski, Shah.

NOES: None.

ABSTAIN: Stivers.

ABSENT: Coriano, Fowler.

Rationale for Recommendation: The project will have a major impact on the Del Paso Boulevard corridor. Since the project is being built on a vacant site, it will assist in the elimination of blight. The building has a high likelihood of encouraging additional property investments in the surrounding area and increasing the demand for retail development along Del Paso Boulevard. The project has also demonstrated a need for assistance to become financially feasible. Any development of this type and magnitude has a certain level of risk. The cash equity commitment of the managing members of the Developer is indicative of their commitment to the success of the Project.

Financial Considerations: The OPA obligates the Agency to issue a $3,000,000 grant to fund construction of the building. Funds will be appropriated from North Sacramento tax-exempt bond, tax increment, and Low to Moderate Income Housing tax-exempt bond funds. Releasing the grant funds will require evidence of Developer cash equity and of conventional private financing commitments sufficient to complete construction and begin operations. The Developer cash equity must be exhausted prior to release of grant funds and the conventional private financing must be spent simultaneously with the grant funds. If other sources of funding become available before the grant is released, such as New Market Tax Credits, those funds will be used as an alternative to the grant.

April 10, 2007

Owner Participation Agreement with New Faze Development

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

Respectfully Submitted by:

ANNE M. MOORE
Executive Director

Recommendation Approved:

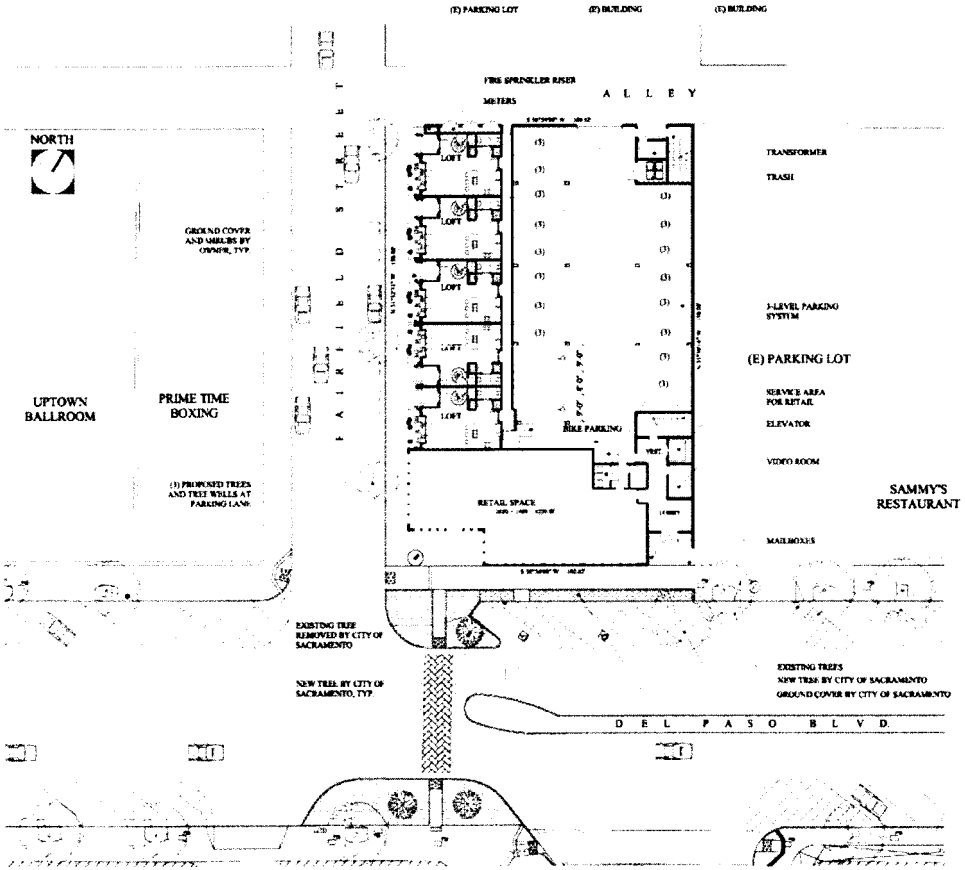
for RAY KERRIDGE
City Manager

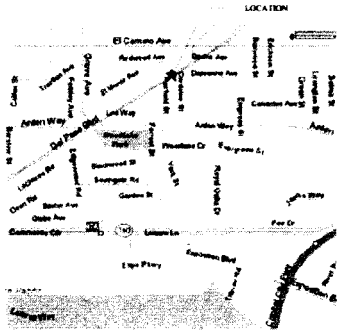
Table of Contents

	Report	Pg 1
Attachments		
1	Location and Site Map	Pg 5
2	Proposed Site Plan, Perspective Renderings, Floorplans	Pg 6
3	Proposed Lift Parking System	Pg 10
4	Background Information and Underwriting Analysis	Pg 11
5	Operating Proforma	Pg 14
6	Redevelopment Agency Resolution	Pg 15
	Exhibit A – Draft Owner Participation Agreement	Pg 17

Sacramento Housing & Redevelopment Agency

2001 Del Paso Boulevard Site
North Sacramento Redevelopment Area





VICINITY MAP

PARKING INFORMATION

PARKING REQUIRED	PROVIDED
RESIDENTIAL: UNIT: 1.5 SPACES PER UNIT 27 UNITS X 1.5 SPACES = 41 PARKING SPACES	32 SPACES
GUESTS:1 SPACE/15 UNITS 27 SPACES/15 UNITS = 2 PARKING SPACES	NONE
RETAIL: FOR RETAIL SPACE: OCCUPANT LOAD 100 = 33 PARKING SPACE	NONE
OFFICE: 1 SPACE/450 SF 13,300 SF/450 = 30 PARKING SPACES	18 SPACES
TOTAL PARKING REQUIRED: 106 PARKING SPACES	TOTAL PROVIDED 50 PARKING SPACES

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-6402
Contact: Wendy Saunders

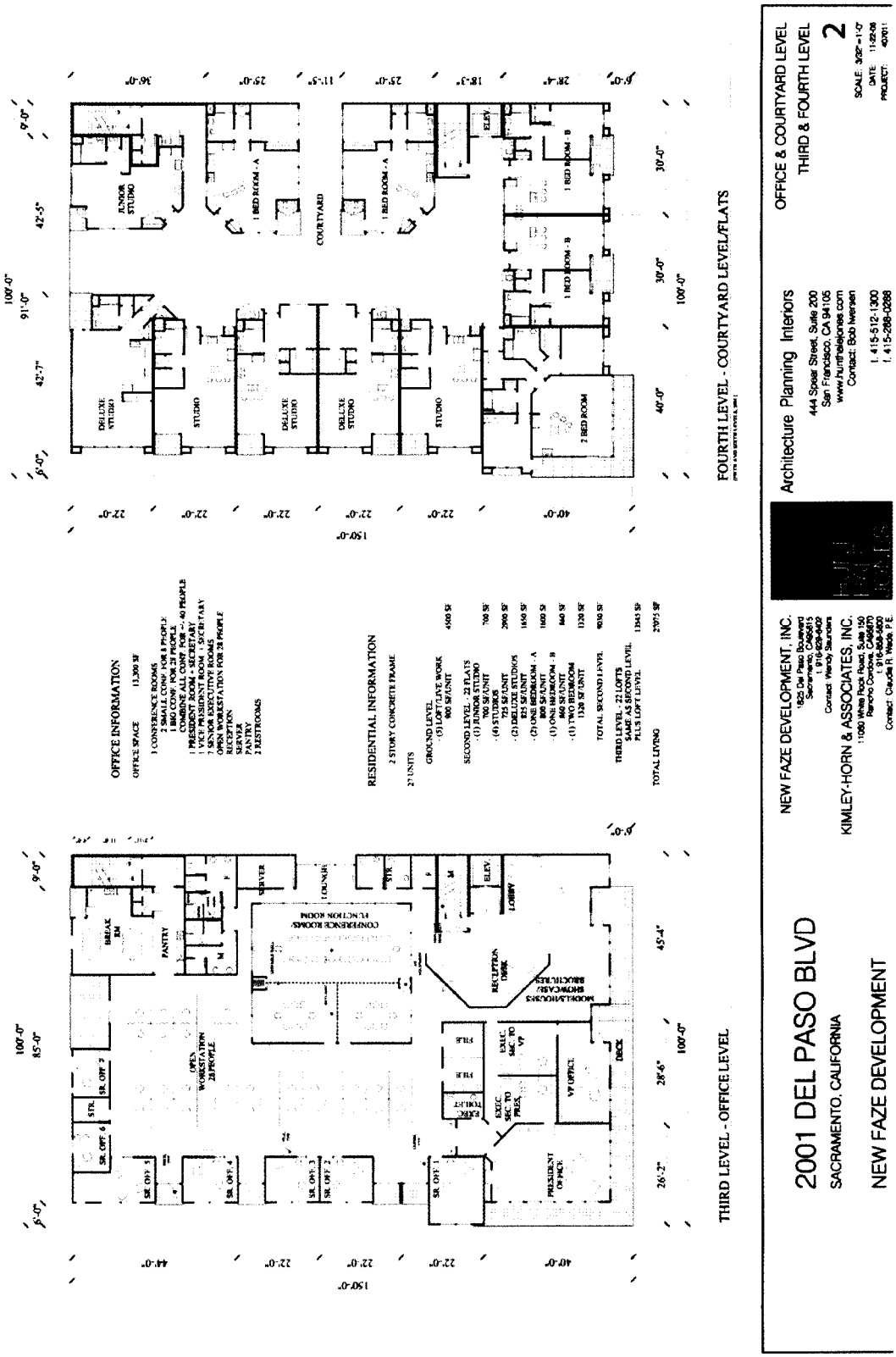
KIMLEY-HORN & ASSOCIATES, INC.
11050 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E.

Architecture Planning Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iversen
t. 415-512-1300
f. 415-288-0288

SITE & GROUND FLOOR PLAN

1

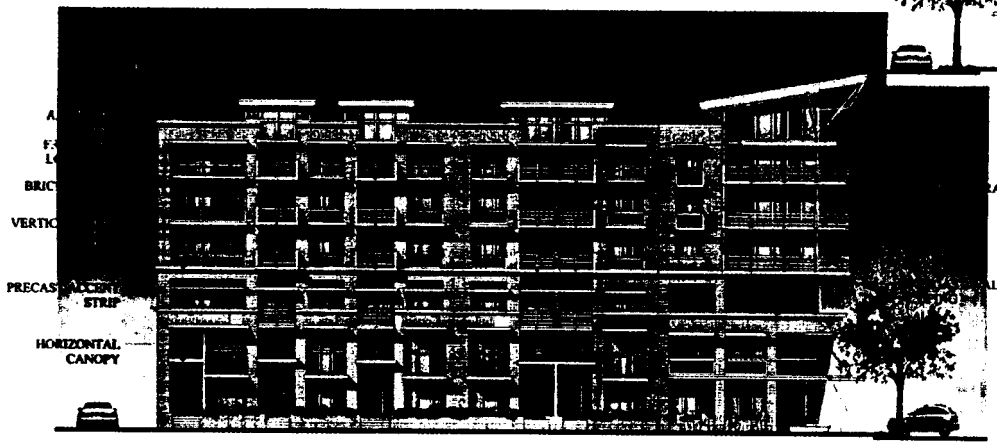
SCALE: 1/16" = 1'-0"
DATE: 11-22-06
PROJECT: 407011


FOURTH LEVEL - COURTYARD LEVEL/FLATS
THIRD LEVEL - OFFICE LEVEL
OFFICE INFORMATION
RESIDENTIAL INFORMATION
2001 DEL PASO BLVD
SACRAMENTO, CALIFORNIA
NEW FAZE DEVELOPMENT
NEW FAZE DEVELOPMENT, INC.
KIMLEY-HORN & ASSOCIATES, INC.
Architecture Planning Interiors
OFFICE & COURTYARD LEVEL
THIRD & FOURTH LEVEL
2

MATERIALS:

WALLS	: BRICK AND ALUMINUM STORE FRONT
ROOF	: FLAT ROOF
WINDOWS	: ALUMINUM
DOORS	: ALUMINUM AND WOOD
RAILING	: ALUMINUM

DEL PASO BOULEVARD ELEVATION - SOUTH



FAIRFIELD ELEVATION - WEST

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-8402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11060 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5600
Contact: Claudia R. Wade, P.E.

HUNT HALE JONES

Architecture | Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iversen
t. 415-512-1300
f. 415-288-0288

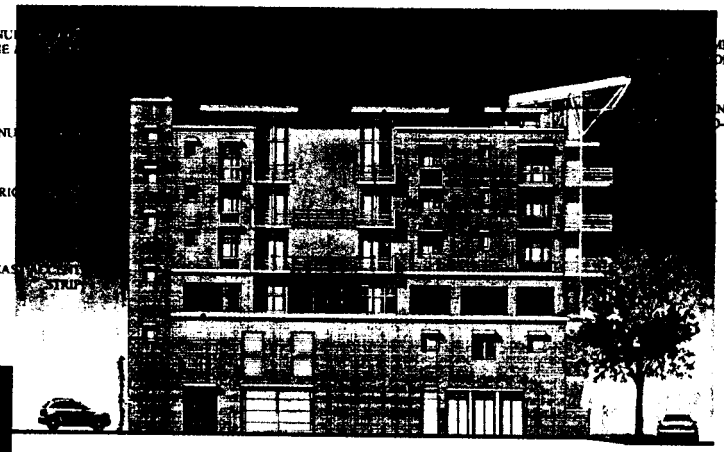
ELEVATIONS

3

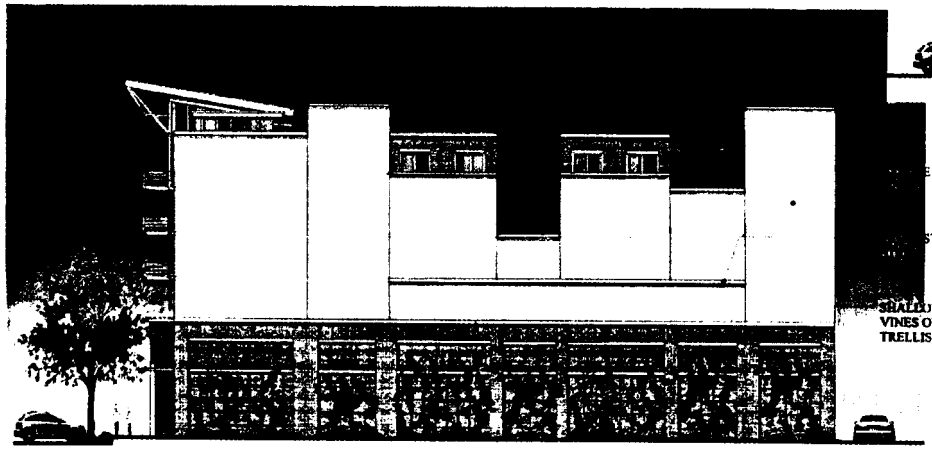
SCALE: 3/32" = 1'-0"
DATE: 11-22-05
PROJECT: 407011

MATERIALS:

WALLS	: BRICK AND ALUMINUM STORE FRONT
ROOF	: FLAT ROOF
WINDOWS	: ALUMINUM
DOORS	: ALUMINUM AND WOOD
RAILING	: ALUMINUM



VACANT LOT ELEVATION - NORTH



PARKING LOT ELEVATION - EAST

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-6402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11080 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E.

