



**Sacramento
Housing &
Redevelopment
Agency**

**REPORT TO COUNCIL AND
REDEVELOPMENT AGENCY
City of Sacramento**

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

Public Hearing
June 12, 2007

**Honorable Mayor and Members of the City Council
Honorable Chair and Members of the Board**

Title: Agreements: 1124/1132 Del Paso Boulevard

Location/Council District: 1124/1132 Del Paso Boulevard; North Sacramento
Redevelopment Project Area (District 2)

Recommendation: **1)** Conduct a public hearing and upon conclusion: adopt a **City Resolution** a) approving and adopting the Agency's CEQA findings; b) approving the sale of 1124/1132 Del Paso Boulevard ("property") to the Sacramento News and Review (SNR); and **2)** adopt a **Redevelopment Agency Resolution** a) amending the 2007 Sacramento Housing and Redevelopment Agency (SHRA) budget to allocate \$350,000 from North Sacramento Development Assistance taxable funds to the property for repairs; b) authorizing the Executive Director or her designee to execute a Disposition and Development Agreement (DDA) and loan agreement in the amount of \$955,000 with the Sacramento News and Review for rehabilitation of the property for use as its office space; c) finding and determining that the public improvements are so interwoven with the developer's improvements that they cannot practically be done by separate contract and competitive bidding, and would result in greater public costs; and d) making related findings.

Contact: Lisa Bates, Director, Community Development, 440-1316, Christine Weichert, Assistant Director, Community Development, 440-1353

Presenter: Christine Weichert, Assistant Director, Community Development

Department: Sacramento Housing and Redevelopment Agency

Description/Analysis

Issue: The property at 1124 and 1132 Del Paso Boulevard has been a priority for the Redevelopment Agency (Agency) since the Redevelopment Area was adopted in 1994. It is in close proximity to the Globe Light Rail Station where the Agency has recently purchased other properties to assemble for development, and is located at the Highway 160 entrance, an important gateway to Del Paso Boulevard. Across the street, the Agency assisted with converting a former Blue Diamond Building into an office building for the Sacramento Training and Employment Agency.

Disposition and Development Agreement with the Sacramento News and Review

The property, which includes one commercial building (18,500 square feet) on a 1.1 acre site (Attachment I, Site Map), has had a history of non-transit friendly uses including an upholstery business and a furniture store. It has been unoccupied for the last two years. While vacant, the property was sold to a funeral home operator, who later determined the costs to rehabilitate the property were too high and deeded the property back to the owner. Because of the large parking lot and the building's open floor plan, churches, funeral homes, and furniture retailers have actively sought to purchase the property. These uses are not considered the highest compatible use adjacent to a light rail station.

Given its prominent location, and concern that the property might again be sold for another incompatible use, the Agency purchased the property in October 2006 with the intention of selling it to (SNR), which at the time was looking for a permanent office location with room for expansion.

The Agency paid \$1,800,000 for the property, which had sold on the open market for \$2,000,000 just 18 months prior to the Agency's acquisition. The Agency reviewed other sales of office and retail property in the area which ranged from \$45 to \$73 per square foot and determined \$1.8 million was within the price range of other compatible properties.

Since the Agency's acquisition in the summer of 2006, the real estate market has slowed and more recent sales prices have declined. This change in the market has resulted in an as-is appraised value that is \$250,000 (14%) less than what the Agency paid for it.

The sale of the property will be accomplished through a DDA, and the major elements include:

- Building Security: Due to SNR's concern that the building is secured and that all hazardous building material is removed, the Agency will complete certain improvements to the building including roof replacement and asbestos abatement, prior to occupancy of the property by SNR. These improvements will cost \$350,000.
- Property Purchase and Closing Costs: SNR will purchase the property at the appraised value of \$1,550,000 and pay \$50,000 in closing costs.
- Building Improvements: SNR will make significant improvements to the building to suit its needs, including the design and construction of new interior walls, electrical, plumbing, and mechanical systems. SNR's commitment also includes a new exterior façade, landscaping, paving, and exterior lighting. These improvements will total \$1,300,000, which includes a \$955,000 Agency loan taken from the proceeds of the sale of the property and \$345,000 of the Grow Sacramento Fund Loan.

Disposition and Development Agreement with the Sacramento News and Review

The total project cost of \$3,250,000 is summarized below.

Expenses	Agency Contribution	Grow Sacramento Fund Loan	Agency Loan	Equity	Total
Building Security	\$350,000				\$350,000
Property Purchase and Closing Costs		\$1,400,000		\$200,000	\$1,600,000
Building Improvements		\$345,000	\$955,000		\$1,300,000
Total	\$350,000	\$1,745,000	\$955,000	\$200,000	\$3,250,000

Policy Considerations: The recommended actions are consistent with the Redevelopment Plan goals identified in the North Sacramento Redevelopment Project Area’s 2005-2009 Five-Year Implementation Plan including:

- creating jobs in the neighborhood;
- forging public and private sector partnerships that encourage new private investment; and
- eliminating barriers to redevelopment by preventing the spread of blight and deterioration.

Successful implementation of the Project Area goals, such as partnering with SNR to relocate to North Sacramento, will encourage additional desired private investment in the redevelopment area.

Environmental Considerations: The proposed project is exempt from environmental review per the California Environmental Quality Act (CEQA) Guidelines Section 15301, Existing Facilities, because the project includes minor interior and exterior alterations of an existing building that will not result in an increase in the building’s footprint.

Committee/Commission Action: *North Sacramento Redevelopment Advisory Committee (RAC) Action:* At its meeting on March 15, 2007, the RAC voted to support the project and recommend staff’s financing proposal. The vote was as follows:

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

NOES: None

ABSENT: Armstrong, Harland, C. Mulligan

Sacramento Housing and Redevelopment Commission (SHRC) Action: At its meeting on March 21, 2007, the Sacramento Housing and Redevelopment Commission considered the staff recommendation for this item. The votes were as follows:

Disposition and Development Agreement with the Sacramento News and Review

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

NOES: None

ABSENT: Coriano, Fowler

Rationale for Recommendation: The sale of the property and subsequent loan to SNR will have a major impact on the Del Paso Boulevard corridor. The building is located near the Globe Light Rail Station, where the Agency is working to create a dynamic, transit-friendly station district. The SNR project sets those plans in motion by transforming an obsolete, blighted commercial building into an active office building and bringing 70 new employees to the Boulevard, many of whom are likely to use public transit.

SNR will be a great boost to North Sacramento and Del Paso Boulevard. SNR's focus on community efforts and issues, and presence on the Boulevard, will broaden the community and media awareness for North Sacramento. The owners of the SNR are committed to the success of the emerging Del Paso Boulevard and consider the reuse and revitalization of a blighted, vacant building to be in line with their social goals.

SNR will stimulate retail investment along Del Paso Boulevard, and more importantly continue to foster North Sacramento's eclectic mix of the arts, retail and other commercial businesses.

Public Hearing: This project is subject to Health and Safety Code §33433 as a disposition of property acquired with tax increment funds. This report provides the support and justification for the Agency's disposition of the property. In compliance with §33433, a report has been prepared and is attached as Exhibit A to the City Council resolution accompanying this report.

