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**Supplemental Material**

**For**

**City of Sacramento**

**City Council and  
Redevelopment Agency**

**Agenda Packet**

**Submitted: June 25, 2007**

**For the Meeting of: June 26, 2007**

**Additional Material**

**Revised Material**

**Subject:** Owner Participation and Conditional Grant Agreement for  
Hotel Berry  
Revised Exhibit B Attached

**Contact Information:** Jim Hare, Assistant Director  
(SHRA) #440-1313

**OWNER PARTICIPATION AGREEMENT**  
[Purchase of Residential Covenants, Conditions and Restrictions]  
**WITH ESCROW INSTRUCTIONS**  
Hotel Berry 2007

TERM	DEFINITION	
"Agency"	The Redevelopment Agency of the City of Sacramento	
"Agency Address"	630 I Street, Sacramento, California 95814	
"Owner"	The Trinity Housing Foundation	
"Owner Legal Status"	A California nonprofit corporation	
"Owner Address"	103 Castle Rock Road, Walnut Creek, California 94598	
"Project Area"	Merged Downtown	
"Title Company"	First American Title Company	
"Effective Date"	June 26, 2007	
"Closing Date"	December 31, 2007	
"Purchase Price"	Purchase Price for the covenants conditions and restrictions in the amount of :	Five Million Dollars (\$5,000,000.00)
"Special Terms"	<p>1. Owner represents and warrants that it has been assigned the rights of A.F. Evans, Inc., under the Assignment and Assumption Agreement for the Hotel Berry ("Assignment") between A.F. Evans Company, Inc., and Mohammed Mohanna, assigning Mohammed Mohanna's rights to purchase the Property under the Purchase and Sale Agreement dated April 13, 2005 in the preamble and August 11, 2006 in the first page following the preamble, ("Purchase Agreement") and under an Option Agreement dated April 14, 2005, ("Option") as evidenced by a Memorandum of Option to Purchase recorded on May 9, 2005, in the Official Records of Sacramento County. Owner shall take all actions necessary to preserve the rights to purchase the Property under the Purchase Agreement and the Option. Within five (5) business days after execution of this OPA, Agency will advance \$130,000 for uses, strictly as provided in this OPA. Agency shall advance to Owner Agency Funding in the amount of Fifteen Thousand Dollars (\$15,000) per month, as needed to pay the cost of continuing the Option until its exercise, commencing July 1, 2007, and continuing until the earlier of December 31, 2007 or Owner's acquisition of fee title to the Property, which advances shall not exceed Two Hundred and Eighty-Five Thousand Dollars (\$285,000) in total. Not less than thirty (30) days prior to the final date to exercise the Option, Owner shall notify Agency if it does not intend to exercise the Option and shall tender assignment of the Option to Agency. If Owner fails to so notify the Agency and thereafter fails to acquire the Property, Owner shall repay all such advances within thirty (30) days of Agency demand therefor.</p> <p>2. Agency Funding shall be used solely for Property acquisition.</p>	

	<p>3. While not an obligation of this Agreement, Owner has represented that Owner will undertake renovation and rehabilitation of the Property, if and when funding is available for such activities, and that Owner will apply for tax credit assistance for the Project at the maximum available assistance level.</p> <p>4. The Property has been rehabilitated in the past with funds provided by the Agency and is subject to existing regulatory provisions which, among other items, restricts the affordability of the certain residential units within the Project. Such affordability restrictions will expire within the next two years. The Regulatory Agreement will extend the term of the affordability provisions in the existing regulatory agreements for an additional fifty-five (55) years from their current expiration dates. The Property is subject to a deed of trust securing a HOME loan and a commercial loan from Agency to the previous Owner. Upon Acquisition of the Property, Agency will forgive both the HOME loan and the commercial loan. If required by a lender, the Agency shall subordinate the Regulatory Agreement to a first loan for construction and upon repayment of the construction loan, to a new permanent lender.</p> <p>5. As used in this Agreement and in the Grant Agreement, construction shall mean rehabilitation, as appropriate,</p>
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Agency and Owner enter into this Owner Participation Agreement, also called OPA, as of the Effective Date. [For purposed of this Agreement, the capitalized terms shall have the meanings assigned in the above table and in Section 15.]

**RECITALS**

A. As of the Close of Escrow, Owner will be the owner of real property located in the City of Sacramento, California; more particularly described the Legal Description.

B. Agency is a redevelopment agency formed and acting under the Community Redevelopment Law (California Health & Safety Code Sections 33000 *et seq.*), and this document is governed by the Community Redevelopment Law. The Project is funded with the Agency's Housing Fund (as defined in the Community Redevelopment Law) generated in the Project Area and is subject to the applicable provisions of the Community Redevelopment Land and the Redevelopment Plan for the Project Area. This OPA is made in accordance with provisions of the Redevelopment Plan for participation by project owners in redevelopment of the project area (adopted in accordance with California Health & Safety Code Section 333390). This OPA is consistent with, and furthers, the Redevelopment Plan and the "Implementation Plan" adopted for the Project Area in that it will improve and increase the community's stock of affordable housing.