HUNT HALE JONES

Architecture | Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iversen
t. 415-512-1300
f. 415-288-0288

ELEVATIONS

4

SCALE: 3/32" = 1'-0"
DATE: 11-22-05
PROJECT: 407011

© HUNT HALE JONES ARCH 11-22-15

KLAUS Auto-Parksysteme GmbH
Hermann-Krum-Straße 2 · D-88319 Aitrach
Tel. 0 75 65 / 508-0 · Fax 0 75 65 / 508-88

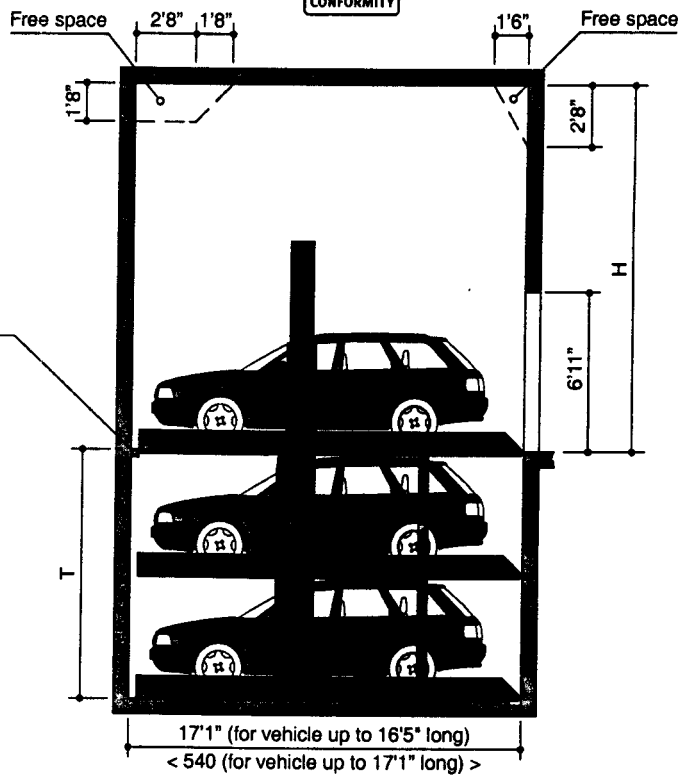
Stack Parker

Series G 63 (horizontal)
EB (single platform) = 3 vehicles
DB (double platform) = 6 vehicles

CE CONFORMITY

Basement Garage

Space requirements are minimum finished dimensions in inch

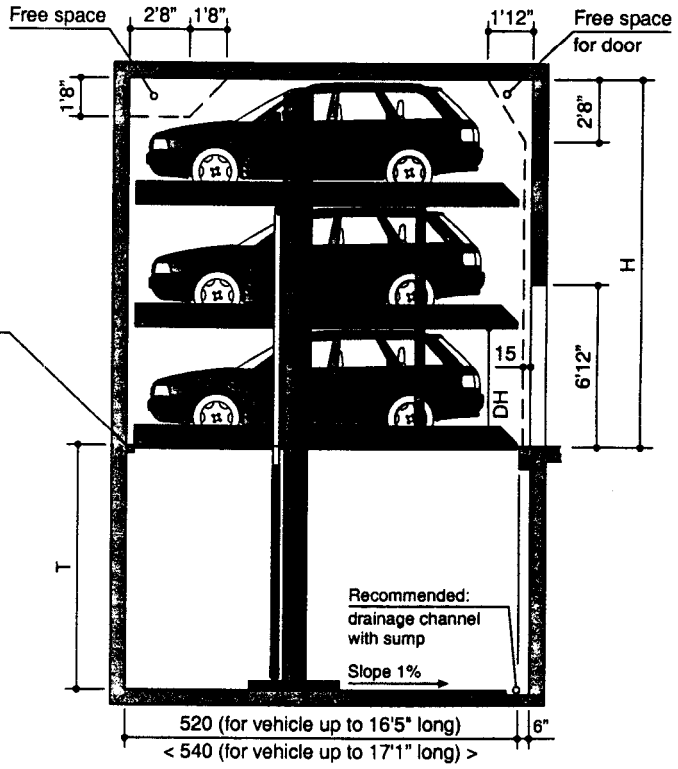


for dividing walls:
cutting through 10 x 10
(for duct for cables etc.) of
dividing wall

Access to all parking spaces is horizontal

Garage with door in front of the car parking system

Space requirements are minimum finished dimensions in inch



for dividing walls:
cutting through 10 x 10
(for duct for cables etc.) of
dividing wall

Type	T	H	DH	Suitable for	Maximum vehicle dimensions	
G 63-480	**10'10"**	**15'9"**	**5'2"**	upper: / middle: / lower: } standard passenger vehicle and station wagon	Length 16'5" <17'1"> Height 4'12" Width 6'3" m Weight 2,000 kg Wheel load 500 kg	

If dimension height "H" is increased by customer in comparison to dimension "H" as indicated, correspondingly higher vehicles may be parked on upper platforms!

2001 Del Paso Boulevard
Project Background and Underwriting Analysis

Site: The subject site (APN 275-0042-007 and 275-0042-008) is a mixed use-zoned parcel at the northeast corner of Del Paso Boulevard and Fairfield Street that is approximately 15,000 square feet (0.34 acres) in size.

Project History: A proposal was received from the New Faze Development, Inc. (Developer) for construction of a six-story mixed-use building and 50 accessory parking spaces for the residential and office spaces. SHRA and the Developer have conducted due diligence on construction costs, leasing demand, revenue and expense projections, and entitlement needs for the project, to be named "2001 Del Paso Boulevard" (Project).

Project Description: The project scope includes new construction of a six-story mixed-use building on the parcel. The new structure would be approximately 59,443 square feet on the 15,000 square foot parcel.

The ground and second levels will provide a 4,982 square foot restaurant space and five live/work lofts along Fairfield Avenue. The third level would contain 14,026 square feet of commercial office space that will be utilized as the new offices for New Faze Development, Inc. The fourth through sixth levels will contain 22 residential units, including four junior studios (700 square feet), eight studios (725 square feet), four deluxe studios (825 square feet), four one-bedroom (860 square feet), and two two-bedroom units (1,515 square feet).

As a result of the $3,000,000 gap funding provided by the Agency, the Developer is required to restrict sales of a minimum of five units to individuals or families earning 120% Area Median Income (AMI) for 45 years. The Developer has agreed to restrict two additional units for a total of seven units. For example, the restricted sales price for a one-bedroom unit must be $227,320 or less. The Developer's market rate sales price, based on a market study completed by the Gregory Group, is anticipated to be at $192,000 for one-bedroom units, which is less than the restricted sales price, therefore the units will be sold at the market rate price.

Entitlements: The site is appropriately zoned C-2/SPD, General Commercial and Del Paso Boulevard Special Planning District, which allows for a broad range of residential, retail, commercial, and office uses. On December 20, 2006, the City of Sacramento's Design Review and Preservation Board approved the proposed design, materials, finishes and landscape features (Project DR06-222). On January 11, 2007, the City of Sacramento's Planning Commission approved the proposed project. The Developer is anticipating City's approval of building permits in August 2007.

Development Team: The Developer is 2001 DPB, LLC (DPB), a California limited liability company, formed in early 2007 to implement the Project. New Faze Development, Inc. (New Faze) a California Corporation has sole interest in DPB.

New Faze, with offices at 1825 Del Paso Boulevard, has 15 years of real estate development, contracting, and construction management experience. They have developed new residential units and, to a lesser degree, developed commercial buildings and have rehabilitated existing structures. New Faze currently has almost 500 residential units under development in seven projects located in and near Sacramento. The range of units being developed include rental apartments and the following types of for-sale housing: entry-level, "move-up" single family, condominium, executive homes and "active adult" housing.

Sources and Uses of Funds: A summary of the development budget for the Project including the Uses of Funds for "hard" construction costs and related "soft" costs is included on the following page. The construction costs were prepared in January 2007 by general contractor MFC, Inc., based on "design development" plans prepared by Hunt, Hale, Jones, Architects.

Developer cash equity must be spent in advance of releasing the Agency's grant and construction loan funding must be spent simultaneously with the Agency's grant.

The conventional debt amount can be justified by underwriting analysis of the project's projected ability to service conventionally-priced debt capital while still providing a reasonable return on the developer's equity investment.

Operating Pro Forma: Projections of revenue and expense for the construction period through the fifteenth year of operations are summarized in Attachment 5.

Schedule of Performances: The OPA includes the following schedule leading to construction and operation of the Project.

2001 Del Paso Boulevard

1.	Design Review Approval (completed)	Dec. 20, 2006
2.	Planning Commission Approval (completed)	Jan. 11, 2007
3.	City Approval of Plans & Issue Building Permit	August 2007
4.	Construction Start	September 2007
5.	Complete Construction	April 2008

2001 Del Paso Boulevard

Number of Market-Rate Units	22	
Number of 110% AMI Restricted Units	7	
Office Square Feet	14,026	
Retail Square Feet	4,982	
Parking Square Feet	6,492	
Acreage	0.34 acres	
Year Built	New Construction	
Sales Prices	**Per Unit**	**Total**
5 Live/Work Loft	$ 198,000	$ 990,000
4 Junior Studios restricted to 110% AMI	164,000	656,000
6 Studios	168,000	1,008,000
2 Studios restricted to 110% AMI	168,000	336,000
4 Deluxe Studios	185,000	740,000
3 1-Bedrooms	192,000	576,000
1 1-Bedrooms restricted to 110% AMI	192,000	192,000
2 2-Bedrooms	306,000	612,000
Less: Commissions, Titles and Escrows	(9,570)	(258,400)
Total Net Sales		**$ 4,851,600**
Sources of Funds	**Per Square Foot**	**Total**
Net Sales	$ 212.14	4,851,600
Permanent Financing	106.06	5,130,026
SHRA Grant	62.02	3,000,000
Deferred Developer Fee	5.17	250,000
Developer Equity	74.67	3,611,773
TOTAL SOURCES		**$ 16,843,399**
Uses of Funds	**Per Square Foot**	**Total**
Land	$ 73.33	$ 1,100,000
Hard Cost		
Demolition	3.45	51,732
Retail	184.37	918,537
Office	247.10	3,465,820
Office Parking	152.02	986,910
Residential	224.77	7,047,688
Residential Parking	152.02	986,910
Soft Cost		
Architectural	5.46	360,000
Engineering	3.03	200,000
Permits and Fees	3.64	240,000
Marketing	1.14	75,000
Construction Manager	1.52	100,000
Soft Cost Contingency	1.52	100,000
Financing Cost	-	
Appraisal	0.07	4,500
Construction Loan Fee	1.36	89,446
Construction Interest	7.67	505,856
Insurance	4.34	286,000
Taxes	1.14	75,000
Developer Fee	3.79	250,000
TOTAL USES	**$ 255.46**	**$ 16,843,399**

2001 Del Paso Boulevard
Cash Flow Proforma

Rental Type	Total Sq. Feet	Gross Rent	Annual Rent	Monthly Rent
Office	13,893	$18.00	$ 250,074	$ 20,840
Retail	3,314	$18.00	$ 59,652	$ 4,971
Total	17,207		$ 309,726	$ 25,811

		Annual Increase	Per Sq. Ft.	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15
Office Rental Income		2.50%		$ 250,074	$ 256,326	$ 262,734	$ 269,302	$ 276,035	$ 312,308	$ 353,348
Retail Rental Income		2.50%		59,652	61,143	62,672	64,239	65,845	74,497	84,287
Gross Potential Income				$ 250,074	$ 256,326	$ 262,734	$ 269,302	$ 276,035	$ 312,308	$ 353,348
Vacancy-Retail	10.00% Stab.			(5,965)	(6,114)	(6,267)	(6,424)	(6,584)	(7,450)	(8,429)
Total Income				$244,109	$250,212	$256,467	$262,878	$269,450	$304,858	$344,919
Operating Expenses	7.25% of Income	3.00%	$1.03	17,698	18,229	18,776	19,339	19,919	23,092	26,770
Net Operating Income				**$226,411**	**$231,983**	**$237,691**	**$243,540**	**$249,531**	**$281,767**	**$318,150**
Mandatory Loan Payment	$ 5,130,026			(191,014)	(191,014)	(191,014)	(191,014)	(191,014)	(191,014)	(191,014)
Cash After Permanent Loan Payment				**$35,397**	**$40,968**	**$46,677**	**$52,525**	**$58,517**	**$90,753**	**$127,135**
Debt Coverate Ratio for Permanent Loan				**1.19**	**1.21**	**1.24**	**1.27**	**1.31**	**1.48**	**1.67**
Developer Fee Payment										
Beg. Balance		$ 250,000	4.00%	$250,000	$260,000	$270,400	$281,216	$288,647	$252,188	$61,415
Plus Interest		139,871		$10,000	$10,400	$10,816	$11,249	$11,546	$10,088	$2,457
Less Payment		(389,871)		$0	$0	$0	($3,817)	($8,611)	($34,399)	($63,871)
Ending Balance		$ -		$260,000	$270,400	$281,216	$288,647	$291,582	$227,876	$0
Combined Debt Coverate Ratio				**1.19**	**1.21**	**1.24**	**1.25**	**1.25**	**1.25**	**1.25**
Net Cash After Distribution				$35,397	$40,968	$46,677	$48,708	$49,906	$56,353	$63,264

Attachment 5

RESOLUTION NO. 2007 –

Adopted by the Redevelopment Agency of the City of Sacramento

ON DATE OF

APPROVAL OF AN OWNER PARTICIPATION AGREEMENT (OPA) TO GRANT AN AMOUNT NOT TO EXCEED $3,000,000 TO 2001 DPB, LLC FOR THE CONSTRUCTION OF A MIXED-USE PROJECT 2001 DEL PASO BOULEVARD

BACKGROUND

A. 2001 DPB, LLC (Developer) owns 2001 Del Paso Boulevard (APN#:275-0042-007 and 008) and desires to construct a six-story mixed use building on the property.