Financial Considerations: This report authorizes a budget amendment appropriating \$350,000 of taxable North Sacramento Development Assistance funds to secure the building prior to occupancy of the property by SNR. The proposed DDA reflects the Agency's sale of the property to SNR for a purchase price of \$1,550,000. The Agency will provide a \$955,000 loan at 6% interest with a 25-year term for building improvements. The proceeds from the sale of the property will fund the Agency loan. The balance of funds will return to the North Sacramento Development Assistance Account. SNR is also receiving a Grow Sacramento Fund loan in the amount of \$1,745,000 to acquire the property and assist with pre-development costs.

June 12, 2007

Disposition and Development Agreement with the Sacramento News & Review

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:



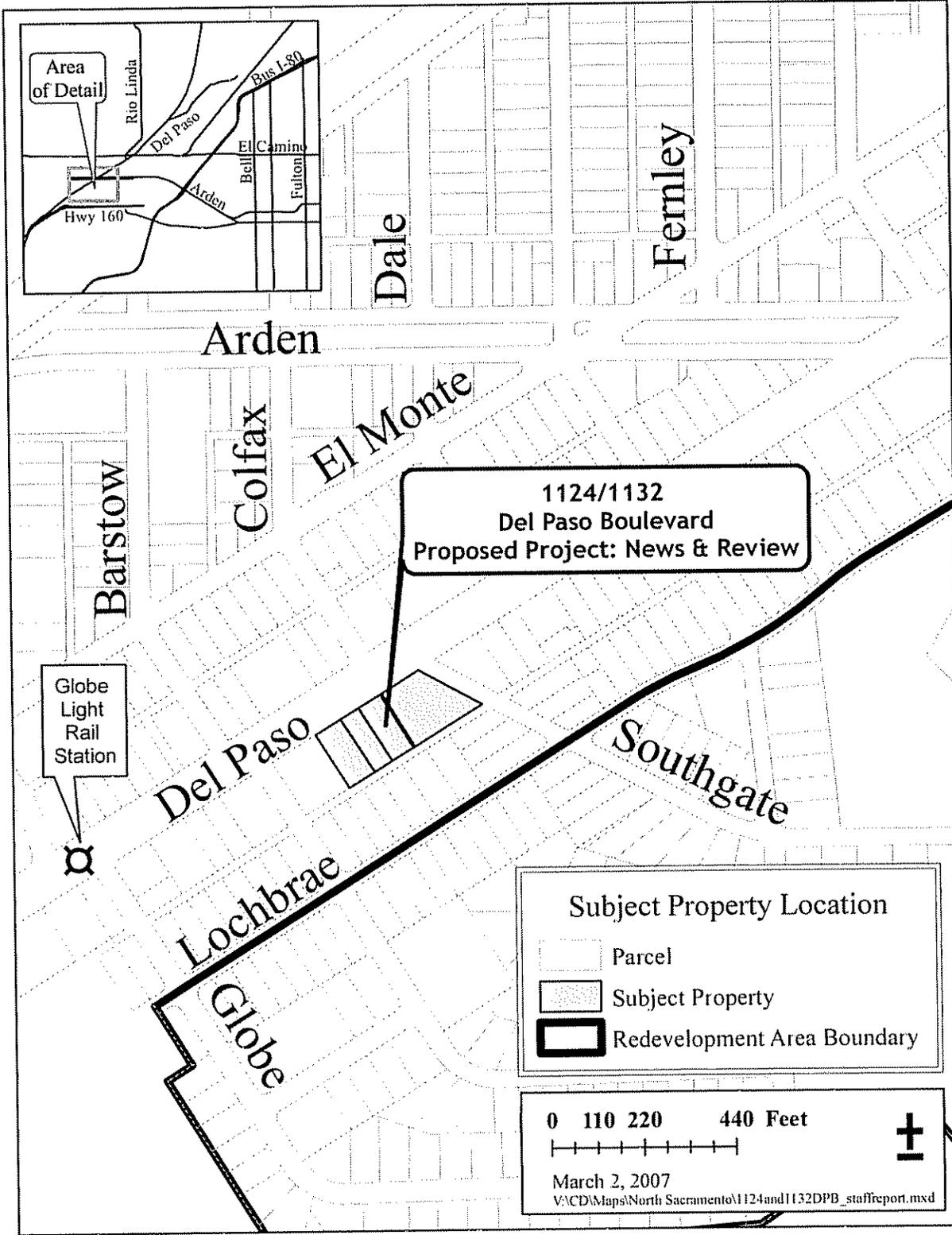
RAY KERRIDGE
City Manager

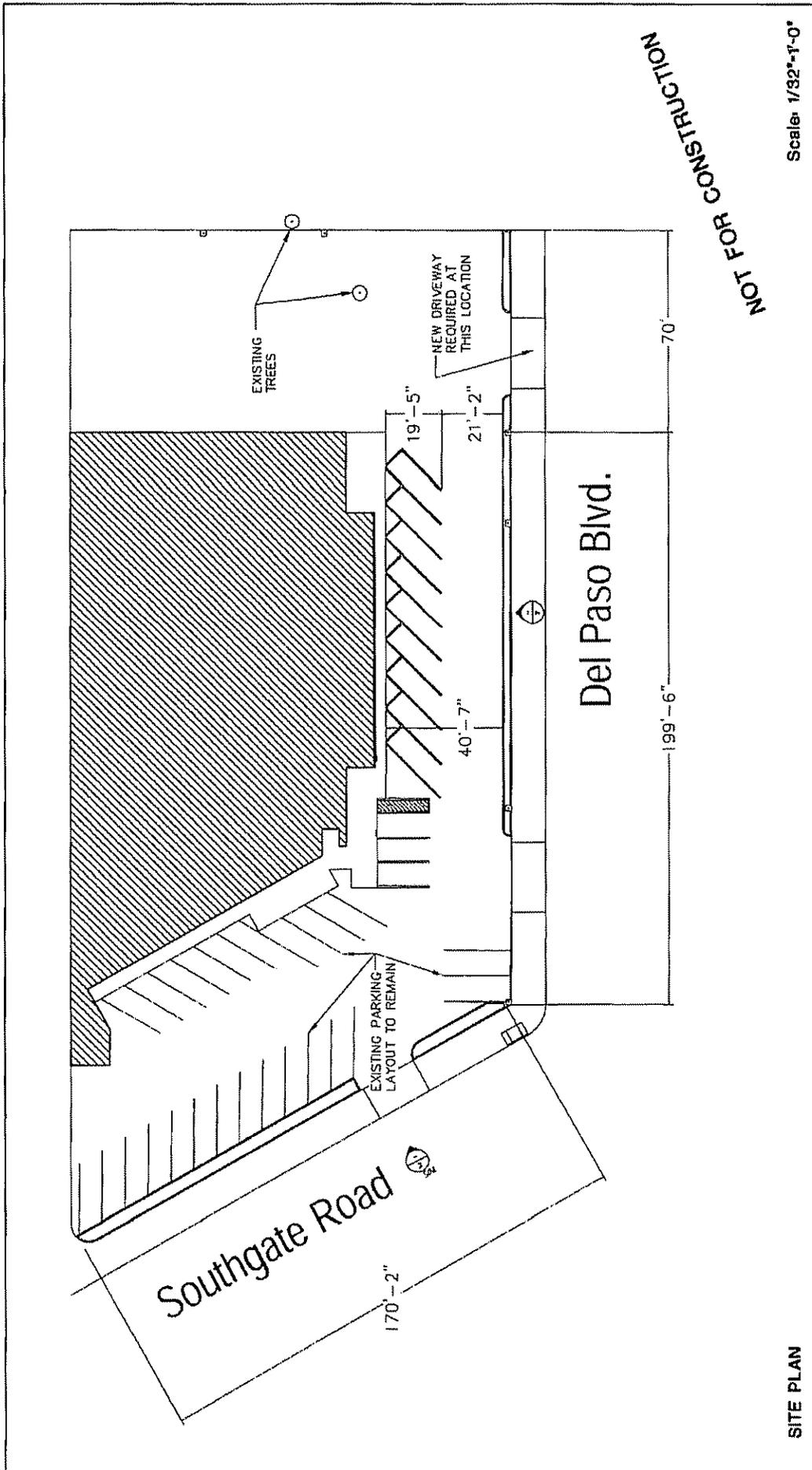
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1124 and 1132 Del Paso Boulevard North Sacramento Redevelopment Area