C. The primary purpose of this OPA is to improve and increase the community's stock of affordable housing in accordance with the Community Redevelopment Law. In order to accomplish such purpose, the OPA provides that the Owner will redevelop the Property for affordable housing described in this OPA and that the Agency shall acquire covenants, conditions and restrictions against the Property running with the land that assure the affordability

of the Property as provided in the Regulatory Agreement. The housing provided under this OPA will benefit the Project Area by providing housing to serve the Project Area.

D. Owner desires to develop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

**AGREEMENT**

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

1. **AGENCY FUNDING.** To improve and increase the stock of affordable housing and in exchange for recordation of the Regulatory Agreement against the Property assuring the same, the Agency shall pay to Owner the amount of the Purchase Price. Such payment shall be conditioned upon Owner's compliance with the provisions of this OPA and the Regulatory Agreement, and the proper recordation of the Regulatory Agreement, subject only to conditions of title as approved by the Agency.

2. **ESCROW.** By this OPA, Owner and Agency have opened the Escrow account with the Escrow Agent subject to the provisions of the standard conditions for acceptance of escrow and the terms and conditions in this OPA, with a signed counterpart of this document to be delivered as escrow instructions to Escrow Agent. In the event of any conflict between the terms of this OPA and the standard conditions for acceptance of escrow, the terms of this OPA shall control. The Escrow reference number is the Escrow Number.

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

2.1.1. Owner has performed all of its obligations then to be performed under this OPA.

2.1.2. The closing conditions as defined in Section 2.4 have been fulfilled as of Close of Escrow;

2.1.3. Owner's representations and warranties in this OPA are correct as of the date of this OPA and as of the Close of Escrow.

2.1.4. The OPA continues to be in full force and effect, no default on the part of Owner has occurred under the OPA, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Owner under the OPA.

2.2. **CONDITIONS TO OWNER'S PERFORMANCE.** Owner's obligation to perform under this OPA is subject to satisfaction of all of the following conditions:

2.2.1. Agency has performed all of its obligations then to be performed pursuant to this OPA.

2.2.2. The closing conditions as defined in Section 2.4 have been fulfilled as of Close of Escrow;

2.2.3. Agency's representations and warranties in this OPA are correct as of the date of this OPA and as of the Close of Escrow.

2.2.4. The OPA continues to be in full force and effect, no default on the part of Agency has occurred under the OPA, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Agency under the OPA.

2.3. **TITLE.** Agency shall cause Escrow Agent to issue the Preliminary Report to Owner, with a copy to Agency, together with copies of all documents requested by Owner or Agency that relate to title exceptions referred to in the Preliminary Report.

2.4. **CLOSE OF ESCROW.** The following are conditions to the Close of Escrow:

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2.4.1. Simultaneously with the Close of Escrow, Escrow Agent shall issue an ALTA Lender's Policy of Title in the amount of Agency funding provided by the Funding Agreement, showing the Regulatory Agreement as a valid lien against the Property in favor of the Agency and subject only to the following matters which are approved exceptions to title:

- 1) A lien for real property taxes, bonds, and assessments not then due;
- 2) Any and all covenants, conditions, restrictions and limitations arising from the Regulatory Agreement; and
- 3) Other exceptions approved in writing by Agency prior to Close of Escrow.

b) On or prior to the Close of Escrow, the parties shall deposit with Escrow Agent three originals of this OPA and of each document attached to this OPA to be entered into between the parties pursuant to this OPA. On or prior to Close of Escrow, the parties shall duly execute (in Escrow or prior to deposit in Escrow) each such document and shall execute those to be recorded in a manner suitable for recording.

2.4.2. The Owner shall also deposit with Escrow Agent on or prior to the Close of Escrow the following documents:

- a) The Regulatory Agreement, executed and acknowledged by Owner;
- b) All closing costs, fees and prorations; and
- c) The insurance policies required of Owner by this agreement or Agency's acknowledgment of receipt of them.

2.4.3. The Close of Escrow shall take place on the Closing Date. On the Closing Date, Escrow Agent shall complete the Close of Escrow as follows and in the following order:

- a) Obtain full execution of all unexecuted documents and date all undated documents (including without limitation any effective date or commencement date not otherwise dated) as of the Closing Date;
- b) Record the Regulatory Agreement (marked for return to Agency) with the Sacramento County Recorder (which shall be deemed delivery to Agency);
- c) Issue the title policy described in Section 2.4.1;
- d) Prorate taxes, assessments, rents, and other charges as provided in this OPA;
- e) Return any remaining Agency deposit for prorations and charges paid by or on behalf of Agency;
- f) Charge Owner for those costs and expenses to be paid by Owner pursuant to this OPA and disburse any net Agency funding or Owner funds remaining after the preceding disbursements to Owner;
- g) Prepare and deliver to both Owner and Agency conformed copies of all recorded documents; and
- h) Prepare and deliver to both Owner and Agency one signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow.

2.4.4. Escrow Agent shall allocate and charge all fees and costs at the Close of Escrow to Owner. In addition, the Owner shall be responsible for the cost of the ALTA insurance policy. Escrow Agent acknowledges that Agency is not subject to real property taxes.