B. Developer approached the Redevelopment Agency of the City of Sacramento for a grant of $3,000,000 in order to assist with the construction of the residential portion of this property.

C. The Project is consistent with the North Sacramento Redevelopment Plan and Implementation Plan goals of promoting public and private partnerships and expanding commercial uses along Del Paso Boulevard, and eliminating the blighting conditions of underutilized and deteriorated buildings.

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

Section 1. All evidence presented having been duly considered, the findings, including the environmental findings regarding this action, are approved.

Section 2. The Agency Budget is hereby amended to transfer the following to the 2001 Del Paso Boulevard Project:

- $1,670,731 North Sacramento 2003 Tax Exempt proceeds
- $500,000 North Sacramento 2006 Tax Exempt proceeds
- $329,269 North Sacramento Tax Increment
- $331,000 Low-Moderate Income Housing 1999 Tax Exempt proceeds
- $169,000 Low-Moderate Income Housing 2003 Tax Exempt proceeds

Section 3. The Owner Participation Agreement (OPA), shown in Exhibit A, with the Developer providing a $3,000,000 grant to fund residential portion of the mixed used Project, whereby the building remains as a commercial retail/residential use and the Property is maintained in accordance with the Regulatory Agreement. If other sources

of funding become available before the grant is released, those funds will be used as an alternative to the grant.

Section 4. The Executive Director is authorized to execute the OPA and the Grant Agreement and all related documents, subject to approval as to form by Agency counsel, and to take all actions to implement the OPA.

Attachment:
Exhibit A – Owner Participation Agreement and related documents

EXHIBIT A

OWNER PARTICIPATION AGREEMENT

Using Funds from Project Area Tax Increment

Redevelopment Agency of the City of Sacramento

North Sacramento Redevelopment Project Area
2001 Del Paso Boulevard
2001 Del Paso Boulevard, Sacramento, California

OWNER PARTICIPATION AGREEMENT
Project Area Tax Increment

Redevelopment Agency of the City of Sacramento
North Sacramento Redevelopment Project Area
2001 Del Paso Boulevard
2001 Del Paso Boulevard, Sacramento, California

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and 2001 DPB, LLC also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of April 16, 2007. For purposed of this Agreement, the capitalized terms shall have the meanings assigned in Section **Error! Reference source not found.**.

RECITALS

Developer is the owner of real property located at 2001 Del Paso Boulevard, Sacramento, California, in the City of Sacramento, California, more particularly described in attached Exhibit A8: Property Description, which is incorporated into this OPA by this reference. The Property is located in North Sacramento Redevelopment Project Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan.

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

B. The Agency is participating in this OPA because this OPA is consistent with, and furthers, the Redevelopment Plan and the Implementation Plan. Specifically and without limitation, the Agency has determined that the Project will increase and improve supply of low- or moderate-income housing in the community and will eliminate the following blighting influences: low or stagnant property values and impaired investment in the Project Area and high number of property vacancies, low rents, and a high number of vacant lots. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: promotes neighborhood by providing retail and office space and eliminates factors hindering economically viable uses.

C. 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. **PROJECT DESCRIPTION**. The Project being assisted with the Agency Funding is the following: The project is a mixed use six story building that will include approximately 4,982 square feet of retail space, 14,026 square feet for office space, to be used by New Faze Development, Inc., and 27 residential units. The residential units shall all consist of five live-work lofts/town homes; 16 studios, four one-bedroom units and two two-bedroom units. The total residential space is approximately 43,804 square feet. Finally, Project shall contain 7,000 square feet of lift parking for fifty automobiles (three cars stacked to a space).

2. **AGENCY FUNDING.** Agency is providing funding to the Project under the Funding Agreements for development of the Project as described in Section 1. If Developer fails to develop the Project as and when required by this OPA, Developer must repay the Agency Funding as provided in the Funding Agreement. As a condition of Agency's obligation to provide the Agency Funding and in consideration of the Agency Funding, Agency is purchasing from Developer, and Developer is selling to Agency, an operating covenant to assure the operation of the Project as described in Section 1, as well as other obligations and restrictions, including without limitation, use restrictions and restrictions on the sale or rental of the Property, as evidenced by the Regulatory Agreement.

2.1. **FUNDING AGREEMENTS.** The Agency shall fund the Project in an amount not to exceed Three Million Dollars ($3,000,000) and shall be in the form of a Conditional Grant.

2.1.1. The conditional grant shall become unconditional upon the terms and conditions of the Conditional Grant Agreement, attached hereto and incorporated herein as Exhibit 1: Conditional Grant Agreement.

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

Plans conform to the Preliminary Plans; and (c) to assure that any Agency funds which may be obligated under this OPA are used as intended by the Agency.

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

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

3.3. **PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans which shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the construction of the Project. Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to the Preliminary Plans and the Scope of Development. To the extent that the Preliminary Plans and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this OPA. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

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 and shall have clearly marked on its exterior "URGENT: 2001 Del Paso Boulevard 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 **Error! Reference source not found.**, 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 **Error! Reference source not found.**, 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 which specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law [commencing at Health and Safety Code Section 33000] shall control.

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

4.2. **GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within 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. **ART IN PUBLIC PLACES.** "Art in Public Places Program" means the "Aesthetic Improvement Policy" adopted by Agency Resolution Number 2865, October 16, 1979. It is Agency's policy for the creation and display of artwork in public areas. In conformance with Agency's Aesthetic Improvement Policy, also know as the Art in Public Places Policy, Developer shall expend not less than two percent (2%) of the Project construction contract price for the acquisition and installation of Aesthetic Improvements.

4.4. **PAYMENT AND PERFORMANCE BONDS.** As a condition precedent to beginning construction of the Project, the Developer shall provide the Agency performance bond and a labor and material payment bonds obtained by Developer or its general contractor in favor of the Developer and Agency as a named dual obligees, in form and amount as approved by the Agency and securing, respectively, completion of the work and payment of all labor and material suppliers and subcontractors for the work as stated in the construction contract for the Project The bonds shall be written with a surety listed as acceptable to the federal government on its

most recent list of sureties. Developer shall assure compliance with all requirements of the surety. Developer shall permit no changes in the work to be performed by the general contractor and shall make no advance payments to the general contractor without prior written notice to the surety and the Agency, if such change or payment could release the surety of its obligations under the bonds.

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

4.6. **LOCAL, STATE AND FEDERAL LAWS.** The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. 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.

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

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

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

4.9.1. **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, creed, religion, sex, marital status, or national origin. 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.

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

4.10. **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.

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

4.12. **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.

4.13. **CERTIFICATE OF COMPLETION.** After the Agency has determined that Developer has completed the construction of the Project in accordance with the Final Plans and Developer's obligations under this 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.

4.13.1. 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.

4.13.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional (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.

4.14. **CONSTRUCTION PERIOD EXTENSION FEE**. If Developer does not complete the construction of the Project on or before the Completion Date stated in the Schedule of Performances, Developer shall pay to Agency, monthly, in advance, on the first day of each month beginning the calendar month following the Completion Date, a construction period extension fee of Fifty Dollars and No Cents Dollars ($50.00) for each day by which the completion of construction is delayed beyond said completion date. Construction Period Extension Fees due for days of delay occurring prior to the first payment date shall be paid in arrears at the time of the first payment under this Section 1. The number of days used in computation of the Construction Period Extension Fee shall be reduced by the number of days of Unavoidable Delay. Failure to pay Construction Period Extension Fees when due is a material default of this OPA. Any unearned portion of an advance payment of any such extension fee shall be refunded by the Agency within thirty (30) days of completion of construction, or of termination of the OPA. Agency shall have the option to terminate, upon ten (10) days prior written notice, Developer's rights to unpaid Construction Extension Fees and to declare Developer in material default of this OPA. In any event, Construction Extension Fees shall not be accepted for a time period greater than six months, at which time Developer shall be deemed in material default of this OPA.

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

4.16. **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..

4.17. **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.

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

4.19. **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.

4.20. **ADDITIONAL PROJECT PROVISIONS.** The Developer has not determined the General Contractor. Before the release of the first disbursement by the Agency, Developer must select subject to the Agency's prior written approval, the general contractor for this Project. The Developer shall spend all equity financing prior to the release of the Agency's first disbursement and the conventional loan financing shall be spent concurrently with the grant funds.

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 **Error! Reference source not found.**), (b) firm and binding loan commitments (as provided in Section **Error! Reference source not found.**) 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, request 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 commitments : (a) are 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) contain only usual, customary, and commercially reasonable loan terms; (c) continue in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provide for a 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 require amendment of this OPA or that require 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 & proper completion; and (c) Developer shall provide financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) 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 himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that it shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Property and the Project.

6.2. **REGULATORY AGREEMENT.** Developer covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, 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 his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

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

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

9.3. **COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may 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:

9.7. **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.

9.8. **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.

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

9.8.2. **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.

9.8.3. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 9 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the 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 9 with respect to such insurance shall otherwise be satisfied by such blanket policy.

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

10.1. **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

10.2. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of Agency shall be personally liable to Developer, or any successor in interest, in the

event of any default or breach by Agency or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this OPA.

10.3. **ATTORNEY'S FEES AND RELATED.** 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. "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.

11. **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. 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.

11.1. **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 **2001 DPB, LLC** ("OPA"). Lender requests, in accordance with Section 11.1 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]

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

11.3. **LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the 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.

11.4. **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.

11.5. **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 11.5 and Lender has failed to cure such default as provided in Section 11.5 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:

11.5.1. Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this 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.

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

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

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

11.6. **FORECLOSURE.** Foreclosure of any encumbrance securing the Loan, or any sale under such encumbrance, whether by judicial proceedings or by virtue of any power contained in such encumbrance, or any conveyance of the Property from the Owner to the Lender or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature of foreclosure, shall not require the consent of the Agency. Upon such foreclosure, sale or conveyance, the Agency shall recognize the resulting purchaser or other transferee as the Developer under this 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.

11.7. **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.

11.8. **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.

11.9. **ESTOPPEL CERTIFICATE.** Any party may, at any time, request in writing of any other party to certify in writing that, to the knowledge of the certifying party, (i) this 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.

11.10. **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 11 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.

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

12.1. **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.

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

12.3. **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.

12.4. **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.

12.5. **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.

12.6. **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.

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

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

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

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

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

13. **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:

13.1. Addresses for notices are as follows:

13.1.1. Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Dianna Sasser.

13.1.2. Developer:2001 DPB, LLC, 1825 Del Paso Boulevard, Sacramento, California 95815; Attention: Wendy Saunders.

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

13.2.1. 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;

13.2.2. 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;

13.2.3. 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

13.2.4. 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.

14. **DEFINITIONS.**

14.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

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

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

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

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

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

14.7. "Completion Date" is the date on or before which Developer must complete the construction of the Project. The Completion Date for the Project is December 31, 2008.

14.8. "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.

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

14.10. "Developer" is 2001 DPB, LLC, a California limited liability company. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided (i) that the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at 1825 Del Paso Boulevard, Sacramento, California 95815.

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

14.12. "Escrow Instructions" means the escrow instructions for the close of the Escrow, a copy of which is attached as **Exhibit 2: Escrow Instructions**.

14.13. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 1, 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.

14.14. "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.

14.15. "Legal Description" is the legal description of the various parcels of real property affected by this OPA. The Legal Description is attached as **Exhibit 3: Legal Description**.

14.16. "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.

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

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

14.19. "Preliminary Plans" are the Project designs prepared by the Project architect, Hunt, Hale and Jones, dated November 22, 2006, a portion of which (consisting of various elevations) is attached as **Exhibit 4: Preliminary Plans**. Agency has approved the Preliminary Plans concurrently with the approval of this OPA.

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

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

14.22. "Project Area" is the North Sacramento Redevelopment Project Area, as defined the Redevelopment Plan.

14.23. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the City Council of the City on June 17, 1986, by City Ordinance Nos. 86-064, 86-065, 86-066 and 86-067, Fourth Series. A copy of the

Redevelopment Plan as initially adopted was recorded on July 29, 1986, in the Official Records of the County of Sacramento, in Book 86-07-29, beginning at pages 1633, 1738, 1690 and 1787, respectively.

14.24. "Regulatory Agreement", a copy of which is attached as **Exhibit 5: Regulatory Agreement** is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions, that run with the Property as a condition of Agency Funding.

14.25. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as **Exhibit 6: Schedule of Performances**.

14.26. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as **Exhibit 7: Scope of Development**.

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

14.28. "Unavoidable Delay" is a delay in the performance by a party of any obligation which delay is unforeseeable and beyond the control of such party and without its fault or negligence. Unavoidable Delay shall include acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, a general moratorium on financing for projects of the same type, and unusually severe weather (as for example, floods, tornadoes, or hurricanes) or delays of subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of Agency and Developer shall be extended for the period of the enforced delay, as determined by Agency, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Developer has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay.