Scale: 1/32"=1'-0"

SITE PLAN

<p>1 SHEET</p>	<p>Preliminary Design July 7, 2003</p>	<p>IMG Home 1192 Del Paso Blvd.</p>	<p>MONIGHAN 710.12th Street Sacramento, CA 95814 T 916.448.1901 F 52701 www.monighan.com</p>
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Sacramento News and Review 1124 and 1132 Del Paso Boulevard

BACKGROUND

Site Description: The subject site (APN 275 0165 002, 275 0165 003, 275 0165 016, 275 0165 017 and 275 0165 0018) is a commercially-zoned (C-2, General Commercial) parcel at the northeast corner of Del Paso Boulevard and Southgate Road. It is a 1.1 acre site (Attachment 1, Site Map) with an 18,500 square foot building, the former home of the IMG furniture store. The subject property is straddled on either side by a Regional Transit (RT) parking lot to the south and the former Nobles Car Dealership (1212 Del Paso Boulevard) to the north. The Agency recently authorized the acquisition of 1212 Del Paso Boulevard, and negotiations are currently underway. In addition, the Agency also purchased 1022 and 1030 Del Paso Boulevard directly south of the RT parking lot in an effort to promote a mixed-use, high density development project on those properties.

Project History: The subject property has been vacant since the departure of the IMG furniture store approximately two years ago. It was purchased for \$2,000,000 by a funeral parlor in March 2005. However, that project was never completed and the property went back to the previous owner in December 2005. In February 2006, Sacramento News and Review (SNR) entered into a contract to purchase the property with plans to re-locate the newspaper's headquarters to the site.

After a Phase I Environmental Site Assessment (ESA) indicated that there was potential underground toxic contamination, SNR became concerned about the site and allowed the purchase contract to expire.

Given its key location and concern about other incompatible uses, the Agency began negotiations with the seller to acquire the property and conducted a Phase II ESA. The Agency paid \$1,800,000 for the subject property in October 2006.

Environmental Contamination

The Agency completed the Phase II environmental investigations and the results revealed the presence of toxic substances in both soil gas and groundwater on the site. A follow-up subsurface investigation was performed on an adjacent site which revealed that the contaminants in the groundwater were likely the result of migration from an off-site source, indicating that the 1124 and 1132 Del Paso Boulevard property is not the source of the contamination. Additionally, contaminant levels from soil and groundwater testing were found to be below regulatory thresholds. Based on the positive results, both the Agency's attorney and the consulting firm hired to conduct the environmental analysis agreed that

moving forward with the acquisition did not present an undue risk to the Agency or SNR.

Project Description: SNR's project scope includes completely demolishing and remodeling the interior space of the 18,500 square foot building to suit its needs, including designing and constructing new interior walls, electrical, plumbing, and mechanical systems. It also includes a new exterior façade, landscaping and improvements to the on-site parking lot.

Agency Due Diligence: Under the terms of the DDA, the Agency will complete the following items prior to occupancy by SNR: building security and removal of building asbestos.

Sources and Uses of Funds: A summary of the development budget for the Project includes the following Uses and Sources of Funds:

Uses		Sources			
Type	Amount	Type	Amount	Interest	Monthly Debt Service
Acquisition	\$1,550,000	SNR	\$200,000		
News and Review Construction	\$1,300,000	Grow Sacramento Fund ¹	\$1,745,000	6% 25 Years	\$11,255
SHRA Construction	\$350,000	SHRA Tax Increment	\$350,000		
Closing Fees	\$50,000	SHRA Loan (Sales proceeds)	\$955,000	6% 25 Years	\$6,160
Total Project Cost:	\$3,250,000	Total Sources	\$3,250,000		\$17,415

Uses: The borrowing entity for the SNR will either be Chico Community Publishing, Inc. or an associated LLC to be formed and named. The entity will purchase 1124 and 1132 Del Paso Boulevard from the Agency for the appraised fair market value of \$1,550,000. Prior to the occupancy of the property, the Agency will perform the following necessary improvements: roof replacement, asbestos abatement, electrical system repair, security and maintenance. The construction costs to rehabilitate the building are projected to be \$1,300,000 and will include architectural drawings and permits, as well as the following site work: demolition and remodeling of interior spaces; new concrete, masonry, metal and wood work; installation of thermal and moisture protection, and new doors and windows; finishing carpentry work; electrical and mechanical work (e.g., HVAC system); general conditioning of the building; and obtaining bonds and insurance. The closing fees on the property are estimated to be \$50,000. The total projected cost of the project is \$3,250,000.

Sources: SNR will contribute \$200,000 of owner equity to the project. As explained earlier in this report, the Agency will make improvements to the building in the amount of \$350,000 prior to the transfer of the property to SNR.

Soft costs including architecture and permits will total \$150,000. Through the Grow Sacramento Fund¹, the Agency will administer a market rate loan in the amount of \$1,745,000 at an interest rate of 6% spread over 25 years. Using sales proceeds from the disposition of the property, the Agency will also provide a market rate loan in the amount of \$955,000 at 6% spread over 25 years. SNR's total debt service on the Agency loan is estimated to be \$17,415 per month.

Schedule of Performances: The DDA includes the following schedule leading to transfer of the property and rehabilitation of the building.

1124/1132 Del Paso Boulevard

- | | |
|---|-------------|
| 1. Building permits secured: | Summer 2007 |
| 2. Interior Demolition and Construction begins: | Fall 2007 |
| 3. Project Completed and SNR Occupies Building: | Summer 2008 |

¹ The Grow Sacramento Fund is a local, community-based small business lender. It was jointly created in 1996 and is funded by the Sacramento Municipal Utility District (SMUD) and the Sacramento Housing and Redevelopment Agency (SHRA). SHRA administers the program for the City and County.