**2.5. INABILITY TO CLOSE.** If Escrow Agent is unable to simultaneously perform all of the preceding instructions, Escrow Agent shall notify Owner and Agency, return to each party all documents and funds which it has deposited in Escrow less fees and expenses incurred by the respective party, and bill the respective parties for any unpaid fees and expenses incurred in Escrow. If Escrow shall fail to close on the Closing Date because Owner has not complied with Owner's obligations under this OPA, then Owner shall be obligated to pay the costs incurred through Escrow to the date the Escrow is terminated, including the cost of any preliminary title report and any cancellation fees or other costs of this. If Escrow shall fail to close on or before the Closing Date because Agency has not complied with Agency's obligations under this OPA, such costs shall be paid by Agency. If Escrow shall fail to close on or before the Closing Date for any other reason, such costs shall be divided equally between the parties.

**2.6. COMMISSIONS.** Agency is not responsible, by this OPA or otherwise, to pay commissions on this transaction.

**2.7. PREPARATION AND APPROVAL OF PLANS AND RELATED DOCUMENTS.** [Intentionally Omitted]

**2.8. DEVELOPMENT PROVISIONS.** [Intentionally Omitted]

**2.9. NONDISCRIMINATION IN CONTRACTING AND EMPLOYMENT.** Owner for itself its Project contractors and subcontractors 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.

**2.9.1. EMPLOYMENT.** Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. The Owner 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. Owner 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.

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

**2.9.3. OFFICE OF ECONOMIC OPPORTUNITY IN CONSTRUCTION.** For the purpose of monitoring the anti-discrimination and all applicable labor provisions, Owner and Owner's contractor and subcontractors shall comply with the requirements of the Agency's Office of Economic Opportunity in Construction.

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

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

**2.12. PROJECT SIGN.** [Intentionally Omitted]

**2.13. CERTIFICATE OF COMPLETION.** [Intentionally Omitted]

**2.14. REPORTS.** [Intentionally Omitted]

**2.15. NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** [Intentionally Omitted]

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**2.16. PROPERTY CONDITION AND ZONING.** Except as provided in this OPA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Owner 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 Final Plans. Agency exercises no authority with regard to zoning of the Property. Owner shall assure that zoning of the Property at the time of development shall be such as to permit the development and construction, use, operation and maintenance of the Project in accordance with the provisions of this OPA.

**2.17. OPERATIONAL FINANCING.** Owner shall be responsible for and shall pay all costs of operating and maintaining the Project. Except as expressly provided in this OPA, no party shall have the right of reimbursement for any funds expended by them for the Project. Agency is not obligated by this OPA or otherwise to make any contribution beyond its obligations stated in this OPA.

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

**3.1. NONDISCRIMINATION.** Owner covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that it shall not discriminate on the basis of race, color, ancestry, religion, creed, sex, marital status, or national origin in the sale, lease or rental or in the use or occupancy of the Property and the Project.

**3.2. REGULATORY AGREEMENT.** Owner covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that the Property shall be used strictly in accordance with the provisions of the Regulatory Agreement.

**4. INDEMNIFICATION.** Each party shall indemnify, protect, defend and hold harmless the other party and its officers, directors, employees, advisors, and agents from any and all liability from bodily injury, death and property damage caused by or resulting from the acts or omissions of such party, its officers, employees, agents or independent contractors and for any and all costs incurred by the other party in defending against such liability claims, including attorney's fees, except only indemnification for injury, death or property damage caused by the negligent act or willful misconduct of the other party. This indemnification provision shall survive the termination of this agreement.

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

**5.1. LIABILITY INSURANCE POLICY LIMITS.** Owner shall assure that the insurance required by this Section shall be written with a deductible of not more than FIFTY THOUSAND DOLLARS (\$50,000).

**5.2. WORKER'S COMPENSATION.** Worker's compensation coverage shall be written for the statutory limits as required by the California Labor Code (commencing with Section 3700, as it may, from time to time, be amended).

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

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occurrence, for bodily injury coverage; \$1,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

**5.4. COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$500,000 for bodily injury coverage and \$300,000 for property damage.

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

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

**5.7. SINGLE PROJECT INSURANCE.** It is the intent of the parties that the Project have available all the specified insurance coverages. Owner shall not provide insurance coverages that are considered in aggregate with other Projects which Owner or its contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Owner or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Owner 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.

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

**5.7.2. FAILURE TO MAINTAIN.** If Owner fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this OPA, the Agency shall have the right to purchase the insurance on Owner's behalf, and Owner shall promptly reimburse the full cost of such insurance to the Agency. If Owner 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.

**5.7.3. BLANKET COVERAGE.** Owner's obligation to carry insurance as required under this Section 5 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 19 with respect to such insurance shall otherwise be satisfied by such blanket policy.

**6. DEFAULTS AND REMEDIES.** Except as otherwise provided in the OPA, if either party defaults in its obligations under this OPA, the defaulting party shall immediately commence and diligently proceed to cure the default within thirty (30) days after written notice of default from the other party or 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. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by this OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party, other than funds properly retained as liquidated damages. After such return of property and funds and termination of the OPA, neither Agency nor Owner shall have

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any further rights against or liability to the other under the OPA except as expressly set forth in this OPA to the contrary.