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

DEVELOPER :
2001 DPB, LLC

By: _____
Allen Wayne Warren
Managing Member
Approved as to form:

_____
Developer Counsel

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
Anne M. Moore, Executive Director
Approved as to form:

_____
Agency Counsel

EXHIBIT 1

CONDITIONAL GRANT AGREEMENT
[Secured by Deed of Trust]

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic, ("Grantor"), whose address is 630 I street, Sacramento, California grants to the 2001 DPB, LLC, a California limited liability company, ("Grantee"), with its principal office at 1825 Del Paso Boulevard, Sacramento, California 95815, the principal amount ("Conditional Grant") of THREE MILLION SIX DOLLARS ($3,000,000), or so much as may be actually advanced under this agreement ("Grant Agreement") and the Owner Participation Agreement between Grantor and Grantee, dated April 16, 2007.

This Grant is secured by a deed of trust ("Deed of Trust") on the real property ("Site") described in the attached "Legal Description" incorporated in this Grant Agreement by this reference. This Conditional Grant is subject to the terms and conditions of the OPA and to the terms and conditions stated below.

The Conditional Grant shall become unconditional on April 30, 2017 provided that all conditions have then been met and Grantee is not then in default of the OPA or this Grant Agreement. Grantee's obligations regarding repayment of the amount of the Conditional Grant shall cease when the Conditional Grant becomes unconditional. Grantee shall repay the grant if Grantee is in default of any of the following covenants and conditions and has not immediately commenced and diligently cured such default:

1. **GRANT PURPOSE AND USE OF FUNDS.** The Agency is making this Conditional Grant for the public benefits derived from the use of the proceeds in the following project ("Project"): The project known as 2001 Del Paso Boulevard is a six story, mixed use building providing 4,982 square feet of retail, 14,026 square feet of office space for the Developer and twenty seven residential units. The project also includes a new parking system. This conditional grant is to be applied only to the residential units and construction in support of those residential units. The proceeds of the Conditional Grant shall be used solely for the Project. Furthermore, the proceeds of the Conditional Grant shall be used solely for the following Project activities: Twenty seven residential units and the infrastructure and off-site improvements (if any) required to develop those residential units.

2. **DISBURSEMENT.** The proceeds of this Conditional Grant shall be disbursed upon execution by each party and delivery to the other party of this Grant Agreement and subject to the following conditions and procedures:

   a) **CONDITIONS TO DISBURSEMENT.** Agency shall not be obligated to disburse any of the Conditional Grant proceeds unless and until all of the conditions are met with respect to each such disbursement:

i) As a condition precedent to the first disbursement by Grantor to Grantee pursuant to this agreement, Grantee shall provide Grantor with conclusive evidence that Soul First Properties LLC and Northstar Capital LLC have conveyed all of each of their entire interests in the properties (APNs 275-0042-007 and 275-0042-008) to 2001 DPB, LLC.

ii) The proceeds of the Conditional Grant are used solely for the following: construction of twenty seven residential units including a mix of live work/loft space, studios, one and two bedroom residential units.

iii) OPA. Grantee is not and shall not be in default of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.

iv) Grantee is not in default of any provision of this Conditional Grant, subject to the rights of Grantee to cure such default.

v) Grantee has fully complied with the following disbursement procedures.

vi) Grantee has provided evidence of approved construction plans, drawings and specifications that comply with this Grant Agreement and of necessary building permits from governmental entities having jurisdiction of the Project.

vii) Agency has determined that the work, for which disbursement is requested, has been satisfactorily completed.

viii) No mechanics liens have been filed or recorded on the Property.

3. **DISBURSEMENT PROCEDURES.** Prior to the first disbursement, Grantee shall expend its equity in the project. Agency shall disburse the Conditional Grant proceeds according to the following procedures: Grantee has made written demand for disbursement stating the amount requested and the intended use of the proceeds to be disbursed. Disbursement shall be made no more often than once a month and shall be on a fifty-fifty basis with the construction lender.

4. **PREVAILING WAGES.** Unless stated otherwise above, Agency advises Grantee that the Project is subject to the payment of prevailing wages under California law. Grantee shall inform the General Contractor and shall require the General Contractor to inform all subcontractors and materialmen furnishing goods or services to the Project of Agency's determination of the applicability of California prevailing wage requirements. Grantee and General Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Grantee and General Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Grantee indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees, penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application

of California prevailing wage laws to the Project by Grantee or General Contractor or both of them.

5. **DEFAULT OF OPA**. Grantee shall not default in any material provision of the OPA, subject to the rights of Grantee to cure such default as provided in the OPA.

6. **NO SALE OR EXCESS REFINANCING**. No Sale or Excess Refinancing If, prior to said date, Grantee, without Agency's written consent (a) sells or transfers all or any portion of the Site or (b) refinances the Site for an amount greater than One Hundred Percent (100%) of the independently appraised, fair market value of the Site reduced by the amount of this Conditional Grant remaining unpaid. Agency shall not withhold consent to sell to an otherwise financially qualified buyer who assumes Grantees obligations under this Conditional Grant accepts the terms of this Conditional Grant.

7. **LOW INCOME TENANTS AND SEC. 8 TENANTS** Grantee shall not permit discrimination against tenants because of their status as low-income tenants or as tenants receiving "Section 8" rental assistance or any other assistance from the U.S. Department of Housing and Urban Development or from any other federal, state or local program of housing or income assistance.

8. **MAINTAIN LOANS.** Grantee shall comply with the provisions of all loans secured by the Site and shall promptly and timely cure any default in said loans.

9. **ADEQUATE RESERVES**. Grantee shall maintain, or cause to be maintained, adequate capital, operational and regular and deferred maintenance reserves for the Project in accordance with ordinary and usual business practices of a prudent property owner. Funds in said reserve accounts shall be used solely for the designated purposes unless such use has first been approved in writing by Agency.

10. **PROFESSIONAL MANAGEMENT**. Grantee shall obtain and maintain, for not less than three (3) years from the date of occupancy of improvements within the Site required by the OPA, independent professional property management services with a firm approved by Agency.

11. **NO NUISANCE**. Grantee shall permit no activity on the Site that may be construed to be a nuisance to any tenant on the Site, to any adjacent tenants or property owners or to the general public. In the event that such a nuisance is occurring on the Site, Grantee shall take immediate action to stop such nuisance and to prevent future occurrences of such nuisance.

12. **OCCUPANCY.** Grantee shall not permit the occupancy of any residential unit on the Site to exceed the occupancy limits established by the U.S. Department of Housing and Urban Development for subsidized housing units.

13. **PROJECT MAINTENANCE**. Grantee shall assure that the following maintenance and use provisions for the Site shall be enforced:

a) **BUILDING UPKEEP.** Grantee shall keep the exterior appearance of all buildings and structures in a clean and attractive condition. Grantee shall perform refinishing of surfaces immediately when observed to be needed due to damage or deterioration.

b) **GROUNDS UPKEEP.** Grantee shall maintain all grounds and landscaped areas within the Site and those adjacent to the Site, which the Grantee may control or otherwise maintain, in a condition consistent with first-quality landscape care. Grantee shall assure that shrubs and trees are to be properly and consistently pruned and that all landscaped areas are kept free of weeds, undesirable plants and trash.

c) **TRASH STORAGE.** Grantee shall assure that all trash, including lawn, shrub and tree cuttings are placed in a screened enclosure when stored for pickup and that collected trash of any kind is not allowed to stand outside of an enclosure for more than eight (8) hours.

d) **STORAGE AND REPAIRS.** Grantee shall assure that no painting, repairing or storage of personal property is permitted in any open parking area, balcony area, or common area or any other area visible to the public.

14. **SIGNS.** Grantee shall not install or permit the installation or use of any sign on the Site which creates a hazard by protruding, overhanging, blinking, flashing, exhibiting animation or other dangerous conditions. Grantee shall not install or permit the installation or use of any billboards, pennants, bunting or similar devices for advertising or commercial display which are not in accordance with all applicable ordinances, regulations and codes. All nonconforming signs shall be removed within the time specified by the organization have jurisdiction over the sign or by the Agency.

15. **INDEMNITY.** Grantee indemnifies, and will hold harmless and defend, the Agency, its officers, directors, commissioners, employees and agents against all claims, demands, penalties, judgments, awards, orders, expenses and liabilities related to the Property, Grantee's activities on the Property or arising from Grantees rights and obligations under this Grant Agreement. Such liabilities include without limitation, strict liability in tort or liability resulting from a finding that Agency or Grantee are engaged in a joint venture or partnership. Such expenses include without limitation, court costs, arbitration or mediation fees, witness fees, investigator fees and attorney's fees, whether or not litigation is commenced. The indemnity provisions of this Section shall survive the termination of this Grant Agreement, whatever the reason for such termination.

16. **ATTORNEY'S FEES AND COSTS.** If a party institutes any action (including without limitation, arbitration, mediation, motions, hearings, suits and appeals) to enforce a provision of this Grant Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its fees, costs and expenses in connection with such action, including without limitation, the prevailing party's expert witness fees, investigator fees and attorney's fees. Payment of such fees shall include payment for such services whether provided by employee's of the prevailing party or independent providers. Prevailing party shall mean the

party who obtains a more favorable result than that offered by it in settlement of the issues, or in the absence of such settlement offer, the party obtaining a favorable result.

17. **NOT ASSIGNABLE.** Grantee shall have no right to, and shall not, assign this Conditional Grant, whether directly, by operation of law, or otherwise.

18. **BOOKS AND RECORDS.** Grantee shall maintain such books and records related to the operation of the Project as are considered reasonable and necessary under generally accepted accounting principals and shall permit Agency to view said books and records at any time during regular business hours.

19. **INTERPRETATION.** This Grant Agreement incorporates the Deed of Trust and the OPA in this document by this reference. This Grant Agreement 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. As the context may indicate, the singular and plural forms each include the other and gender references include all other genders. If any provision of this Grant Agreement is held invalid for any reason, the other provisions shall be given full force and effect to the extent that the purpose and intent of this Conditional Grant can then be met.

20. **WAIVERS AND AMENDMENTS.** All waivers of the provisions of this Grant Agreement must be in writing and duly executed by the waiving party. All amendments to this Grant Agreement must be in writing and duly executed by the Agency and the Developer.

21. **CUMULATIVE RIGHTS AND REMEDIES.** No right, power or remedy given to Agency by the terms of this Grant Agreement or the OPA is intended to be exclusive of any other right, power or remedy, and each such right , power or remedy will be cumulative and in addition to every other right , power or remedy given to the Agency by the terms of any instrument, by any statute or otherwise.

22. **NONLIABILITY OF AGENCY OFFICIALS AND EMPLOYEES.** No member, official or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any obligations under the terms of this Grant Agreement.

23. **NOTICES AND DEMANDS.** A notice, demand or other communication under this Grant Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail postage or prepaid, return receipt requested, or delivered personally or by national courier service, delivery charges prepaid, to the address set out above, or at such other address for the receiving party as has been duly noticed under this Section 22.

EXECUTED AT SACRAMENTO, CALIFORNIA, as of the date first written above.

GRANTEE:
2001 DPB, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

By: _____
Allen Wayne Warren
Managing Member

Grantor:
Redevelopment Agency of the City Of Sacramento

By: _____
Anne Moore
Executive Director

Agency Counsel approval as to form:

_____
_____Agency Counsel

NO FEE DOCUMENT:
Entitled to free recording
per Government Code 6103.

When recorded, return to:
SACRAMENTO HOUSING AND
REDEVELOPMENT AGENCY
630 "I" Street
Sacramento, CA 95814
Attention: Legal Department

DEED OF TRUST AND ASSIGNMENT OF RENTS
CONDITIONAL GRANT AGREEMENT
2001 Del Paso Boulevard

For purposes of this Deed of Trust he following capitalized terms shall have the meanings ascribed in the space adjacent to them:

TERM	DEFINITION	
"Effective Date"	April 16, 2007	
"Trustor" and "Borrower"	2001 DBP, LLC, limited liability company	
"Borrower Address"	1825 Del Paso Boulevard, Sacramento, California 95815	
"Trustee"	Stewart Title of Sacramento	
"Beneficiary" and "Grantor"	Redevelopment Agency of the City of Sacramento, a public body, corporate and politic	
"Grantor Address"	PO Box 1834, Sacramento, California 95812-1834	
"Property"	Which is real property located in the County of Sacramento and the State of California as more particularly described in the Legal Description.	
	Address	2001- 2005 Del Paso Boulevard, Sacramento, California
	Assessor's Parcel Number	275-0042-007 and 275-0042-008
"Legal Description"	The Legal Description of the Property which is more particularly described in the attached **Exhibit 1 Legal Description**, which is an incorporated in and an integral part of this Deed of Trust	
"Grant"	Which is Grantor's conditional grant to Borrower evidenced by the Conditional Grant Agreement and which is secured by this Deed of Trust.	
"Grant Agreement"	Which is the Conditional Grant Agreement between Grantor and Borrower stating the term and conditions of the Grant.	
	Which is dated:	April 16, 2007

"Additional Notices"	Grantor shall give copies of notices required to be delivered to Borrower to the following parties at the following addresses; provided, however that Borrower acknowledges that such notice is an accommodation and the failure of the Grantor to properly deliver any such notice shall not give rise to any claims or defenses of Borrower or any third party:	
"Note"	Which is Borrower's note made in accordance with the Grant Agreement securing the following principal sum or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Grantor, with interest.	
	Which has a principal sum of	Three Million Dollars and No Cents ($3,000,000.00)

THIS DEED OF TRUST is made as of the Effective Date between the Trustor also referenced as the Borrower, the Trustee, and the Beneficiary also referenced as Grantor.

Borrower, in consideration of the indebtedness described below and the trust created by this Deed of Trust, irrevocably grants and conveys the Property to Trustee, in trust with power of sale.

Together with all the improvements now or subsequently erected on the property, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given to Grantor to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades, awnings, screens, venetian blinds and other furnishings, now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are referred to as the "Property";

To secure to Grantor (a) the repayment of the Grant; and (b) the performance of the covenants and agreements of Borrower contained in this Deed of Trust, the Note, or the Grant Agreement.

Borrower covenants that Borrower is lawfully seized of the estate conveyed by this Deed of Trust and has the right to grant and convey the Property, and that Borrower will warrant and defend generally the title of the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Grantor's interest in the Property.