RESOLUTION NO. 2007 -

Adopted by the Sacramento City Council

on date of

APPROVAL OF AGENCY'S SALE OF PROPERTY AT 1124 AND 1132 DEL PASO BOULEVARD, WITH THE NEWS AND REVIEW FOR DEVELOPMENT OF OFFICE SPACE

BACKGROUND

- A. The City of Sacramento approved by Ordinance the North Sacramento Redevelopment Plan ("Redevelopment Plan") for the North Sacramento Redevelopment Project Area ("Project Area").
- B. The Redevelopment Agency of the City of Sacramento ("Agency") owns the subject property located at 1124 and 1132 Del Paso Boulevard (APN 275 0165 002, 275 0165 003, 275 0165 016, 275 0165 017 and 275 0165 0018) in the Project Area ("Property").
- C. Agency and The Chico Community Publishing, Inc. or an affiliate organization to be formed and named, subject to approval of Agency Counsel, ("Developer") desire to enter into Disposition and Development Agreement ("DDA") to convey the Property to Developer for rehabilitation of an 18,500 square foot building into office space and headquarters for the News and Review including on-site parking and landscaping, as more specifically described in the DDA.
- D. In accordance with the California Environmental Quality Act ("CEQA") and its implementing regulations, the Project is exempt under CEQA Guidelines for the reasons set out in the Agency staff report that accompanies this resolution, and the Agency Executive Director has been directed to prepare a Notice of Exemption for the sale of the Property for the Project in accordance with CEQA Guidelines Section 15301 ("Agency CEQA Action").
- E. A report under Health and Safety Code Section 33433 ("Section 33433 Report") has been prepared and is attached hereto as Exhibit A filed with the Agency Clerk, and made available for public review pursuant to Section 33433.
- F. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

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

Section 1. The foregoing recitals, including the statements regarding the CEQA findings, are true and correct. The Agency CEQA Findings are approved and adopted.

Section 2. The Agency's sale of the Property for rehabilitation of the existing building on the property is consistent with the goals and objectives of the Redevelopment Plan to remove blight and strengthen the economic base of the Project Area, and is consistent with the Implementation Plan adopted for the Redevelopment Plan. The sale and development of the Property will assist in the elimination of blight as stated in the 33433 Report.

Section 3. The consideration for the Agency's conveyance of the Property to Developer is the Developer obligations under the DDA, and the fair reuse value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed, which fair reuses value is \$1,550,000, as established in the 33433 Report (Exhibit A).

Section 4. The City Council approves the Agency's sale of the Property to the Developer for the Project pursuant to the terms of the DDA.

Exhibit A – 33433 Report

Exhibit A

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

I. Agreement

A copy of the Purchase and Sale or Lease Agreement ("Agreement") disposing of an interest in Agency real property is attached to this Report.

II. Summary of Terms of Disposition

AGENCY'S COST OF ACQUIRING THE LAND	
Purchase Price (or Lease Payments Payable During Agreement)	\$ 1,800,000
Commissions	
Closing Costs	
Relocation Costs	
Land Clearance Costs	
Financing Costs	
Improvement Costs (e.g. utilities or foundations added)	\$350,000
Other Costs	
TOTAL	\$ 2,150,000

ESTIMATED VALUE OF INTEREST CONVEYED	
Value of the property determined at its highest and best use under the redevelopment plan	\$ 1,550,000

ESTIMATED REUSE VALUE OF INTEREST CONVEYED	
Value of property determined with consideration of the restrictions and development costs imposed by the Agreement	\$ 1,550,000
VALUE RECEIVED ON DISPOSITION	
The purchase price or the total of the lease payments due to the Agency under the Agreement	\$ 1,550,000

33433 Report

III. Explanation of Disposition for Less than Full Value

Not applicable.

IV. Elimination of Blight

The subject site was formerly occupied by a furniture store and the existing building and site have been vacant for approximately two years. The property with its boarded up, vacant building has had a serious blighting impact on the surrounding community. The Agency acquired the site in the fall of 2006 for the purpose of conveying it to the News and Review and rehabilitating the existing parking lot and building for its new headquarters. The transfer of property and the project are consistent with the 2005-2009 Implementation Plan for the North Sacramento Redevelopment Area. This project is a key element of the transit-oriented development planned for the nearby Globe Light Rail Station and the surrounding North Sacramento Redevelopment Area. The proposed project will assist with the elimination of blight by replacing the vacant lot and building with the vibrant use of a rehabilitated office building that provides employment for approximately 70 employees.

RESOLUTION NO. _____

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

APPROVAL OF DISPOSITION AND DEVELOPMENT AGREEMENT WITH THE NEWS AND REVIEW FOR CONVEYANCE OF REAL PROPERTY AND REHABILITATION OF A COMMERCIAL STRUCTURE AT 1124 AND 1132 DEL PASO BOULEVARD

BACKGROUND

- A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the North Sacramento Redevelopment Plan ("Redevelopment Plan") and Implementation Plan (2005-2009) for the North Sacramento Project Area ("Project Area").
- B. Agency owns certain real property generally described as being located at 1124 and 1132 Del Paso Boulevard (APN 275 0165 002, 275 0165 003, 275 0165 016, 275 0165 017 and 275 0165 0018) in the Project Area ("Property").
- C. Before the sale of the property, the Agency has additional due diligence in order to complete hazardous mitigation, stabilization, building code fulfillment, and security and maintenance of the existing building.
- D. The Chico Community Publishing, Inc., or an affiliate organization to be formed and named, subject to approval of Agency Counsel, ("Developer") desires to enter into a Disposition and Development Agreement ("DDA") with the Agency to convey the property to Developer for rehabilitation into useable office space and on-site parking; as more specifically described in the DDA, and which would require the improvements of the Property, as further described in the DDA (collectively, "Project"), a copy of which is on file with the City Clerk.
- E. In accordance with the California Environmental Quality Act ("CEQA") and its implementing regulations, the sale of the Property and the Project are exempt under CEQA Guidelines Section 15301 as an Existing Facilities as described in the accompanying staff report.
- F. A report under Health and Safety Code Section 33433 ("Section 33343 Report") has been prepared, filed with the Agency Clerk, and made available for public review pursuant to Section 33433.
- G. Proper notice of this action has been given and a public hearing has been held in accordance with Health and Safety Code Sections 33431 and 33433.

- H. The public and private portions of the Project are architecturally and functionally interconnected and interrelated. To be consistent and compatible with the timely redevelopment of the Property, the demolition of obsolete and deteriorating tenant improvements shall be removed and upgraded by the Developer. The interrelationship of the public and private work of the Project would create serious difficulties in the coordination and scheduling of work between multiple contractors, in the storage of materials and equipment and in the location of construction operations facilities

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

- Section 1. The Executive Director is directed to prepare a Notice of Exemption based on the findings presented in accordance with CEQA Guidelines Section 15301.
- Section 2. The sale of the Property and rehabilitation of the Project pursuant to the DDA is consistent with the goals and objectives of the Redevelopment Plan to remove blight and strengthen the economic base of the Project Area. The sale of the Property and construction of the Project pursuant to the DDA is consistent with the Implementation Plan. The Project will assist in the elimination of blight as stated in the 33433 Report. The DDA shall be deemed an implementing document approved in furtherance of the Redevelopment Plan and Implementation Plan for the Project Area, and all applicable land use plan, studies, and strategies.
- Section 3. The Report as required under Health and Safety Code Section 33433 is hereby approved.
- Section 4. To amend the Agency budget to use \$350,000 from Development Assistance Program to secure and stabilize the building, which will be reimbursed with proceeds from and after the sale of the property.
- Section 5. The consideration for the Agency's conveyance of the Property to Developer is the Developer obligations under the DDA, and the fair reuse value of the Property with the covenants, conditions, restrictions required by the DDA and Grant Deed, is \$1,550,000.
- Section 6. To amend the Agency budget to loan \$955,000 to the News and Review at 6% interest over 25 years from program income received through the proceeds of the sale of the property.
- Section 7. The Disposition and Development Agreement is approved and the Executive Director is authorized to execute the DDA and related conveyance documents including without limitation the Grant Deed, Escrow Instructions

as described in the DDA, substantially in the form on file with the Agency Clerk, and to perform other actions as necessary to implement the terms of the DDA.