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

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

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

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

**7.1. NOTICES.** If the Agency gives any notice of default to Owner under this OPA, the Agency shall contemporaneously give a copy of such notice to each Lender who has requested such notice in the following form of request for notice at the address stated in the 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 Owner. 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 OPA dated June 26, 2007 between the Redevelopment Agency of the City of Sacramento and [Owner] ("OPA"). Lender requests, in accordance with Section 21.1 of the OPA, that if any default notice shall be given to Owner under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

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

**7.3. LENDER NOT OBLIGATED TO CONSTRUCT** [Intentionally Omitted]

**7.4. LENDER'S OPTION TO CURE DEFAULTS.** After any default of Owner's obligations under the OPA, each Lender, and each limited partner of any limited partnership entity that succeeds Owner in ownership of the Property in accordance with this OPA, shall have the right, at its option, to cure or remedy such default, within the time for cure allowed to Owner, 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 Owner; 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, Owner's obligations to complete the Project on the Property in the manner provided in the OPA. Any Lender who properly completes the Project as provided in the OPA shall be entitled, upon written request made to the Agency, to Certificate of Completion from the Agency in a manner provided in the OPA. Such certification shall mean that any remedies or rights with respect to the Property that the Agency may have because of Owner's failure to cure any default with respect to the construction of the Project on other parts of the Property, or because of any other default of the OPA by the Owner 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 Owner for such default.

**7.5. DEFAULT BY OWNER.** In the event of a default by Owner, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 21.5 and Lender has failed to cure such default as provided in Section 21.5 provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

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

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

7.5.3. Upon receiving possession of the Property, Lender or its designee promptly commences and diligently proceeds to cure such default in accordance with the written instrument described in Section 21.5.1.

7.6 From and after the cure of such Owner default, Lender or its designee is not required to obtain possession or to continue in possession of the Property. Nothing in this Section 21.5 shall preclude the Agency from exercising any of its rights or remedies with respect to Owner during any period of such forbearance.

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

provided, however, that the assignee or transferee shall thereafter be subject to all of the terms and conditions of this OPA.

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

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

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

**9. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Owner, 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. Owner shall not, prior to issuance of a Certificate of Completion, assign Owner's interests or obligations under this OPA or undertake any act or transaction resulting in a significant change in the interests of the principals of Owner or the degree of their control of Owner 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 Owner. Such a transfer as permitted in this Section shall not relieve Owner, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Owner and the parties signing the OPA on behalf of the Owner represent that they have the authority of all of Owner's principals to agree to and bind them to this provision.

Notwithstanding the foregoing, Owner shall have the right to transfer this OPA to a limited partnership of which it is the sole general partner or co-general partner with an affiliate of A.F. Evans, Inc., which affiliate shall take transfer subject to the requirements of this OPA.

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

**10.1. INTEGRATED DOCUMENTS; SEVERABILITY.** This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA including the incorporated documents integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this OPA shall, to any extent, be held invalid or unenforceable, the remainder of this OPA shall not be affected; provided that the intent of the OPA may then be reasonably fulfilled.

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

**10.3. WAIVERS AND AMENDMENTS.** All waivers of the provisions of this OPA must be in writing and signed by Agency or Owner, as applicable, and all amendments to this OPA must be in writing and signed by Agency and Owner. 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 Owner under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Owner under this Section or with respect to the particular default except to the extent specifically waived in writing.

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

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

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

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

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

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

**12. OWNERSHIP OF DATA.** If this OPA is terminated, for any reason, prior to the completion of the Project, Owner 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.

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

**13.1.** Addresses for notices are as follows:

**13.1.1.** Agency: Redevelopment Agency of the County of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Katherine Klein McFadden

**13.1.2.** Owner: The Trinity Housing Foundation, 103 Castle Rock Road, Walnut Creek, California, 94598, Attention: Bill Leone, Executive Director

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

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

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

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

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

## Owner Participation Agreement

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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 Owner or Agency may respectively designate by written notice to the other.

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

15. **DEFINITIONS.** In addition to the definitions contained the table at the beginning of this OPA, the following definitions shall apply in interpreting the provisions of this OPA.

15.1. "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. Agency as used in this DDA includes 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.

15.2. "Art in Public Places Program" means the "Aesthetic Improvement Policy" adopted by Agency Resolution Number 2865, October 16, 1979. It is Agency's policy for the creation and display of artwork in public areas.

15.3. "Certificate of Completion" is the certificate issued by the Agency certifying Owner's completion of the construction of the Project for purposes of this OPA.

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

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

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

15.7. "Final Plans" are the full and final plans, drawings and specifications for the Project as described in, and approved by the Agency under, Section 2.7, which shall include all construction plans, drawings, specifications and other documents required to obtain all required building permits for the construction of the Project. The Final Plans may refer, as the context may indicate, to partial Final Plans prepared and submitted in accordance with this OPA. The Final Plans shall incorporate any related mitigation measures that may be required for compliance with CEQA. The Final Plans shall specifically include changes or corrections of the Final Plans approved as provided in this OPA. The Final Plans shall include all landscaping, on- and off-site work and artwork related to the Project. Except as approved by the Agency, the Final Plans shall conform in all material respects to all provisions of this OPA, including without limitation, the Preliminary Plans and the Scope of Development.