Borrower and Grantor covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest, if any, on the indebtedness evidenced by the Note. All payments received by Grantor under the Note shall be applied by Grantor first to interest payable on the Note and thereafter to the unpaid principal of the Note.

2. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property and leasehold payments or ground rents, if any by Borrower making payment, when due, directly to the appropriate payee. Borrower shall promptly furnish to Grantor all notices of amounts due under this paragraph, and in the event that Borrower makes payment directly, Borrower shall promptly furnish to Grantor receipts evidencing such payments. Borrower shall pay when due any encumbrance, charge and lien, with interest in accordance with its terms, on the Property or any portion which are inferior or superior to this Deed of Trust.

3. Hazard Insurance. Borrower shall keep the improvements now existing or later erected on the Property insured against loss of fire or hazards under a policy approved by Grantor consistent with the insurance requirements of the Grant Agreement. In addition, Borrower shall insure against loss of all furniture, equipment and other personal property owned by Borrower related to Borrower's operation of the Property. Grantor shall have the right to hold the policies and policy renewals, and Borrower shall promptly furnish to Grantor all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Grantor. Grantor may make proof of loss if not made promptly by Borrower.

Unless Grantor and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, as and to the extent provided in the Grant Agreement.

Unless Grantor and Borrower otherwise agree in writing, any such application of insurance proceeds to principal shall not extend or postpone the due date of any Grant payment or change the amount of such payment. If the Property is acquired by Grantor pursuant to this Deed of Trust, all right, title and interest of Borrower in and to any insurance policies and proceeds of such policies resulting from damage to the Property prior to the sale of acquisition shall pass to Grantor to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

4. Liability Insurance. In addition to the casualty insurance required under the Grant Agreement during the course of construction, Borrower shall keep comprehensive general liability insurance for the Property in a form and coverage consistent with the provisions of the Grant Agreement and reasonably approved by Grantor.

5. Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment, demolition, or deterioration of the Property.

6. Protection of Grantor's Security. Borrower shall appear and defend any action or proceeding purporting to affect the security under this Deed of Trust or the rights of the Grantor. If

Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Grantor's interest in the Property, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedant, then Grantor may, upon notice to Borrower, make such appearances, disburse such sums and take such action as are necessary to protect Grantor's interest, including, but not limited to, disbursement of judgments, costs or reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Grantor pursuant to this Section 6, with interest, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Grantor agree to other terms of payment, such amounts shall be payable upon notice from Grantor to Borrower requesting payment, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. In any event, this Section shall be construed as a right and an option of Grantor and shall not be construed to require Grantor to incur any expense or take any action.

7. Inspection. Grantor, by its designated representative, may make reasonable entries upon and inspections of the Property, provided that Grantor shall give Borrower and any occupant of the Property reasonable prior notice of any such inspection.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of all or any part of the Property, or for conveyance in lieu of condemnation, shall be applied as provided in the Grant Agreement.

If the Property is abandoned by Borrower, or if, after notice by Grantor to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Grantor within 30 days after the date such notice is mailed, Grantor is authorized to collect and apply the proceeds, at Grantor's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Grantor and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment or change the amount of such payment.

9. Borrower Not Released. Extension of the time for payment of the sums secured by this Deed of Trust granted by Grantor to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Grantor shall not be required to commence proceedings against such successor or refuse to extend time payment by reason of any demand made by the original Borrower or Borrower's successors in interest.

10. Forbearance by Grantor Not a Waiver. Any forbearance by Grantor in exercising any right or remedy under this Deed of Trust, or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any such right or remedy. The procurement of insurance or

the payment of taxes or other liens or charges by Grantor shall not be a waiver of Grantor's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust, the Note, the Grant Agreement or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Successors and Assigns Bound; Joint and Several Liability Captions. The covenants and agreements contained in this Deed of Trust shall bind, and the rights under this Deed of Trust shall inure to, the respective successors and assigns of Grantor and Borrower, subject to the provisions of Section 15. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or to define its provisions.

13. Notice. Except for any notice required under applicable law to be given in another manner, any notice to be given under this Deed of Trust shall be given as provided for in the Grant Agreement. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Grantor when given in the manner designated.

14. Governing Law; Severability. This Deed of Trust shall be governed by the law of the State of California. If any term or provision of this Deed of Trust shall, to any extent, be held invalid or unenforceable, the remainder of this Deed of Trust 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.

15. Acceleration on Transfer or Refinancing of the Property; Assumption. Except as otherwise provided in the Grant Agreement, if all or any part of the Property or an interest in the Property is sold or transferred or refinanced by Borrower without Grantor's prior written consent, Grantor may, at Grantor's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Grantor shall have waived such option to accelerate if, prior to the refinancing, sale or transfer, Grantor and the person to whom the Property is to be sold or transferred reach agreement in writing that the grant may be assumed. If Grantor has waived the option to accelerate provided in this Section and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Grantor, Grantor shall release Borrower from all obligations under this Deed of Trust and the Note.

If Grantor exercises such option to accelerate, Grantor shall mail Borrower notice of acceleration. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower, or any of its principals or anyone with a substantial legal interest in Borrower, may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Grantor may, without further notice or demand on Borrower, invoke any remedies permitted by this Deed of Trust.

16. Acceleration on Breach; Remedies. Except as provided in Section 15, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, the Note, (including the covenants to pay when due any sums secured by this Deed of Trust and restricting transfer of the Property) or Grant Agreement, Grantor shall mail notice to Borrower specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, no less than 30 days from the date the notice is mailed to Borrower, by which breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Grantor at Grantor's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Grantor shall be entitled to collect from the Borrower, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this Section, including, but not limited to reasonable attorney's fees.

If Grantor invokes the power of sale, Grantor shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Grantor's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which any portion of the Property is located. Grantor or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale, in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Grantor or Grantor's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements it contains. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust and (c) the excess, if any, to the person or persons legally entitled thereto as determined by Grantor. In the event of a dispute regarding the excess funds, either Grantor or Trustee may file an action in interpleader to determine who shall receive the funds and may then deposit the excess funds with the court.

17. Assignment of Rents; Appointment of Receiver; Grantor in Possession. As additional security, Borrower assigns to Grantor the rents of the Property, provided that Borrower shall, prior to an acceleration for breach as provided above or abandonment of the Property, have the right to collect such rents as they become due.

Upon acceleration for breach or abandonment of the Property, Grantor, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the

Property and to collect the rents of the Property including those past due. All rents collected by Grantor, its agent, or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Grantor, its agent and the receiver shall be liable to account only for those rents actually received.

18. Prior Lienholder. The provisions of this Deed of Trust shall operate subject to the claims of prior lienholders to the extent of such claims.

19. Nonrecourse. Notwithstanding any provision of this Deed of Trust or any document evidencing or securing this Grant, Borrower, and Borrower's principals, agents, officers, and successors in interest shall not be personally liable for the payment of the Grant or any obligation of the Grant.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Grantor shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to such reconveyance. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness.

21. Substitute Trustee. Grantor, at Grantor's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee by this Deed of Trust and applicable law.

22. Request for Notice. Borrower and each party listed to receive Additional Notices request that copies of the notice of default and notice of sale be sent to their respective addresses.

23. Statement of Obligation. Grantor may collect a reasonable fee for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California, as it may be amended from time to time.

24. Use of Property. Borrower shall not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

BORROWER (Trustor):
2001 DBP, LLC

By:_____
Allen Wayne Warren
Managing Member

County of Sacramento

State of California

ss.

On _____ before me,
_____, personally appeared Allen Wayne Warren, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/it/they executed the same in his/her/its/their authorized capacity, and that by his/her/its/their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public
In and for said County and State

EXHIBIT 2

JOINT ESCROW INSTRUCTIONS
FOR AGENCY CONDITIONAL GRANT
2001 DEL PASO BOULEVARD

"Effective Date"	April 16, 2007

Agency and Borrower execute these Escrow Instructions as of the Effective Date. This document, including attachments and any amendments and additions, shall constitute the joint escrow instructions of Agency and Borrower for the Agency loan secured by the Property.

ARTICLE I. GENERAL TERMS.

1. **GENERAL.** These Escrow Instructions, in addition to items listed below includes Article II General Provisions, which is attached to and incorporated in this Regulatory Agreement by this reference.

2. **DEFINITIONS.** The capitalized terms in these Escrow Instructions shall have the meanings assigned in Article I General Terms and as defined in Article II Instructions. (Terms being defined are indicated by quotation marks.)

"Title Company"	Stewart Title Company of Sacramento			
	Address:	1425 River Park Drive, Suite 110, Sacramento, California 95815		
"Escrow" with Title Company	**Escrow Number:**	05-007481 GG	**Attention:**	Gayl Gregson
"Agency"	Redevelopment Agency of the City of Sacramento			
	Address:	630 I Street, Sacramento, CA 95814		
	Attention:	Diana Sasser		
"Borrower"	Borrower is Grantee called 2001 DPB, LLC			
	Address:	1825 Del Paso Boulevard, Sacramento, California 95815		
	Attention:	Wendy Saunders		
"Closing Date"	April 16, 2007			
"Property"	**Address:**	2001 Del Paso Boulevard, Sacramento, California 95815	**APN:**	275-0042-007 and 275-0042-008
Description of the transaction	The Redevelopment Agency is providing a Conditional Grant for the redevelopment of this property into a mixed use office, retail and residential project pursuant to an Owners Participation Agreement with the Developer. The conditional grant is secured by a deed of trust			

"Recorded Documents"- The following documents are to be recorded in the order listed (top being first in priority). Copies of the Recorded documents are attached.	**Documents:**	**Marked for return to:**
	Regulatory Agreement Deed of Trust	Redevelopment Agency of the City of Sacramento/Portfolio Management
"Agency Items"	Promissory Note for subject Conditional Grant	
	Conditional Grant Agreement for the subject conditional grant	
	Authorizing resolutions for all Borrower signatories	
	Owner Participation Agreement	
"Borrower Items"		
	conformed copies of the recorded documents	

"Special Provisions":	Title Policy shall, in addition to customary endorsements, bear the following endorsements: ALTA 101.1 Mechanic's Lien Endorsement For the Regulatory Agreement - CLTA 124.1

"Agency Title Policy" in the form of an ALTA Agency's Policy insuring that the following are valid liens against the property:	**Documents:**	**Coverage amount:**	
	Regulatory Agreement and Trust Deed	In the amount of the grant secured ($3,000,000)	
The title policies shall be subject only to the following "Conditions of Title":	Items A, E, F, G, H, 1, 2,7,8 and 9 of Title Company's Preliminary Report for Escrow	**Dated:**	February 6, 2007
		Number:	05-007481 GG

THE PARTIES HAVE EXECUTED THESE ESCROW INSTRUCTIONS in Sacramento, California as of the date first written above.

BORROWER: 2001 DPB, LLC

By:

Name: Wendy Saunders
Title: Project Manager
Authorized signatory

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

Anne Moore, Executive Director

ARTICLE II. INSTRUCTIONS

1. **CLOSING DATE.** Escrow shall close on or before the Closing Date as it may be changed from time to time by written agreement of Borrower and Agency.

2. **CONDITIONS TO CLOSE OF ESCROW.** "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date The following are conditions to the Close of Escrow:

2.1.1. The conditions precedent to performance stated in the Recorded Documents are satisfied as of the Closing Date.

2.1.2. Simultaneously with the Close of Escrow, Title Company shall issue the Agency Title Insurance to Agency (at Borrower's cost) in the amount stated. The Agency Title Insurance shall include all usual and customary endorsements and any endorsements and other commitments as Agency may reasonably require. The Agency Title Insurance shall show the Recorded Documents marked for return to Agency as valid liens against the Property in favor of the Agency, subject only to the Conditions of Title, and securing, as applicable, Borrower's performance of it obligations and repayment of Agency Funding.

2.1.3. Prior to the Closing Date, the parties shall duly execute (in Escrow or prior to deposit in Escrow) each such document and shall execute those to be recorded in a manner suitable for recording.

2.1.4. On or before the Closing Date, Agency shall also deposit with Title Company the Borrower Items and any Loan Amount then to be disbursed under this Agreement, but not less than closing costs, fees and charges required for Close of Escrow.

2.1.5. On or before the Close of Escrow, Borrower shall also deposit with Title Company the Agency Items and Borrower's share of closing costs and fees.

2.1.6. Title Company is satisfied that all required funds have been deposited in Title Company's account for the Escrow, have cleared the originating bank and are available for transfer by Title Company's check or wire transfer to the appropriate party.

2.2. **TRUST DEED FORM.** If no exhibit setting out the form of the Trust Deed form is attached, the Title Company shall draw the Trust Deed on the Title Company's Long Form Deed of Trust. Title Company shall assure that the Trust Deed includes a standard clause giving Agency the option to accelerate the Loan upon the sale, conveyance, transfer or further encumbrance of the Property, whether voluntary or involuntary. Title Company shall also affix the following provision to the Trust Deed and incorporate it in the Trust Deed by reference:

> *"The Loan Agreement requires the filing of the "Regulatory Agreement" that is defined in the Loan Agreement. The Regulatory Agreement contains covenants running with the*

land and is recorded against the Property. If Developer does not comply with the requirements of the Regulatory Agreement and fails to come into compliance with the Regulatory Agreement within thirty (30) days after Agency's written notice to Developer of such failure, the principal balance of the Loan shall, at Agency's option, be immediately due and payable, together with all unpaid interest at the stated rate from the date of the advancement of the Loan's proceeds."

2.3. **UPON CLOSE OF ESCROW**. The Close of Escrow shall take place on the Closing Date. On the Closing Date, Title Company shall complete the Close of Escrow as follows and in the following order (unless otherwise stated, all recorded documents are recorded with the Sacramento County Recorder):

2.3.1. Assure fulfillment of the Special Provisions;

2.3.2. Assure all documents are complete and affix legal descriptions of the Property as necessary to complete them;

2.3.3. Obtain full execution of all unexecuted documents;

2.3.4. Date all undated documents as of the Closing Date;

2.3.5. Record the Recorded Documents in the priority listed;

2.3.6. Determine all closing costs and fees; including without limitation, all charges, fees, taxes and title insurance premiums payable under this Agreement on Close of Escrow and any other fees and charges approved for payment from Escrow by both parties and deduct such fees from the Loan proceeds deposited by Agency in Escrow;

2.3.7. Deliver the Agency Items to Agency and the Borrower Items to Borrower; and

2.3.8. Prepare and deliver to Borrower and Agency, respectively, one signed original of all documents included for delivery to either party and not delivered for recording, one signed original of Title Company's closing statement showing all receipts and disbursements of the Escrow, and one conformed copy of each of the recorded documents.