Section 8: The Agency finds and determines that the public improvements are so interwoven with the developer's improvements that they cannot practically be done by separate contract and competitive bidding would result in greater public costs.

Exhibit A – Disposition and Development Agreement and related documents

EXHIBIT A

NO FEE DOCUMENT:

Entitled to free recording
per Government Code 6103.

When recorded, return to:

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY
630 "I" Street
Sacramento, CA 95814

DISPOSITION AND DEVELOPMENT AGREEMENT
1124 AND 1132 DEL PASO BOULEVARD, SACRAMENTO, CALIFORNIA 95815
NORTH SACRAMENTO **REDEVELOPMENT PROJECT AREA**

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

RED VOLCANO PRODUCTIONS, LLC,

__2007

DISPOSITION AND DEVELOPMENT AGREEMENT
1124 and 1132 Del Paso Boulevard, Sacramento, California 95815
North Sacramento

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and RED VOLCANO PRODUCTIONS, LLC, also called Agency and Developer, respectively, enter into this Disposition and Development Agreement, also called DDA, as of _____, 2007. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 18.

RECITALS

- A. Agency is the owner of real property located at 1124 and 1132 Del Paso Boulevard, Sacramento, California 95815 in the City of Sacramento, State of California, more particularly described in the Property Description.
- B. The Property is located in the North Sacramento Redevelopment Project Area and is subject to the redevelopment plan for the Project Area. Further, Developer acknowledges that Developer is purchasing the Property from Agency which is a Redevelopment Agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*) and that this document is governed by the Community Redevelopment Law. This DDA is consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it meets the following implementation plan goals: This project furthers the Redevelopment Plan and the Implementation Plan adopted for the North Sacramento Redevelopment Project Area in that it will remediate blight by creating jobs in the neighborhood and forging public and private sector partnerships that encourage new private investment, and, eliminating barriers to redevelopment by preventing the spread of blight and deterioration
- C. The primary purpose of this DDA is the elimination of the following blighting influences: low values and impaired investment, high vacancy rates and vacant parcels, deficient buildings and improper parcelization. In order to accomplish such purpose, the DDA provides that the Agency will transfer the Agency's interests in the Property to Developer upon the express condition that Developer will redevelop the Property for the uses described in this DDA. This DDA is intended to assure that the Developer will redevelop the Property and that the Developer is not merely speculating in land.
- D. Developer desires to purchase and develop the Property, and Agency desires to sell the Property for development, on the terms and conditions in this DDA.
- E. It is necessary to suspend public bidding, under Public Contracts Code Section 20688.2, for the public portions of the Project, for the following reasons:

1) The public and private portions of the Project are architecturally and functionally interconnected and interrelated in the following respects: the demolition of existing, obsolete and deteriorating tenant improvements along with abatement of hazardous materials on the public property shall be done by the Developer so as to be consistent and compatible with the timely redevelopment of the Property.

2) The interrelationship of the public and private work of the Project would create serious difficulties in the coordination and scheduling of work between multiple contractors, in the storage of materials and equipment and in the location of construction operations facilities.

3) Upon completion, the Project will be operated primarily as a privately-owned facility for private purposes.

4) Agency funding of these improvements and deferred maintenance is necessary for Developer to obtain the financing for the remainder of the Project.

AGREEMENT

NOW THEREFORE, the parties acknowledge that the foregoing Recitals are true and correct, and based upon such Recitals and in consideration of the following mutual covenants, obligations and agreements and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **PERFORMANCE.** The parties shall perform their obligations at the times and in the manner specified in this DDA. The time for performance is stated in this DDA and in the Schedule of Performances; provided, however that such times shall be extended for periods of Unavoidable Delay.

2. **PROJECT DESCRIPTION.** Agency is entering into this DDA and conveying the Property to Developer solely for the purposes of developing the Project. The Project shall be the following: significant rehabilitation of interior space and façade improvements to the building to reuse it to suit the needs of the News and Review and its operation of its weekly newspaper. The project includes the design and construction renovated interior walls, electrical, plumbing, and mechanical systems. It also includes a new exterior façade, landscaping and improvements to the onsite parking lot

3. **IRREVOCABLE OFFER OF DEDICATION.** Developer agrees to provide an irrevocable offer of dedication for up to and including two feet of property from the existing property line along Del Paso Boulevard to accommodate the installation of public streetscape improvements. The actual amount of land dedication will be determined when and if streetscape improvements are implemented. A survey will be conducted at that time to determine the actual amount of land required.

4. **PURCHASE AND SALE.** Agency agrees to sell and Developer agrees to purchase the Property subject to the terms and conditions in this DDA. This DDA, if executed by Developer only, constitutes Developer's offer to purchase the Property on the terms and conditions contained in this DDA and subject to the covenants, conditions and restrictions contained in the

Regulatory Agreement to be executed by the Agency and Developer and recorded on the Property upon conveyance of the Property to Developer.

5. **PURCHASE PRICE.** The Purchase Price for the Property shall be One Million Five Hundred Fifty Thousand Dollars and No Cents (\$1,550,000.00) and shall be payable as follows: The unpaid portion of the Purchase Price shall be payable prior to the conveyance of the Property to Developer as a condition precedent to its conveyance.

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

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

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

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

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

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

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

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

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

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

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

5.4. **GENERAL COVENANTS.** The parties make the following covenants regarding the Property and the Project:

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

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

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

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

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

e) Prior to the Developer's occupancy of the property, the Agency will complete or have Developer complete subject to a Reimbursement Agreement, improvements to the building including but not limited to asbestos abatement, electrical system upgrade, a new roof, a heating, ventilation and air conditioning system totaling approximately \$350,000.

Agency shall convey the Property to Developer pursuant to the terms and conditions contained in this DDA.

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

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

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

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

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

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

Developer shall comply with all provisions of the Regulatory Agreement, and cause any subsequent purchaser of the property to so comply. Among other requirements and restrictions found in the Regulatory Agreement, the property will be used as offices for a minimum of five years from the date of transfer.

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

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

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

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

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

amounts received on account of, and assign to Developer all of Agency's rights regarding, any awards for such taking.

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

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

7. **LOT LINE ADJUSTMENT/PARCEL MERGER.** Agency shall have the five separate parcels comprising the Property merged into a single parcel prior to the Close of Escrow. All other entitlements are to be obtained and are the responsibility of the Developer.

8. **PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** The Agency shall have the right, but not the obligation, to review Plans to assure their conformity with the provisions of this DDA. Based upon such review the Agency shall have the right to approve or reject the Plans for reasonable cause.