15.8. [Intentionally Omitted]

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

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

15.11. "Loan" is the loan for acquisition or development of the Property made by Lender.

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

**Owner Participation Agreement**

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15.13. [Intentionally Omitted]

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

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

15.16. "Project Area" is the named Project Area, as defined the Redevelopment Plan.

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

15.18. "Regulatory Agreement", a copy of which is attached as Exhibit 2: Regulatory Agreement (and is, therefore, incorporated in this Agreement by reference) is the agreement containing covenants, conditions and restrictions, including without limitation, use and affordability restrictions that run with the Property as a condition of Agency Funding.

15.19. "Schedule of Performances" is the schedule that establishes the dates by which obligations of the parties under this OPA must be performed and conditions of the OPA must be satisfied. The Schedule of Performances is attached as Exhibit 3: Schedule of Performances.

15.20. [Intentionally Omitted]

15.21. "Title Company" refers to the insurer of title, as described in the Funding Agreement.

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

**OWNER : THE TRINITY HOUSING FOUNDATION**

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

By: \_\_\_\_\_  
—William M. Leone, Executive Director

By: \_\_\_\_\_  
Anne M. Moore, Executive Director

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Owner Counsel

\_\_\_\_\_  
Agency Counsel

document2

## Acceptance of Escrow Instructions

To Title Company / Escrow Holder:

Your acceptance of this escrow shall create a contractual obligation by you with Agency and Owner for complete compliance with these instructions. Agency and Owner reserve the right to jointly revoke this escrow at any time upon their payment to you of your fees and reimbursement to you of your expenses in accordance with the terms of these escrow instructions. Your obligations as Escrow Holder under these escrow instructions shall be subject to the following: You are not responsible for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this escrow nor as to the authority or rights of any person executing such instrument. Except as otherwise provided in these escrow instructions or by law, your duties as Escrow Holder are limited to the proper handling of monies and the proper safekeeping of instruments and other items received by you as Escrow Holder, and for the performance of your obligations as specifically provided under these escrow instructions. You are responsible for the sufficiency of any instruments or documents prepared by you for this escrow.

Agency and Owner agree to indemnify and hold you harmless from damages incurred as a result of your good faith and diligent performance of your duties under these escrow instructions, which damages are not a result of your negligent or wrongful act or omission.

Your execution acknowledges receipt of the foregoing escrow instructions, evidences your agreement to act as escrow holder as provided in this document and to comply with the terms and conditions of the escrow instructions included in this document.

Dated: \_\_\_\_\_

**TITLE COMPANY / ESCROW HOLDER:**

\_\_\_\_\_ **TITLE COMPANY**

By: \_\_\_\_\_

*Name of Title Officer*  
Commercial Escrow Officer

**SCHEDULE OF PERFORMANCES**

<b>TASK:</b>	<b>DUE ON OR BEFORE:</b>
1. Owner shall open escrow, and Agency and Owner to deposit OPA and all attachments	(30) days after Agency approval of this OPA
2. Owner and Agency to deposit all required items in Escrow	(90) days after opening the Escrow
3. Escrow shall close.	(150) days after opening Escrow, unless extended by the parties for unavoidable delays in meeting conditions for close

## CONDITIONAL GRANT AGREEMENT HOTEL BERRY 2007

IN CONSIDERATION of their mutual promises, the parties agree as follows:

1. **GRANT.** The Grantor is making the Grant pursuant to the terms and conditions of this Grant Agreement. Grantor and Grantee have entered this Grant Agreement as of the Effective Date.

2. **DEFINITIONS TABLES.** The capitalized terms in this Grant Agreement shall have the meanings assigned in the following Definitions Tables and in Section 3 Definitions. Terms being defined are indicated by quotation marks. If an item in the Definitions Table is marked "None", "Not Applicable", "N/A" or equivalent or is left blank, that defined term is not applicable to this Grant or the referenced item is not required or is not included in this Grant as the context may indicate.

"EFFECTIVE DATE"	June 26, 2007	Being the date as of which this Grant Agreement shall be effective, and which is the same date as the Effective Date of the OPA.
"GRANTOR"	The following public agency that is making the Grant, and whose legal status and address are:	
Name	Redevelopment Agency of the City of Sacramento	
Legal Status	A public body, corporate and politic	
Principal Address	630 I Street, Sacramento CA 95814	
"GRANTEE"	The Grantee of the Grant funds whose name, legal status and address are:	
Name	The Trinity Housing Foundation	
Legal Status	nonprofit corporation	
Principal Address	103 Castle Rock Road, Walnut Creek, California 94598	
"GRANT"	The Grant made by this Grant Agreement.	
"GRANT COMMITMENT"	Grantor's Grant commitment, made by letter dated as of	Not Applicable
"GRANT PROGRAM"	Grantor's Grant Program, commonly known as	Merged Downtown Project Area Tax Increment Housing Set-Aside Fund
"GRANT AMOUNT"	Five Million Dollars and No Cents (\$5,000,000.00)	
"GRANTEE EQUITY"	Four Hundred and Eighty-eight Thousand Dollars (\$488,000)	Which is the minimum amount of cash or cash equivalent (excluding land equity or other non-cash investment in the Project) that Grantee is investing in the Project.
"SATISFACTION OF CONDITION"	The Grant shall be forgiven upon purchase of the Property and recordation of a regulatory agreement extending the affordability restriction period on all residential units currently restricted by Agency regulatory agreement or agreements for an additional fifty-five (55) years from the expiration date of the regulatory covenant on each respective regulated unit.	
"PROJECT"	Which is the extension of the regulatory period for each residential unit subject to an Agency regulatory agreement for an additional fifty-five (55) years and bringing all regulated units to current code requirements, as applicable to the Property.	