2.4. **INABILITY TO CLOSE.** If Title Company is unable to simultaneously perform all of the preceding instructions, Title Company shall notify Borrower and Agency, and upon each of their directions return to each party all documents, items and funds deposited in Escrow by such party (less fees and expenses incurred by the respective party) and bill the respective parties for any unpaid fees and expenses incurred in Escrow. If Escrow fails to close on the Closing Date because Borrower has not complied with Borrower's obligations under this Loan Agreement, then Borrower shall pay the costs incurred through Escrow to the date the Escrow is terminated, including the cost of any preliminary title report and any cancellation fees or other costs of this Escrow. If Escrow fails to close on or before the Closing Date because Agency has not complied with Agency's obligations under this Loan Agreement, such costs shall be paid by Agency. If Escrow fails to close on or before the Closing Date for any other reason, such costs shall be divided equally between the parties.

COMMISSIONS. Agency is not responsible, by this Loan Agreement or otherwise, to pay commissions in relation to this transaction.

Your acceptance of this escrow shall create a contractual obligation by you with Agency and Borrower for complete compliance with these instructions. Agency and Borrower reserve the right to jointly revoke this escrow at any time upon their payment to you of your fees and reimbursement to you of your expenses in accordance with the terms of these escrow instructions. Your obligations as Escrow Holder under these escrow instructions shall be subject to the following provisions:

You are not responsible as to the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow nor as to the authority or rights of any person executing such instrument. Except as otherwise provided in these escrow instructions, your duties as Escrow Holder are limited to the proper handling of monies and the proper safekeeping of instruments and other items received by you as Escrow Holder, and for the performance of your obligations as specifically provided under these escrow instructions. You are responsible for the sufficiency of any instruments or documents prepared by you for this escrow.

Borrower agrees to indemnify and hold you harmless from damages incurred as a result of your good faith and diligent performance of your duties under these escrow instructions.

Upon your acceptance of these escrow instructions return the executed counterparts of these escrow instructions to Agency and Borrower, respectively.

Escrow Holder acknowledges receipt of the foregoing escrow instructions and agrees to act as Escrow Holder and to comply with the terms and conditions of said escrow instructions.

Dated: _____

TITLE COMPANY
STEWART TITLE COMPANY OF SACRAMENTO

By: _____
Name:_____
Title:_____
Its authorized agent and signatory

EXHIBIT 3

Legal Description

Parcel A:

Lot 8, Block 6, as shown on the official "Plat of North Sacramento Subdivision No. 9", recorded in the office of the County Recorder of Sacramento County, April 3, 1941 in Book 15 of Maps, Map No. 2

APN: 275-0042-007

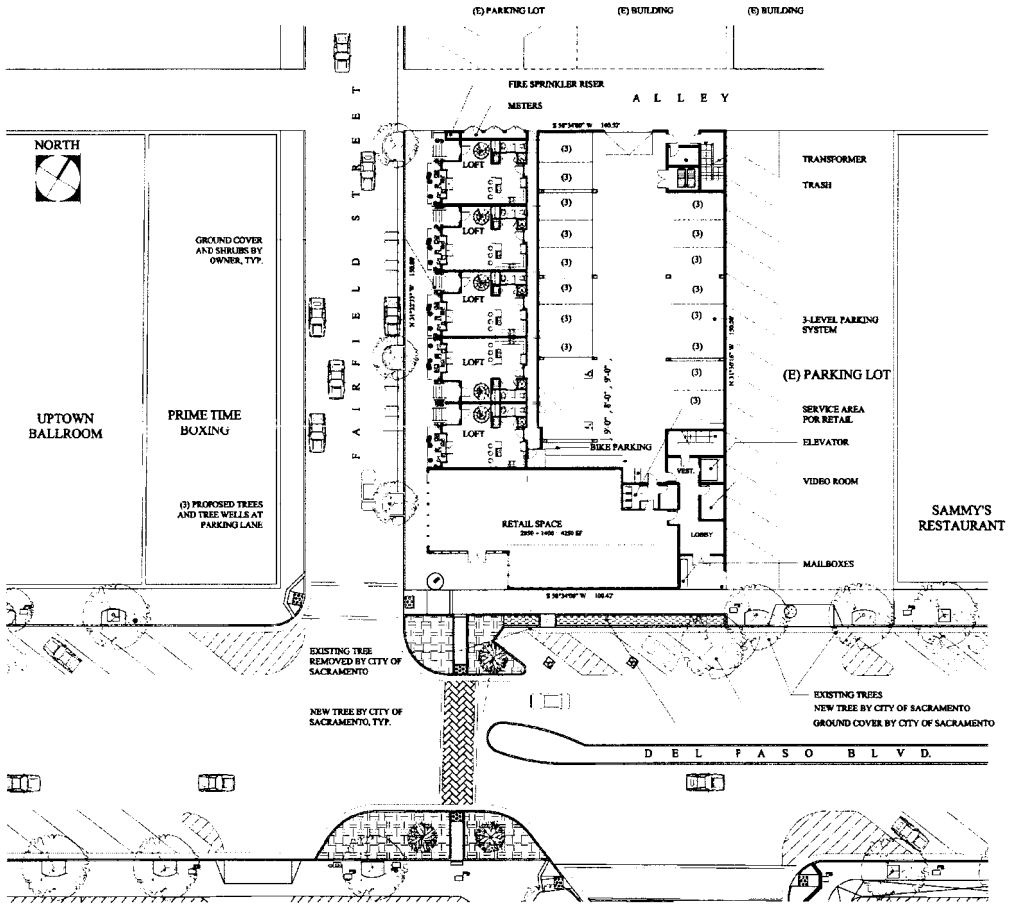
Parcel B"

Lot 9, in Block 6, as shown on the Map entitled, "North Sacramento Subdivision No. 9", recorded April 3, 1914, in Book 15 of Maps, Page 2.

APN: 275-0042-008

EXHIBIT 4

Preliminary Plans



VICINITY MAP

PARKING INFORMATION

PARKING REQUIRED	PROVIDED
RESIDENTIAL:	
UNIT: 1.5 SPACES PER UNIT 27 UNITS X 1.5 SPACES = 41 PARKING SPACES	32 SPACES
GUESTS: 1 SPACE/15 UNITS 27 SPACES/15 UNITS = 2 PARKING SPACES	NONE
RETAIL: FOR RETAIL SPACE: OCCUPANT LOAD 100 = 33 PARKING SPACE	NONE
OFFICE: 1 SPACE/450 SF 13,300 SF/450 = 30 PARKING SPACES	18 SPACES
TOTAL PARKING REQUIRED: 106 PARKING SPACES	TOTAL PROVIDED 50 PARKING SPACES

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-6402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11060 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E.

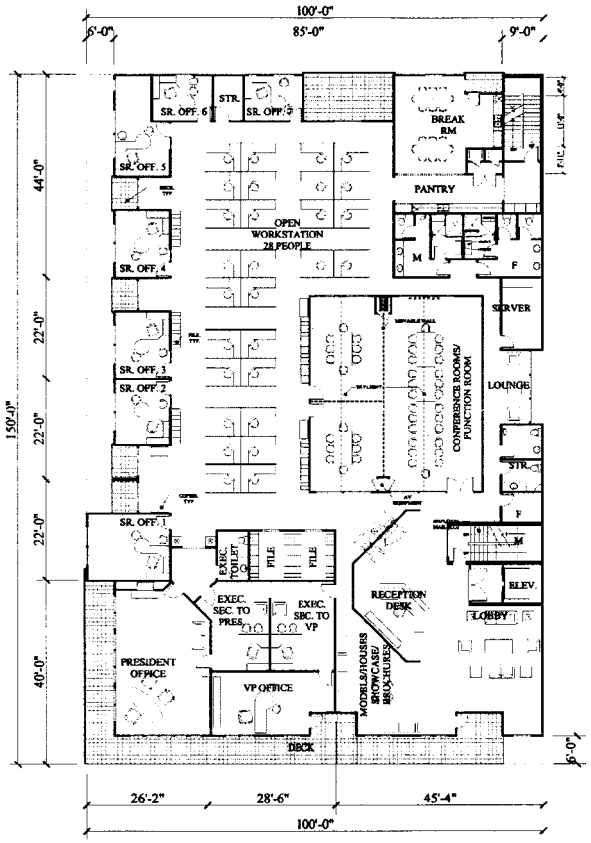
HUNT HALE JONES
Architecture | Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iwersen
t. 415-512-1300
f. 415-288-0288

SITE & GROUND FLOOR PLAN

1

SCALE: 1/16" = 1'-0"
DATE: 11-22-06
PROJECT: 407011

©HUNT HALE JONES ARCH TECTS



THIRD LEVEL - OFFICE LEVEL

OFFICE INFORMATION

OFFICE SPACE 13,300 SF

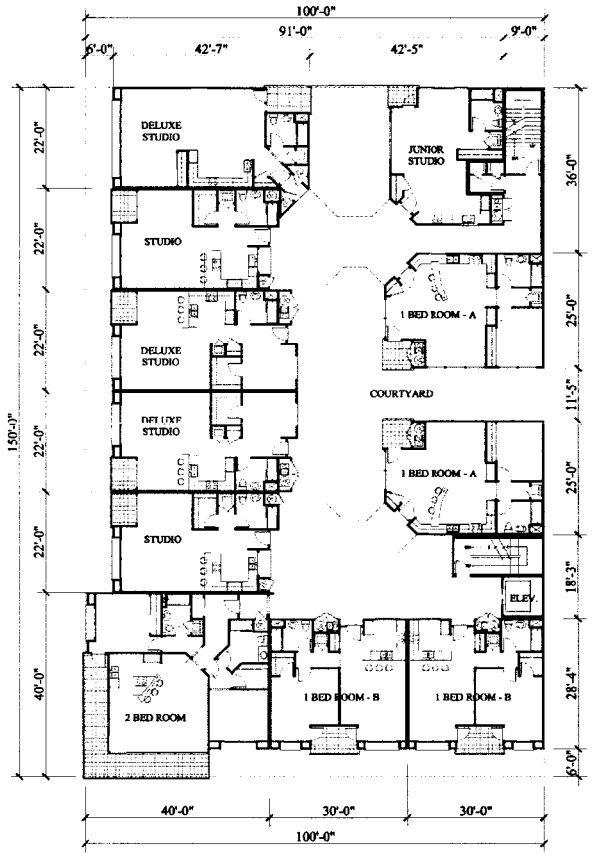
3 CONFERENCE ROOMS
2 SMALL CONF. FOR 8 PEOPLE
1 BIG CONF. FOR 28 PEOPLE
COMBINE ALL CONF. FOR +/- 40 PEOPLE
1 PRESIDENT ROOM + SECRETARY
1 VICE PRESIDENT ROOM + SECRETARY
7 SENIOR EXECUTIVE ROOMS
OPEN WORKSTATION FOR 28 PEOPLE
RECEPTION
SERVER
PANTRY
2 RESTROOMS

RESIDENTIAL INFORMATION

2 STORY CONCRETE FRAME

27 UNITS

GROUND LEVEL	
- (5) LOFT/LIVE WORK 900 SF/UNIT	4500 SF
SECOND LEVEL - 22 FLATS	
- (1) JUNIOR STUDIO 700 SF/UNIT	700 SF
- (4) STUDIOS 725 SF/UNIT	2900 SF
- (2) DELUXE STUDIOS 825 SF/UNIT	1650 SF
- (2) ONE BEDROOM - A 800 SF/UNIT	1600 SF
- (1) ONE BEDROOM - B 860 SF/UNIT	860 SF
- (1) TWO BEDROOM 1320 SF/UNIT	1320 SF
TOTAL SECOND LEVEL	9030 SF
THIRD LEVEL - 22 LOFTS SAME AS SECOND LEVEL PLUS LOFT LEVEL	13545 SF
TOTAL LIVING	27075 SF



FOURTH LEVEL - COURTYARD LEVEL/FLATS
(FIFTH AND SIXTH LEVELS SIM.)

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-829-6402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11080 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E.