8.1. **EXTENT AND CHARACTER OF PLAN REVIEW.** Agency's right of review includes, without limitation, the right to review architectural and engineering plans and specifications, off-site plans and specifications, and landscaping designs and specifications. Agency's approval of Plans is neither a representation of nor an assurance of their adequacy or correctness. Agency has reserved approval rights solely (a) to assure that the Plans further the Redevelopment Plan; (b) to assure that the Final Plans conform to the Scope of Work; and (c) to assure that Agency's purposes are fulfilled and any Agency funds which may be obligated under this DDA are used as intended by the Agency. This DDA is a financing document and not a land use or planning document. Approval of the Project and Plans under this DDA is only an approval by Agency of the Project design "concept" as presented in this DDA. Such approval by Agency is not and shall not be considered an approval of land use entitlements, structural design of the Project, or the aesthetic design of the Project. Developer shall comply with all applicable land use, planning and design laws, rules and regulations of each governmental agency acting in proper exercise of its respective jurisdiction, including without limitation, departments, staff, boards and commissions of the City.

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

8.3. **PLANS.** Developer has provided Agency with a Scope of Work and the Agency has approved the Scope of Work concurrently with this DDA. The Agency has been

induced to undertake its obligations under this DDA by Developer's promise to develop the Project in accordance with the Scope of Work and the provisions of this DDA.

8.4. PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS. Developer shall prepare the Final Plans that shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the construction of the Project. Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to this DDA, including without limitation, Scope of Work. To the extent that the DDA has insufficient detail or is unclear, the DDA shall be deemed to provide that the Project shall contain high-quality materials, and shall conform to all applicable laws, regulations, zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this DDA. The Final Plans shall incorporate all related mitigation measures required for compliance with approvals under CEQA and any conditions of City approval of the project, unless otherwise fulfilled. Developer agrees that it will comply with the requirements of the City of Sacramento Design Review/Preservation Board to the extent of its jurisdiction.

8.5. DELIVERY. Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Agency Clerk at the address for notices and shall have clearly marked on its exterior "URGENT: News and Review/Del Paso Boulevard PROJECT PLAN REVIEW" or the equivalent.

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

8.5.2. AGENCY DISAPPROVAL. If Agency disapproves, in whole or in part, the Final Plans or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes that the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with this DDA, including without limitation, the Scope of Work, the Final Plans, and with any items previously approved in accordance with this DDA. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this DDA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

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

8.7. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLANS. If the Developer desires to make any substantial changes in the Final Plans, Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the Final Plans under this section. 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.

8.7.1. SUBSTANTIAL CHANGE. A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements:

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

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

9. **CONTINGENCY PERIOD.** The Contingency Period for this DDA shall begin at mutual execution of DDA. The Contingency Period shall terminate one hundred eighty (180) calendar days from the mutual execution of this DDA. During this Contingency Period, Developer shall undertake at Developer's expense an inspection of the Property; which may include a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, and Hazardous Substances, if any, affecting the Property. Developer shall also conduct an investigation of the financial cost of remodeling the Property to Developers proposed use. The contingency Period shall not be tolled or extended for any reason, except by written extension signed by the Agency.

Within ten (10) days following the full execution of this DDA by both parties, Agency shall make available to Developer copies of all available documents pertaining to the physical condition of the Property that are owned and possessed by Agency.

If Developer disapproves of the results of the inspection and review, or finds that the Property cannot be remodeled for the costs contemplated by Developer, Developer may elect, prior to the last day of the Contingency Period, to terminate this DDA by giving Agency written notification prior to the last day of the Contingency Period, and the Deposit together with all interest shall be returned to Developer. If Developer fails to properly notify Agency of the intent to terminate this DDA, Developer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this DDA pursuant to this provision.

10. **DEVELOPMENT PROVISIONS.** As stated in detail in this Section 9, Developer shall construct and manage the Project according to the requirements established in this DDA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this DDA, the provisions that specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law (commencing at Health and Safety Code Section 33000) shall control.

10.1. **NOTICE TO PROCEED.** Developer shall not enter the Property or begin work on the Project until the Agency has issued to Developer a written notice to proceed with the work. Agency will issue a notice to proceed after Agency approval of the Final Plans, City's issuance of a building permit for substantially more than the Project foundations, Developer's compliance with all governmental requirements for start of construction, Developer's provision of required policies of insurance, and Developer's provision of proof of construction financing in an amount adequate to begin the Project work.

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

property is revested in the Agency pursuant to Section 16.1. Developer shall assign all rights under the construction contracts to Agency.

10.3. GOVERNMENTAL REVIEW PROCESS. Notwithstanding any other provision of this DDA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within 180 days of the signing of this DDA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the City's Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable but in no case longer than 180 days from this Agreement. Conditions to the project imposed by the City shall be considered obligations of the Developer under this DDA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission Agency.

10.4. ART IN PUBLIC PLACES. To the extent that this Project is substantially a rehabilitation project, the Project is exempt from the Art in Public Places Program.

10.5. 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 8.7, without Agency approval of such changes as provided in Section 8.7.

10.6. LOCAL, STATE AND FEDERAL LAWS. The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Agency shall cooperate in securing certifications and permits which require consent of the owner of the property. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

10.7. PREVAILING WAGES. The transaction, as contemplated by this DDA, is a market rate transaction and does not by itself require prevailing wages. Developer and Contractor have had the opportunity to meet with their respective legal counsel and to request a determination of the matter before the California Department of Industrial Relations and any other appropriate governmental bodies. Developer and Contractor have made their own independent determinations of the applicability of prevailing wage laws and have independently implemented such determinations. Developer indemnifies, holds harmless and defends the Agency from all additional wages, benefits, fees,

penalties, fines, legal fees, court costs, arbitration costs, and other costs arising from the improper application of California prevailing wage laws to the Project by Developer or Contractor or both of them.

10.8. 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.

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

10.9.1. 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.

10.9.2. 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.

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

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

10.11. AGENCY ACCESS TO THE PROPERTY. Developer shall permit Agency representatives access, without charge, to the entire Property at any time and for any purpose which Agency reasonably considers necessary to carry out its obligations and protect its interests under the DDA. Purposes for Agency entry may include, without

limitation, inspection of all work being performed in connection with the construction of the Project.

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

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

10.13.1. The Certificate of Completion shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any provision of this DDA that is not related to construction of the Project.

10.13.2. 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 DDA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

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

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

10.16. PROPERTY CONDITION. Developer, at Developer's expense, shall conduct any Property investigation beyond those provided by Agency under this DDA and which Developer may consider necessary to determine the condition of the Property for the development of the Project. As between the Agency and Developer, Developer shall be solely responsible for the adequacy of such investigations. Except as provided in this DDA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency. Agency shall not be responsible for removing any surface or subsurface obstructions, or structures of any kind on or under the Property.