### B. "COLLATERAL." The Collateral securing repayment of the Grant, which Collateral consists of the following:

"PROPERTY"	The following described real property, which is security for the Grant and the site of the Project:	
Address	729 L Street	
Assessor's Parcel Number	006-0096-012	
"Legal Description"	The Property is situated in the State of California, County of Sacramento, and is more particularly described in <b>Exhibit 1: Legal Description</b> attached and incorporated by reference.	
Grantee's Title Interest	Grantee has rights to obtain fee interest in the Property and will acquire fee interest in the Property as provided in the OPA.	

### C. "ESCROW INFORMATION":

Conditional Grant Agreement

"Title Company" and "Escrow Agent"	First American Title Company	Which is the title company that will issue the Title Policy and that will act as Escrow Agent for the Escrow
"Escrow"	The escrow with Escrow Agent	
"Closing Date"	December 31, 2007	Which is the date for close of the Escrow, as it may be extended

**D. "LIST OF EXHIBITS" (The following are attached and incorporated in this Grant Agreement):**

EXHIBIT	DEFINED TERM
<u>Exhibit 1: Legal Description</u>	"Legal Description"
<u>Exhibit 2: Schedule of Performances</u>	"Schedule of Performances"
<u>Exhibit 3: Regulatory Agreement</u>	"Regulatory Agreement"
<u>Exhibit 4: Escrow Instructions</u>	"Escrow Instructions"

**E. "APPROVAL DOCUMENTS" Grantee shall submit the following documents for Grantor approval:**

Grantee's organizational documents, such as partnership agreements or corporate articles and by-laws
"Budget" for the Project

**F. "ASSIGNED DOCUMENTS" Grantee shall assign the following documents to Grantor:**

None
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**G. "SPECIAL PROVISIONS" The following special provisions shall be in addition to the provisions of this Grant Agreement:**

1. This Grant is made pursuant to the Owner Participation Agreement ("OPA") between the Parties, made concurrently with this Grant Agreement. This Grant Agreement is subject to the OPA including without limitation, conditions precedent to funding the Grant or making disbursements of the Grant proceeds. The OPA provides for advances to be made under this Grant Agreement as necessary to continue the "Option" described in the OPA.
2. Grant Proceeds shall be used solely for Property acquisition and costs related to such acquisition. Grantor will deposit the Grant Proceeds in escrow for the purchase of the Property, which shall also be the escrow for the Grant, with instructions that the Grant Proceeds shall be used solely for the purchase of the Property and if Grantee fails to purchase the Property on or before the date scheduled for close of the Escrow, the Grant Proceeds shall be returned to Grantor immediately.
3. Evans Property Management, Inc., 1000 Broadway, Suite 300, Oakland, California 94607 is approved by the Grantor as "Property Manager" for the Property and Project.

3. **DEFINITIONS.** Terms not defined in Article I and II of this Grant Agreement shall have the definitions assigned in the OPA and the Regulatory Agreement. If a definition in Article I refers to an Exhibit that is an attached document form, the attached document is a true and correct copy of the document referenced. As used in this Grant Agreement, the following terms shall have the following meanings:

3.1. "Budget" is the budget approved by Grantor for the Project.

3.2. "Close of Escrow" means the fulfillment of the Escrow terms and conclusion of the Escrow, including, without limitation, the execution of unexecuted documents, the recordation of documents specified for recording, the issuance of title insurance policies, the payment of fees and the delivery of funds and documents as directed in the escrow instructions for the Escrow. The Close of Escrow shall occur on the Closing Date.

3.3. "Escrow" is the escrow with Title Company for the closing of the Grant.

3.4. "Escrow Instructions" means the Escrow Instructions for the Escrow signed by each of the parties to this Grant Agreement.

3.5. "Event of Default" is breach of or default in a party's obligations under this Grant Agreement, the Regulatory Agreement, or the OPA.

3.6. "Governmental Authority" means the United States of America, the State of California, the County of Sacramento, the City of Sacramento or any other political subdivision, agency, department, commission, board, bureau, or instrumentality of any of them.

## Conditional Grant Agreement

3.7. "Governmental Requirement" means any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a Governmental Authority

3.8. "Grant" is the Grant from Grantor to Grantee made pursuant to this Grant Agreement.