HUNT HALE JONES

Architecture | Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iwersen

t. 415-512-1300
f. 415-288-0288

OFFICE & COURTYARD LEVEL
THIRD & FOURTH LEVEL

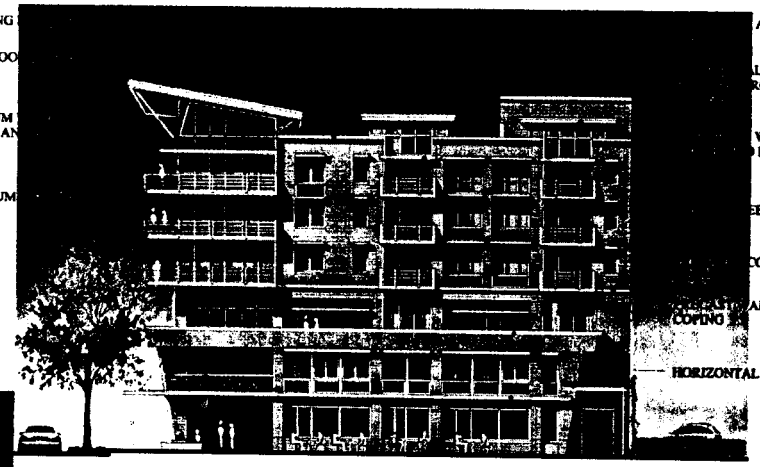
2

SCALE: 3/32"=1'-0"
DATE: 11-22-06
PROJECT: 407011

©HUNT HALE JONES ARCHITECTS

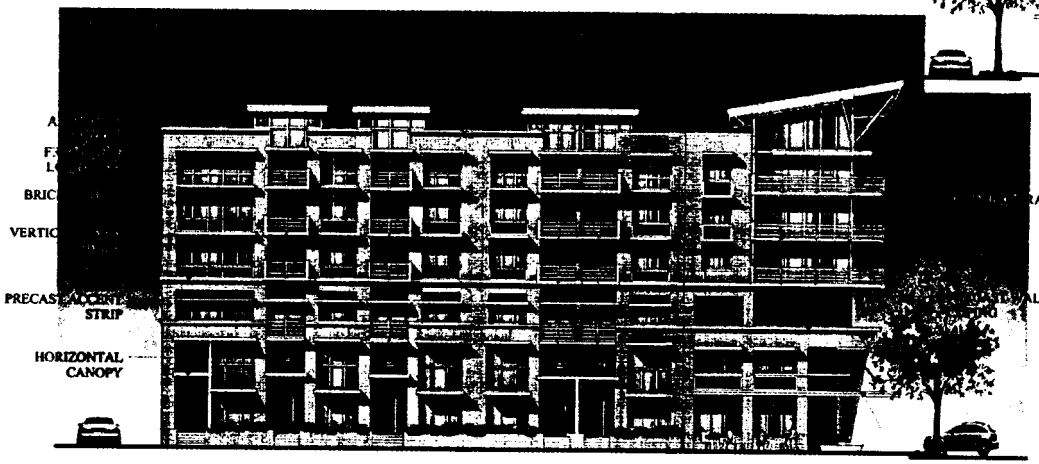
MATERIALS:

WALLS	: BRICK AND ALUMINUM STORE FRONT
ROOF	: FLAT ROOF
WINDOWS	: ALUMINUM
DOORS	: ALUMINUM AND WOOD
RAILING	: ALUMINUM



DEL PASO BOULEVARD ELEVATION - SOUTH

VERTICAL WOOD
SIDING W/ WOOD DOOR



FAIRFIELD ELEVATION - WEST

VERTICAL WOOD
SIDING W/ WOOD DOOR

ALUMINUM CANOPY

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-6402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11060 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E

HUNT HALE JONES

Architecture | Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iversen
t. 415-512-1300
f. 415-288-0288

ELEVATIONS

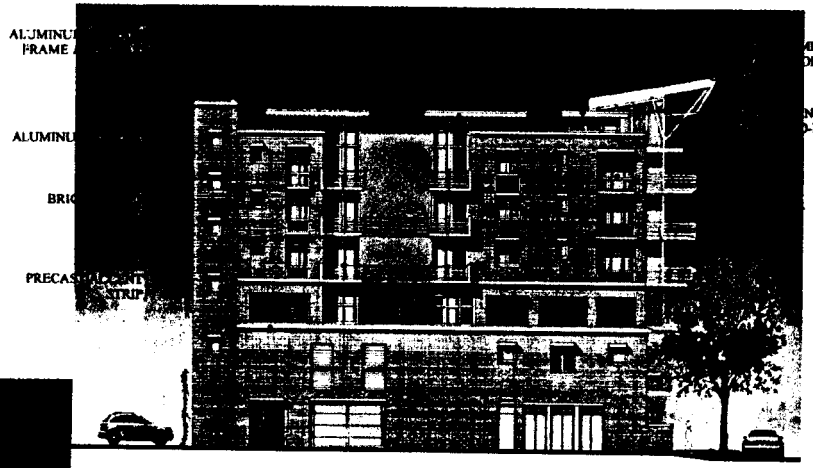
3

SCALE: 3/32"=1'-0"
DATE: 11-22-06
PROJECT: 407011

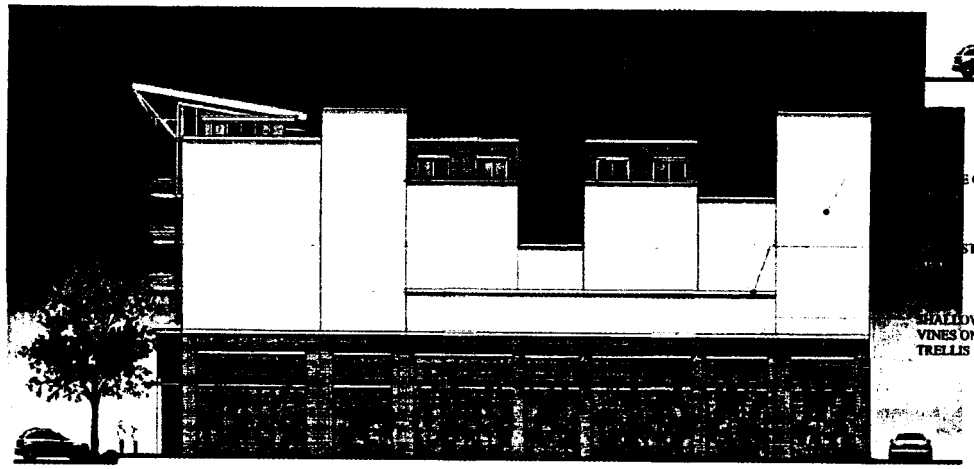
© HUNT HALE JONES ARCH 2006

MATERIALS:

WALLS	: BRICK AND ALUMINUM STORE FRONT
ROOF	: FLAT ROOF
WINDOWS	: ALUMINUM
DOORS	: ALUMINUM AND WOOD
RAILING	: ALUMINUM



VACANT LOT ELEVATION - NORTH



PARKING LOT ELEVATION - EAST

2001 DEL PASO BLVD

SACRAMENTO, CALIFORNIA

NEW FAZE DEVELOPMENT

NEW FAZE DEVELOPMENT, INC.
1825 Del Paso Boulevard
Sacramento, CA95815
t. 916-929-6402
Contact: Wendy Saunders

KIMLEY-HORN & ASSOCIATES, INC.
11080 White Rock Road, Suite 150
Rancho Cordova, CA95670
t. 916-858-5800
Contact: Claudia R. Wade, P.E.

HUNT HALE JONES

Architecture Planning | Interiors
444 Spear Street, Suite 200
San Francisco, CA 94105
www.hunthalejones.com
Contact: Bob Iversen
t. 415-512-1300
f. 415-268-0288

ELEVATIONS

4

SCALE: 3/32" = 1'-0"
DATE: 11-22-06
PROJECT: 407011

© HUNT HALE JONES ARCHITECTS

EXHIBIT 5

NO FEE DOCUMENT:

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

REGULATORY AGREEMENT FOR DEVELOPMENT OF HOMEOWNERSHIP PROPERTY
INCLUDING COVENANTS, CONDITIONS AND RESTRICTIONS RUNNING WITH THE LAND

INCLUDING CONDITIONS PRECEDENT TO RESALE

PROJECT NAME:	2001 Del Paso Boulevard
PROJECT ADDRESS:	2001 Del Paso Boulevard

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

WARNING: **A SALE IN VIOLATION OF THIS REGULATORY AGREEMENT IS VOID.**

ARTICLE I TERMS AND DEFINITIONS.

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

3. **GENERAL.** This Regulatory Agreement, in addition to Exhibits listed below includes Article II General Provisions, all of which are attached to and incorporated in this Regulatory Agreement by this reference.

4. **DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned in Article I General Terms and as defined in Article II General Provisions. (Terms being defined are indicated by quotation marks.) The Lender is making the Agency Funding pursuant to the Agency Funding Commitment and the terms and conditions of this Funding Agreement.

TERM	DEFINITION	
"Effective Date"	This Regulatory Agreement shall be effective as of the following date:	April 16, 2007
"Agency"	Redevelopment Agency of the City of Sacramento	
	The Agency is a public body, corporate and politic.	
"Owner" and "Developer"	2001 DPB, LLC	
"Agency Address"	Agency's business address is 630 I Street, Sacramento, California 95814	

"Owner Address"	Owner's business address is as follows:	1825 Del Paso Boulevard, Sacramento, California 95815
"Jurisdiction"	City of Sacramento	
"Property"	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as **Exhibit 1 – Legal Description of the Property**.	
"Funding Agreement"	The Funding Agreement between Agency and Owner, dated as follows:	April 16, 2007
"Agency Funding"	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property	
"Agency Funding Amount "	The amount of the Agency Funding, as follows:	$3,000,000
"Funding Requirements"	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in **Exhibit 2 – Funding Requirements**.	
"Restricted Units"	The individual housing parcels within the Property that are to be subject, by this Regulatory Agreement to affordability restrictions that limit the price for which they may be sold and resold. The units shall be restricted for the period of years stated in the Funding Requirements.	
"Individual Regulatory Agreement"	The agreement containing conditions, covenants and restrictions running with the land and restricting the use and resale of the Restricted Units as provided in this Regulatory Agreement, the form of which is attached as **Exhibit 3 – Individual Regulatory Agreement**.	
"Approved Use"	The only permitted use of the Property, which is as a residential property available for sale to the general public and containing not less than the following number of units:	-27-

5. **RESTRICTED UNITS;** The following units are Restricted Units for the respective Funding Source or Funding Sources specified. The initial sales price for the respective Restricted Units is the following, determined as of the Effective Date.

a. If the applicable Sacramento Metropolitan Statistical Area median income is adjusted by the federal Department of Housing and Urban Development prior to the sale of a Restricted Unit or if other factors considered in making the determination of the following prices (in accordance with Agency policy and practice) change prior to the sale of a Restricted Unit, then the following schedule shall be adjusted to assure compliance with the Funding Requirements as of the date when the Restricted Unit is sold (and the new schedule recorded in the same manner as the original).

b. For purposes of this Regulatory Agreement, the sales price is amount actually paid to Developer by the purchaser ("Buyer"), including all additions or reductions (for changes to the Restricted Unit or otherwise) made to the initial purchase price shown in the purchase and sale agreement between Developer and the Buyer.

"Funding Source"	"Affordability Level" of Assisted Units	Bedroom Number	Number of Units	"Unit Assistance" (Agency Subsidy per unit)	"Restricted Units" (By plan number or unit square footage)		)
Low Mod Tax Increment	Moderate Income	Junior studios	4	$98,854	700 square feet	$164,000	$199,068
Low Mod Tax Increment	Moderate Income	Studios	2	$98,854	720 square feet	$168,000	$199,068
Low Mod Tax Increment	Moderate Income	One bedroom	1	$113,981	860 square feet	$192,000	$227,320

6. **RESTRICTION ON SALES.** In order to assure that the proper number and types of units have been sold in accordance with this Regulatory Agreement, Developer is prohibited from selling any Restricted Unit within the Project unless and until (a) the Agency has reviewed and determined that the sale complies with the Funding Requirements, (b) that the sales price to be paid by the buyer on sale is an "Affordable Price" as required by the Funding Source and (c) that the Buyer has executed and

the parties have recorded an Individual Regulatory Agreement with all terms applicable to such Restricted Unit. A purported sale to a third party in violation of this Regulatory Agreement is voidable by Agency at any time upon notice to Developer.

7. **NO RENTAL.** Developer shall not rent the Restricted Units without the prior written approval of the Agency. Agency may withhold such approval if the proposed rental would violate provisions of the Funding Restrictions.

8. **RECAPTURE.** If Developer rents a Restricted Unit without Agency authorization or sells a Restricted Unit at a price that exceeds the Affordable Price, Developer shall repay to Agency, as "Recapture", all of the Agency Funding allocable to the Restricted Unit, plus interest from the date of this Regulatory Agreement until paid, at then market rate for construction loans for projects similar to the Project, as reasonably determined by the Agency.

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

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

OWNER : 2001 DPB, LLC, a California limited liability company

By:

_____

Allen Wayne Warren
Managing Member

Date:_____
Approved as to form:_____
Developer Counsel

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

_____

Anne M. Moore, Executive Director

Date: _____
Approved as to form:_____
Agency Counsel

1. **REPRESENTATIONS.** Agency has provided Agency Funding, subject to the terms of the Funding Agreement, in consideration of the property interests conveyed to Agency under this Regulatory Agreement. The funds used by Agency under the Funding Agreement are funds from public funding sources administered by Agency and their use is subject to certain requirements some of which are embodied in this Regulatory Agreement. Further, Agency has made the Agency Funding in accordance with the laws, rules and regulations to which Agency is subject. This Regulatory Agreement represents a portion of this entire transaction. Therefore, Agency has made the Agency Funding conditioned upon Owner's agreement, for itself and its successors and assigns, to comply with all provisions of this Regulatory Agreement, including without limitation, the Funding Agreement. Owner has had full opportunity to make itself independently familiar with such limitations and restrictions, and Owner accepts them and agrees to comply fully with them.

2. **PROHIBITION ON SALE WITHOUT APPROVAL; CONDITION PRECEDENT.** Owner is prohibited from selling the Property including the Restricted Unit unless and until (a) the Agency has reviewed and determined that the sales price complies with

the Funding Requirements and (b) that the purchaser of the Property has acknowledge and accepted the Individual Regulatory Agreement. For purposes of determining such compliance, the sales price is amount actually paid to Owner by the purchaser, including all additions or reductions made to the initial purchase price shown in the purchase and sale agreement between Owner and the purchaser. Owner shall receive no consideration for additions or improvements made to the Property, except those improvements (such as the addition of bedrooms) that affect the affordability calculations of the Funding Requirements. Pursuant to Section 3.a below, the foregoing is a condition precedent to any resale of the Property.

3. **COVENANTS.** Owner makes the following covenants. Unless Owner has received the prior written consent of Agency otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Funding Requirements.

a. Owner shall comply with the foregoing covenant prohibiting resale without Agency approval. Such compliance is a condition precedent to any such resale. If Owner fails to comply with said covenant, such resale shall be null and void, and the purported purchaser and anyone claiming any interest in the Property on account of such resale, including without limitation trustors and beneficiaries under deeds of trusts or others claiming lien or mortgage interests in the Properties, shall have no interests in or rights regarding the Property.

b. Owner shall use and permit others to use the Property only for the Approved Use.

c. Owner shall assure full compliance with the Funding Requirements.

d. Owner shall not transfer or encumber any of the Property or permit the conveyance, transfer, or encumbrance of the Property unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of this Regulatory Agreement.

e. Owner shall not cause and shall not permit expansion, reconstruction, or demolition of any part of improvements on the Property, except as provided by the Funding Agreement.

f. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable housing quality standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible.

g. Owner shall not cause and shall not permit discrimination 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 Property. Owner covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall continue in perpetuity.