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

10.18. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. Agency has obtained a Phase I and Phase II environment assessment. To the best of Agency's actual knowledge, Agency has disclosed to Developer any and all information which Agency has regarding the environmental condition with respect to hazardous substances of the Property. Attached hereto as Exhibit ___ is a list of environmental reports concerning the Property that Agency has provided to Developer. Based upon the information in the reports identified in Exhibit __ it is Agency's belief that there are currently no hazardous substances on, or emanating from, the Property. Therefore, Agency shall indemnify, protect and defend Developer, its officers, directors, employees, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to (a) the removal, discharge, or release of Hazardous Substances caused by Agency, or its officers, employees, agents or contractors or (b) the existence of Hazardous Substances on the Property at any time prior to transfer of possession of the Property pursuant to this DDA. 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 pursuant to this DDA, 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

10.19. DEVELOPER ACCESS TO PROPERTY. Prior to the conveyance of the Property by Agency to Developer, the Agency shall permit representatives of Developer to have access, without charge, to the Property, at all reasonable times for the purpose of obtaining data and making various tests necessary to carry out Developer's obligations

under the DDA; provided, however, that Developer shall not enter the Property except (a) after execution by Developer and Agency of Agency's standard "Permit for Entry" and (b) after Developer has obtained insurance coverage then required by Agency. No work shall be performed on the Property until a "Notice of Nonresponsibility" has been recorded and posted in accordance with applicable laws, assuring that Agency interest in the Property shall not be subject to mechanic's liens related to such work. Developer shall not commence any work on the Property without Agency's written approval of the work to be done, and in any event, Developer shall not commence any work which might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

10.20. RELOCATION. Agency is required by law to provide relocation services and make relocation payments to eligible tenants that are displaced as a result of the Project. Developer shall comply fully with all relocation laws that are the obligation of Agency or are otherwise applicable to the Project. Agency and Developer, however, agree and affirm that there are no occupants on the Property eligible for relocation.

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

11.1. EVIDENCE OF AVAILABLE FUNDS. Unless otherwise approved by the Agency, Developer's evidence of available funds, as required in the preceding section, must include only the following: (a) Developer equity (as provided in Section 11.3), (b) firm and binding loan commitments (as provided in Section 11.2) from each Lender, in form and content acceptable to Agency, and (c) Agency contribution, if any, as specified in this DDA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, request for clarification, further evidence or audited financial reports.

11.2. COMMITMENT AND LOAN REQUIREMENTS. As a material obligation under this DDA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this DDA. The Agency may reject a loan commitment unless such commitment: (a) is subject only to Lender's reasonable conditions of title and Developer's execution of

standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contains only usual, customary, and commercially reasonable loan terms; (c) continues in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provides for a construction loan term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this DDA, that require amendment of this DDA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

11.3. EVIDENCE OF DEVELOPER EQUITY. Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) by any one of the following actions: (a) deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely & proper completion; or (c) Developer's provision of financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) 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.

12. GENERAL REPRESENTATIONS AND WARRANTIES. The parties make the following representation and warranties regarding the Property and the Project.

12.1. AGENCY'S REPRESENTATIONS AND WARRANTIES. Agency represents and warrants to Developer that as of the date of this DDA and as of the Close of Escrow, to the knowledge of Agency's Legal Department, its Executive Director, and its staff with responsibility for the Property:

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

12.1.1. Agency has provided to Developer all information, records, and studies in Agency's possession concerning Hazardous Substances on the Property.

There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property.

12.1.2. Any information that Agency has delivered to Developer, either directly or through Agency's agents, is accurate to the best of Agency's knowledge and Agency has disclosed all material facts concerning the operation, development, or condition of the Property that are known to the Agency. Among others, Agency has provided all of the documents regarding Hazardous Substances on and adjacent to the Property.

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

12.1.4. The persons executing this DDA on Agency's behalf are authorized to do so, and on execution of this DDA, this DDA shall be valid and enforceable against Agency in accordance with its terms.

12.2. DEVELOPER'S REPRESENTATIONS AND WARRANTIES. Developer represents and warrants to Agency that as of the date of this DDA and as of the Close of Escrow:

12.2.1. Developer has reviewed and accepts the Hazardous Substances documents provided by Agency. If Developer desires further information regarding Hazardous Substances on the Property, including without limitation, a formal "Phase I Investigation", Developer agrees that it will obtain them at its own expense.

12.2.2. Developer has reviewed the condition of the Property, including without limitation, physical condition of the Property and issues regarding land use and development of the Property, and Developer is satisfied that the Property is suitable in all respects for its intended development and uses.

12.2.3. There is no pending or threatened litigation, administrative proceeding or other legal or governmental action with respect to Developer which would affect its ability to fulfill its obligations under this DDA and purchase the Property.

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

12.2.5. Developer has the financial capacity, the equity and the financing necessary to fulfill its obligations under this DDA and purchase the Property. Developer represents that any equity and funding commitments represented by Developer to the Agency as available to the Project are unencumbered and that Developer has not represented to any other party that it will

use such funds for any purpose other than the Project (and covenants that it will not use them for any other purpose) without prior written Agency consent.

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

12.2.7. Developer acknowledges that it is purchasing the property in an "as-is" condition.

12.2.8. The persons executing this DDA on Developer's behalf are authorized to do so, and on execution of this DDA, this DDA shall be valid and enforceable against Developer in accordance with its terms.

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

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

14. 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.

15. LIABILITY INSURANCE. With regard to this DDA, the Developer shall obtain and maintain for the life of the Regulatory Agreements, and require the Contractor and subcontractors for the Project to obtain and maintain for the term of the development of the Project, such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, Contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person, claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this DDA.

15.1. LIABILITY INSURANCE POLICY LIMITS. Developer shall obtain all insurance under this Section 15 written with a deductible of not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000) or an amount approved by Agency, and for limits of liability which shall not be less than the following:

15.2. WORKER'S COMPENSATION. Developer shall obtain and maintain worker's compensation coverage shall be written for the statutory limits as required by Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code (as it may, from time to time, be amended) and having an employer's liability of not less than \$1,000,000.

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

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

15.5. PROPERTY INSURANCE. For the duration of the Regulatory Agreements, Developer shall obtain and maintain property insurance in ISO policy form CP 10 30 - Building and Personal Property Coverage - Causes of Loss - Special Form, to the full

insurable value of the Property with no coinsurance penalty (and with endorsements of Builder's Risk until completion of construction of the Project), Boiler and Machine to the extent necessary to obtain full insurance coverage, and with such other endorsements and in such amounts as the Agency may reasonably require to protect the Project and the Property. In the event of damage to the Project and subject to the requirements of Lender, Developer shall use the proceeds of such insurance to reconstruct the Project and the public improvements.