3.9. "Grant Agreement" means this Grant Agreement including all Exhibits attached to this Grant Agreement (which are incorporated in this Grant Agreement by this reference) and the Grant Documents which are not otherwise included in this definition.

3.10. "Grant Proceeds" means funds disbursed by Grantor on account of the Grant and pursuant to this Grant Agreement.

3.11. "Potential Default" means an event that would constitute an Event of Default but for any requirement of notice to be given or period of grace or time to elapse.

3.12. "Title Policy" means the title insurance policies to be issued in connection with this Grant, as further defined in the Escrow Instructions.

4. **GRANTEE'S REPRESENTATIONS AND WARRANTIES.** As a material inducement to Grantor to enter into this Grant Agreement and to make the Grant to Grantee, Grantee unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to Grantor, as of the Close of Escrow, as follows:

4.1. **LEGAL ORGANIZATION.** Grantee is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

4.2. **GRANTEE'S POWERS.** Grantee has full authority to execute this Grant Agreement and the Regulatory Agreement, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

4.3. **BINDING OBLIGATION.** This Grant Agreement constitutes a legal and binding obligation of, and is valid and enforceable against Grantee, in accordance with their respective terms.

4.4. **LITIGATION.** There are no actions, suits, or proceedings pending or, to the best knowledge of Grantee, threatened against or affecting Grantee, the Property, or any part of it, or involving the validity or enforceability of the Regulatory Agreement, the priority of the lien, or the validity or enforceability of any of the other Grant Documents, at law or in equity, or before or by any Governmental Authority. Grantee is not in default with respect to any order, writ, injunction, decree, or demand of any court or other Governmental Authority.

4.5. **NO OTHER BREACH.** The consummation of the transactions covered by this Grant Agreement and the payment and performance of all of the obligations in the Grant Documents, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, Grant or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Grantee or any of its general partners is a party or by which it or they or the Property may be bound or affected.

4.6. **NO DEFAULT.** There is no Event of Default or Potential Default on the part of Grantee.

4.7. **TITLE TO PROPERTY.** Grantee, as of the close of escrow, is the sole legal and beneficial owner of the Property, which is free of all claims, liens, and encumbrances other than those shown in the Title Policy.

4.8. **USE OF PROCEEDS.** All Grant Proceeds will be disbursed as provided in this Grant Agreement and used only for the purposes specified in the Grant.

4.9. **TAXES PAID.** Grantee has filed all required Federal, State, County, and City tax returns and has paid all taxes due and owing. Grantee knows of no basis for additional assessments with respect to any taxes, other than the lien of taxes not yet due.

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4.10. **ACCURACY.** All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to Grantor concerning the Grant or required by this Grant Agreement or any of the other Grant Documents are accurate, correct, and sufficiently complete to give Grantor true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

5. **GRANT.** Grantor agrees to deliver to Grantee, and Grantee agrees to accept from Grantor, an amount not to exceed the Grant Amount, to acquire the Property, subject to the terms, conditions, representations, warranties, and covenants in this Grant Agreement.

5.1. **PRINCIPAL AMOUNT.** The principal amount of the Grant shall be the actual disbursements of the Grantor to or on account of Grantee, not to exceed the Grant Amount.

5.2. **USE OF GRANT FUNDS.** Grant funds shall be used solely for actual costs to purchase the Property and related costs.

5.3. **GRANT TERMS.** The Grant is made pursuant to the Grant Program and is subject to the laws, rules and regulations of the Grant Program. Grantor agrees to disburse the Grant Proceeds in the manner and subject to the limitations stated in this Grant Agreement.

5.4. **REGULATORY AGREEMENT.** The Regulatory Agreement imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the Grant. Grantee shall execute the Regulatory Agreement prior to Close of Escrow and deliver it to Escrow for recordation as a condition precedent to the Grant disbursement.

5.5. **ESCROW.** The parties shall open the Escrow promptly after the Effective Date. Escrow shall close as provided in the Escrow Instructions on or before the Closing Date.

5.6. **COMMISSIONS.** Grantor is not responsible, by this Grant Agreement or otherwise, to pay commissions in relation to this transaction.

6. **PERFORMANCE CONDITIONS.** The following are conditions precedent to performance under this Grant Agreement:

6.1. **CONDITION OF TITLE.** Grantor shall cause Escrow Agent to issue to Grantee (with a copy to Grantor) the Preliminary Report, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. At Close of Escrow, Grantor's Regulatory Agreement shall be a valid lien against the Property securing the Grant and subject to no exceptions to title (of record or off record) other than the exceptions listed in the "Conditions of Title" in the Escrow Instructions.

6.2. **CONDITIONS TO GRANTOR'S PERFORMANCE.** Grantor's obligation to perform under this Grant Agreement is subject to all of the following conditions: (a) Grantee has performed all of its obligations then to be performed pursuant to this Grant Agreement (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Grantee's representations and warranties in this Grant Agreement are true and correct as of the Close of Escrow, (d) the Agreement continues to be in full force and effect, no default on the part of Grantee has occurred under the Grant Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Grantee under the Grant Agreement; and (e) Grantor has approved the Approval Documents.