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

4. **NATURE OF COVENANTS.** The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

5. **SUPERCEDING EXISTING COVENANTS, CONDITIONS, & RESTRICTIONS.** This Regulatory Agreement shall supersede any covenants, conditions and restrictions that have been previously recorded by, or on behalf of, the Agency against the Property.

6. **TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. In the absence of a term in the Funding Requirements, the term shall be forty-five (45) years from the Effective Date.

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

8. **AUDIT AND INSPECTION.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related items shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles. Owner shall provide Agency access to the Property and its tenants during reasonable hours for the purpose of reviewing Owner's compliance with this Regulatory Agreement.

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

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

11. **DEFAULT.** Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. To the extent reasonable under the circumstance, in the event of any breach, the Agency and Owner shall reasonably endeavor to identify a remedy for such breach by conference and conciliation. If such violation is not corrected to the satisfaction of Agency within sixty (60) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, for money damages or for such other relief as may be appropriate. The injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

a. Agency may institute or prosecute in its own name, any suit Agency may consider advisable in order to compel performance of any obligation of any owner to develop and maintain the subject property in conformity with this Regulatory Agreement and to remedy any default of this Regulatory Agreement. Agency may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for uses not permitted under this Regulatory Agreement and which improvements are unsuitable only for uses not permitted under this Regulatory Agreement.

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

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

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

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

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

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

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

EXHIBIT 1

Legal Description of the Property

Parcel A:

Lot 8, Block 6, as shown on the official "Plat of North Sacramento Subdivision No. 9", recorded in the office of the County Recorder of Sacramento County, April 3, 1941 in Book 15 of Maps, Map No. 2

APN: 275-0042-007

Parcel B"

Lot 9, in Block 6, as shown on the Map entitled, "North Sacramento Subdivision No. 9", recorded April 3, 1914, in Book 15 of Maps, Page 2.

APN: 275-0042-008

EXHIBIT 2

TAX INCREMENT FUNDING REQUIREMENTS FOR HOUSING ASSISTED WITH TI HOUSING FUNDS

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

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

a. Agency has provided the "Agency Funding" from proceeds of the "Housing Fund" (as defined in Health & Safety Code Section 33334.3) for the "Project Area" named in the Regulatory Agreement and Funding Agreement. The Agency Funding is subject to the provisions of the redevelopment plan for the Project Area and the California Community Redevelopment Law.

b. Agency has approved the Agency Funding on condition that the "Property" named in the Funding Agreement is rehabilitated or developed as the "Project," as residential property for sale to owner-occupants, and that certain Project housing units are regulated in accordance with Health & Safety Code Section 33487. Such regulation is accomplished by recordation of the Regulatory Agreement with these TI Funding Requirements as covenants running with the land, in accordance with Health & Safety Code Section 33334.3(e). The purpose of such regulation is to make the regulated units affordable to persons and households that qualify as moderate-income, low-income or very low-income, in accordance with Health & Safety Code Section 33334.2.

c. The development of the Project benefits and serves the Project Area, and the Project will provide housing for persons who work within the Project Area.

2. TERM. These covenants shall burden and regulate the Restricted Unit for forty-five (45) years.

3. **AFFORDABILITY REQUIREMENTS.** In consideration of Agency's use of the Agency Funding to subsidize Owner's purchase price for the Restricted Unit ("Owner's Purchase Price"), the sale and rental of the Restricted Unit are restricted for the term of the Regulatory Agreement.

a. **SALE.** If Owner elects to sell the Restricted Unit ("Resale"), Owner shall assure that the Restricted Units shall be sold for a price ("Resale Price") or below the following "Affordable Price":

1) Moderate-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty-five percent (35%) of one hundred and ten percent (110%) the Sacramento Metropolitan Statistical Area median income ("Median Income"), as determined annually by the federal Department of Housing and Urban Development, as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

2) Low-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty percent (30%) of seventy percent (70%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

3) Very Low-Income Restricted Units shall be sold for amounts, the payments for which do not exceed thirty percent (30%) of fifty percent (50%) the Median Income as adjusted for family size appropriate to the size and number of bedrooms in the respective Restricted Unit.

b. **RENTAL.** If Owner elects to rent a Restricted Unit, Owner shall rent the unit only at an "Affordable Rent" as determined in accordance with Health and Safety Code Section 50052.5. Owner shall be responsible to determine the

Affordable Rent for the Restricted Units. Within ten (10) days of Owner request, Agency shall provide all information necessary for Owner to compute such Affordable Rent and will assist Owner in determining such amounts.

c. **RECAPTURE ON UNQUALIFIED SALE.** If Owner sells the Property for an amount in excess of that permitted under these TI Funding Requirements or to a purchaser whose household income exceeds the allowable amounts, Owner shall pay Agency an amount that is the same proportionate share of the net sales proceeds as the Proportionate Agency Assistance, as further reduced by a percentage that the is one forty-fifth (1/45) for each full year that the Regulatory Agreement has been in place.

By way of example:

Net Profits X Proportionate Agency Assistance X (Number of Years of Regulatory Agreement/45) = Agency share

EXHIBIT 3

Individual Regulatory Agreement

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

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

PROJECT NAME:	2001 Del Paso Boulevard
PROJECT ADDRESS:	2001 Del Paso Boulevard, Sacramento, California

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

ARTICLE I TERMS AND DEFINITIONS.

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

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

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

TERM	DEFINITION	
"Effective Date"	This Regulatory Agreement shall be effective as of the following date:	April 16, 2007
"Agency"	Redevelopment Agency of the City of Sacramento	
	The Agency is a public body, corporate and politic.	
"Owner" and "Developer"	2001 DPB, LLC	
"Agency Address"	Agency's business address is 630 I Street, Sacramento, California 95814	
"Owner Address"	Owner's business address is as follows:	1825 Del Paso Boulevard, Sacramento, California 95815
"Jurisdiction"	City of Sacramento	
"Property"	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as **Exhibit 1 – Legal Description of the Property**.	

"Funding Agreement"	This Regulatory Agreement is subject to an Owner Participation Agreement, which is considered the Funding Agreement.. Also Funding Agreement includes, the Construction and Permanent Loan Agreement between Agency and Owner, dated as follows:		Dated: April 16, 2007
"Agency Funding"	The Agency Funding made by Agency to Owner under the Funding Agreement for development of the Property		
"Agency Funding Amount "	The amount of the Agency Funding, as follows:	Amount of Funding	$3,000,000
		Source of Funding	Project Area Tax Increment, Tax-Exempt Bonds and Low/Mod Tax Exempt
"Funding Requirements"	The legal restrictions on the use of the funds that Agency has used to make the Agency Funding, as applicable to and restricting the Property. The Funding Requirements are set out in **Exhibit 2 – Funding Requirements** .In consideration of the Agency Funding, the Agency has purchased the covenants, conditions and restrictions contained in the Regulatory Agreement.		
"Term"	The Term of each of the respective covenants, conditions and restrictions contained in this Regulatory Agreement is the term stated in the Funding Agreement, this Regulatory Agreement and in the absence of such provision, the term of the Redevelopment Plan.		
"Special Provisions"	None.		
"Approved Use"	Owner shall assure that the property is used only for the following Approved Uses:		
	mixed used including market rate residential units, retail space, commercial space and parking		
"Disapproved Uses"	Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses:		
	Liquor store/bar; Adult store/film; Vet office/kennel; Funeral; Video rentals; Video arcade/pool hall; Bowling alley; Music ; Dancing; Manufacturing; Repair facility ; Vehicle related; Service stations; Hazardous materials; Storage or warehousing facilities; Tattoo and or piercing establishment; store sublet to multiple vendors; second-hand or thrift store; pawn shop; Check cashing or paycheck advance business; Passive activity (switching station); and Nuisances		

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

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

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

15. **COVENANTS.** Owner makes the following covenants. Unless Owner has received the prior written consent of Agency otherwise, Owner shall fully comply with each and every covenant. Except as otherwise stated in this Regulatory Agreement, the following covenants shall have a term that is the same as the longest term specified in the Funding Requirements.

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

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

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

c. Owner shall maintain the Property and the building improvements, grounds and equipment of the Property in good repair and condition and in compliance with all applicable standards and local code requirements. Owner shall maintain the Property in good condition and shall keep the Property reasonably free from graffiti and unrepaired vandalism and from accumulation of abandoned property, inoperable vehicles, unenclosed storage, debris, and waste materials. In the event of a casualty loss, Owner shall cause the restoration or replacement of the Property, in a timely manner and provided that such restoration or replacement is then economically feasible.

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

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

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

17. **NATURE OF COVENANTS.** The provisions contained in this Regulatory Agreement are covenants which subject and burden the Property, as covenants running with the land. It is intended and agreed that the agreements and covenants provided in the Agreement shall be covenants running with the land and equitable servitudes on the land and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to Agency's interest under this Regulatory Agreement against the Owner, its successors and assigns and every successor in interest to all or any part of the Property.

18. **SUPERSEDING EXISTING COVENANTS, CONDITIONS, & RESTRICTIONS.** Excepting the conditions, covenants and restrictions of the Funding Agreement, this Regulatory Agreement shall supersede any covenants, conditions and restrictions that have been previously recorded by, or on behalf of, the Agency against the Property.

19. **TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated. In the absence of a term in the Funding Requirements, the term shall be thirty (30) years from the Effective Date.

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

21. **AUDIT AND INSPECTION.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related items shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents during reasonable hours solely for the purpose of reviewing Owner's compliance

with this Regulatory Agreement. The books and accounts of the operations of the Property and of the Property shall be kept in accordance with generally accepted accounting principles.

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

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

24. **DEFAULT.** Upon a breach of any of the provisions of this Regulatory Agreement by Owner, the Agency may give written notice of such breach to Owner by registered or certified mail. To the extent reasonable under the circumstance, in the event of any breach, the Agency and Owner shall reasonably endeavor to identify a remedy for such breach by conference and conciliation. If such violation is not corrected to the satisfaction of Agency within thirty (30) days after the date such notice is mailed or within such further time as the Agency may reasonably determine is necessary to correct the breach, and without further notice to Owner, the Agency may declare a default under the Agreement, effective on the date of such declaration of default, and upon such default the Agency may: (a) take any action then available under the Funding Agreement for a default under the Funding Agreement and (b) apply to any court for specific performance of this Regulatory Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Regulatory Agreement, for money damages or for such other relief as may be appropriate. The injury to the Agency arising from a default under any of the terms in this Regulatory Agreement would be irreparable, and the amount of damage would be difficult to ascertain.

a. Agency may institute or prosecute in its own name, any suit Agency may consider advisable in order to compel performance of any obligation of any owner to develop and maintain the subject property in conformity with this Regulatory Agreement and to remedy any default of this Regulatory Agreement. Agency may also seek a decree requiring removal of any improvements constructed on the Property which improvements are designed for uses not permitted under this Regulatory Agreement and which improvements are suitable only for uses not permitted under this Regulatory Agreement.

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

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

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

27. **ATTORNEYS' FEES.** If the services of any attorney are required by any party to secure the performance of this Regulatory Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or mediation is necessary to enforce or interpret any provision of this Regulatory Agreement or the rights and duties of any person in relation to this Regulatory Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of this Regulatory Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law. The prevailing party shall mean the party receiving an award in arbitration or a judgment in its favor, unless the award or judgement is less

favorable than the best settlement offered in writing in a reasonable manner by the other party, in which case the prevailing party is the party making such settlement offer.

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

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

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

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

OWNER : 2001 DPB, LLC

By: _____
Allen Warren, Managing Member

Approved as to form:

_____
Developer Counsel

AGENCY: REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
Anne M. Moore, Executive Director

Approved as to form:

_____
Agency Counsel

EXHIBIT 1

Legal Description of the Property

Parcel A:

Lot 8, Block 6, as shown on the official "Plat of North Sacramento Subdivision No. 9", recorded in the office of the County Recorder of Sacramento County, April 3, 1941 in Book 15 of Maps, Map No. 2

APN: 275-0042-007

Parcel B"

Lot 9, in Block 6, as shown on the Map entitled, "North Sacramento Subdivision No. 9", recorded April 3, 1914, in Book 15 of Maps, Page 2.

APN: 275-0042-008

EXHIBIT 2

TAX INCREMENT FUNDING REQUIREMENTS FOR NON-HOUSING FUND PROJECTS

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

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

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

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

5. TERM. These covenants shall burden and regulate the Property for the term of the Redevelopment Plan, but in any event, not less than thirty (30) years from the date of recordation, excepting the covenant against discrimination, which shall run in perpetuity..

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

7. ANTI –DISCRIMINATION. The Owner covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property or any portion of it, nor shall the Owner or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. This covenant against discrimination shall run in perpetuity.

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

EXHIBIT 6

Schedule of Performances

2001 Del Paso Boulevard

1. Design Review Approval (completed)	Dec. 20, 2006
2. City Planning Commission Approval (completed)	Jan. 11, 2007
3. North Sacramento RAC recommendation on OPA	Mar. 15, 2007
4. City Council Approval of OPA	Apr. 10, 2007
5. Completion of Construction Documents	June 2007
6. Construction Financing Secured	September 2007
7. City Approval of Plans & Issue Building Permit	September 2007
8. Construction Start	Fall 2007
9. Complete Construction	Winter 2008

EXHIBIT 7

Scope of Development

New construction of a six-story mixed-use building on the subject parcel. Building and site plans will be consistent with the plan set dated November 22, 2006 prepared by Hunt Hale Jones Architects.

The ground and second levels will provide 4,982 square feet of retail space and five live/work lofts along Fairfield Avenue. The third level would contain 14,026 square feet of commercial office space. The fourth through sixth levels will contain 22 residential units, including four junior studios, eight studios, four deluxe studios, four one-bedroom, and two two-bedroom units. In addition, a lift system will accommodate 50 automobiles associated with the residential and office spaces. The lift system is a new parking system in Sacramento area that will allow 3 cars to park above the other. It is an efficient way to park additional cars in a compact space. The total footprint of the building will be approximately 65,935 square feet.