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

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

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

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

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

15.6.5. FAILURE TO MAINTAIN. If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this DDA, the Agency shall have the right to

purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

15.6.6. BLANKET COVERAGE. Developer's obligation to carry insurance as required under this Section 10 may be satisfied by coverage under a "blanket" policy or policies of insurance (as the term is customarily used in the insurance industry); provided, however, that the Agency shall nevertheless be named as an additional insured under such blanket policy or policies to the extent required by this Section, the coverage afforded the Agency will not be reduced or diminished thereby, and all of the other requirements of this Section 15 with respect to such insurance shall otherwise be satisfied by such blanket policy

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

16.1. REVESTING TITLE IN AGENCY. Notwithstanding any other provisions of this DDA and in addition to any other rights and remedies of the Agency, after conveyance of any part of the Property to Developer and prior to issuance of Certificate of Completion, if Developer defaults in its obligations related to the Project development, abandons or unreasonably suspends Project construction work, permits any unauthorized encumbrance or lien (including tax liens) and fails to discharge any such unauthorized lien or encumbrance, or permits any transfer of all or any part of the Property, then the Agency shall have, for a period of ten years following the Completion Date, the right to re-enter and take possession of the Property, or any part of the Property conveyed to Developer, and to terminate and re-vest in the Agency the estate so conveyed. It is the intent of this DDA, that the conveyance of the Property to Developer shall be made upon, and that the Grant Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Developer specified in this Section, failure on the part of Developer to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in the DDA, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the

rights and interest in the Property conveyed by the Grant Deed to Developer, and that such title and all rights and interests of Developer, and any assigns or successors in interest to and in the Property, shall revert to the Agency. Such condition subsequent and any such revesting of title in the Agency shall always be subject to and limited by the lien or security interest authorized by the DDA, and any rights or interests provided in the DDA for the protection of the Lenders; and shall not apply to individual parts or parcels of the Property on which the Project have been completed in accordance with the DDA and for which a Certificate of Completion issued as provided in the DDA. Such condition subsequent shall conform to the provisions of Civil Code Sections 885.010 through 885.070.

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

16.1.2. AGENCY REIMBURSEMENT. Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Property (but less any net income derived by Agency from the Property after such revesting); all taxes, assessments, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have been payable if the Property were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Property at the time of such revesting or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer; any expenditures made or obligations incurred with respect to completion of the Project; and any amounts otherwise owing the Agency by the Developer.

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

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

16.2. OTHER RIGHTS AND REMEDIES. Upon the occurrence of any default not subject to the preceding liquidated damages provision, and the expiration of any applicable notice and cure period without a cure having occurred within the specified cure period, the non-defaulting party shall have the right to institute such actions as it may deem desirable to remedy a default of this DDA as allowed under this DDA, at law or in equity

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

16.4. FEES AND COSTS ARISING FROM DISPUTE. If an action is commenced between the parties, the Prevailing Party in that action shall be entitled to recover from the nonprevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "Prevailing Party" shall include without limitation a party who dismisses an action in exchange for sums allegedly due; the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law.

17. ENCUMBRANCE OF PROPERTY AND LENDER PROTECTIONS. Before issuance of a Certificate of Completion, if Developer has obtained Agency's prior written approval, which approval Agency may withhold in exercise of its reasonable discretion and in consideration of the commercially reasonable protection of its interests under this DDA, the Developer may obtain a Loan and encumber the Property as security for the Loan, provided either that the proceeds of the Loan are used solely for construction of the Project improvements upon usual and customary and commercially reasonable terms or that the Loan is permanent project financing made upon usual and customary and commercially reasonable terms. Each lender shall be a federal or state chartered financial institution, a pension fund, an insurance company or such other lender which Agency may approve in writing in advance. After issuance of a Certificate of Completion, the Agency shall have no rights of approval regarding financing secured by the Property. As a condition to Agency's approval of a Loan, Developer shall provide the Agency with a conformed copy of all documents related to the Loan. Agency acknowledges that a Lender will rely upon this DDA in making the Loan and that Agency's obligations under this DDA are inducements to Lender's making of the Loan.

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

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Disposition and Development Agreement dated _____ between the Redevelopment Agency of the City of Sacramento and **Red Volcano Productions, LLC**, ("DDA"). Lender requests, in accordance with the DDA, that if any default notice shall be given to Developer under the DDA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

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

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

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

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

17.5.1. If such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this DDA) shall be tolled if and so long as, all of the following are true: (a) Lender has delivered to the Agency, prior to the date on which Agency is entitled to give notice of termination of this DDA, a written instrument satisfactory to Agency in which Lender or its designee unconditionally agrees that it will commence the cure of such default immediately upon Lender or its designee taking possession of the Property and will thereafter diligently pursue such cure to completion; provided, however, that neither the Lender nor its designee shall be obligated to pay damages to the Agency on account of such default, except to the extent of any monies due and unpaid from Developer; (b) Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property; (c) if Lender is prevented by court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and (d) upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default in accordance with this DDA.

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

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

17.7. MODIFICATIONS. No modification or amendment to the DDA which materially and adversely affects the Lender's interest in the Property shall be valid and effective unless the Lender's written consent to such modification or amendment has first been obtained, which consent shall not be unreasonably withheld.

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

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

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

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

18.1. ENTIRE DDA; SEVERABILITY. This DDA integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of

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

18.2. WAIVERS AND AMENDMENTS. All waivers of the provisions of this DDA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this DDA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific 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.

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

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

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

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

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

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

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

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

18.10.1. Addresses for notices are as follows:

a) Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Molly Oser.

b) Developer: Red Volcano Productions, LLC, 1015 20th Street Sacramento, California 95814, Attention: Jeff von Kaenel and Deborah Redmond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.9. "Developer" is Red Volcano Productions, LLC., corporation. The principal office of the Developer is located at 1015 20th Street Sacramento, California 95814. The principals of Developer Jeff von Kaenel.

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

19.11. "Escrow Instructions" are the escrow instructions for the close of the Escrow for this DDA, a copy of which are attached as **Exhibit 6: Escrow Instructions**.

19.12. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under this DDA. The Final Plans include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this DDA. The Final Plans shall incorporate all applicable mitigation measures which

may be required for compliance with approvals under the California Environmental Quality Act (commencing at Public Resources Code Section 21000) and the rules and regulations promulgated under such act. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this DDA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this DDA.

“Funding Agreement” is the document that states the terms of Agency Funding, a copy of which is attached as **Exhibit 7: Funding Agreement**.

19.13. “Grant Deed” is the grant deed for the transfer of the Property to Developer under this DDA. The Grant Deed contains covenants that run with the land, easements and a reverter provision. A copy of the Grant Deed is attached as **Exhibit 2: Grant Deed**.

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

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

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

19.16. “Project Area” is the North Sacramento Area, as defined in the Redevelopment Plan.

“Property” is the real property to be developed under this DDA by Developer, as more particularly described in the Property Description. The Property includes all improvements contained within the Property.

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

19.18. "Purchase Price" is the purchase price for the Property as set out in Section 4.

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

19.20. "Regulatory Agreement" a copy of which is attached as **Exhibit 3: Regulatory Agreement**, is the agreement, which sets out the certain provisions of this DDA that shall survive the completion of the Project.

19.21. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this DDA must be performed and on which conditions must be satisfied. The Schedule of Performances is attached as **Exhibit 4: Schedule of Performances**.

19.22. "Scope of Development" is the detailed description of the construction parameters for the Project. The Scope of Development is attached as **Exhibit 5: Scope of Development**.

19.23. "Title Company" is North American Title Company. Title Company is the insurer of title under this DDA and the Escrow holder. The Title Company address is 1610 Arden Way, Suite 110, Sacramento, California 95815.

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

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

**DEVELOPER : RED VOLCANO
PRODUCTIONS, LLC, a California limited
liability company**

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

Disposition and Development Agreement

By:

Jeff von Kaenel
Managing Member

Date: _____

Approved as to form:

Developer Counsel

By:

Anne M. Moore, Executive Director

Date: _____

Approved as to form:

Agency Counsel