6.3. **CONDITIONS TO GRANTEE'S PERFORMANCE.** Grantee's obligation to perform under this Grant Agreement is subject to satisfaction of all of the following conditions: (a) Grantor has performed all of its obligations then to be performed pursuant to this Grant Agreement; (b) the closing conditions as defined in the Escrow Instructions have been fulfilled as of Close of Escrow; (c) Grantee has met the Conditions to Close of Escrow, (d) Grantor's representations and warranties in this Grant Agreement are correct as of the date of this Grant Agreement and as of the Close of Escrow; and (e) the Grant Agreement continues to be in full force and effect, no default on the part of Grantor has occurred under the Grant Agreement, and no event has occurred that, with the giving of notice or the passage of time, will constitute a default by Grantor under the Grant Agreement.

7. **CONDITIONS PRECEDENT TO GRANT DISBURSEMENT.** The obligation of Grantor to make any disbursements under this Grant Agreement shall be subject to the following conditions precedent:

## Conditional Grant Agreement

7.1. The representations and warranties in the Grant Documents are correct as of the date of the requested disbursement.

7.2. Grantee has submitted to Grantor all documents, records, statements, certificates, reports, and other materials and information then required to be submitted to Grantor for approval under this Grant Agreement.

7.3. All conditions to Close of Escrow have been satisfied in accordance with the Grant Agreement.

7.4. Grantor has provided proof of all insurance required by the Grant Documents.

7.5. To the best of Grantee's knowledge, the use and occupancy of the Property comply in full with all Governmental Requirements.

8. **MAKING DISBURSEMENT.** Grantor shall deposit the Grant Amount into escrow at least two (2) business days prior to the actual date for close of the Escrow, subject to fulfillment of the stated conditions precedent.

9. **PROPERTY MANAGEMENT COMPANY.** For the life of the Grant, Grantee shall obtain and maintain a property management agreement with a top quality and duly accredited real estate property management company for the management of the Property, and shall assure the compliance of the property management with such agreement. Grantor shall not disburse any funds under this Grant Agreement unless and until it has reviewed and approved the agreement as adequate and the property management company as top quality and duly accredited. Agency shall have the right to review and approve any proposed changes to scope of said agreement and to changes in the real estate property management company, prior to Grantee's making such changes. Any such changes made without Agency approval shall be a default of the Grant. The Agency has approved the Property Manager as a qualified property management company for the Project.

10. **EVENTS OF DEFAULT.** At the option of Grantor, each of the following events will constitute an "Event of Default", subject to applicable cure rights, if any:

10.1.1. Default under the Regulatory Agreement.

10.1.2. Grantee's failure to comply with any Governmental Requirements.

10.1.3. Grantee's failure to keep in full force any permit, license, consent, or approval with respect to the Project.

10.1.4. The lien, attachment, levy, execution, or other judicial seizure of any portion of the Property, or any substantial portion of the other assets of Grantee, that is not released, expunged, bonded, discharged, or dismissed within thirty (30) days after the attachment, levy, execution, or seizure.

10.1.5. Making of any unauthorized payment from Grant Proceeds or other funds of Grantor.

## 11. REMEDIES

11.1.1. **OPTION TO ACT.** On the occurrence of any Event of Default, in addition to its other rights in this Grant Agreement or in any of the other Grant Documents, at law, or in equity, Grantor may, without prior demand, exercise any one or more of the following rights and remedies:

11.1.2. Declare the repayment of the Grant immediately due.

11.1.3. Make disbursement after the happening of any one or more of the Events of Default, without waiving its right to demand repayment of the Grant and all other sums that may then be owing to Grantor or any other rights or remedies, regardless of Grantor's previous exercise of any rights and remedies.

11.1.4. Proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, remain entitled to exercise all other rights and remedies described in this Grant Agreement or the Regulatory Agreement.

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11.1.5. Recover its funds expended in exercising or enforcing any of its rights or remedies under any of the Grant Documents, together with interest at the maximum amount allowed by law from the date the funds were spent until repaid.

11.2. **RIGHTS CUMULATIVE, NO WAIVER.** All of Grantor's rights and remedies provided in this Grant Agreement or in any of the other Grant Documents are cumulative and may be exercised by Grantor at any time. Grantor's exercise of any right or remedy will not constitute a cure of any Event of Default unless all sums then due to Grantor under the Grant Documents are repaid and Grantee has cured all other Events of Default. No waiver will be implied from Grantor's failure to take, or delay in taking, any action concerning any Event of Default or from any previous waiver of any similar or unrelated Event of Default. Any waiver under any of the Grant Documents must be in writing and will be limited to its specific terms.

11.3. **DISCLAIMER.** Whether Grantor elects to employ any of the remedies available to it in connection with an Event of Default, Grantor will not be liable to perform any obligation of Grantee.

11.4. **INSURANCE.** With regard to this Grant Agreement, the Grantee shall obtain and maintain, and as applicable cause others to obtain and maintain, until the Satisfaction of Conditions, all insurance required under the OPA.

## 12. MISCELLANEOUS

12.1. **NATURE OF REPRESENTATIONS AND WARRANTIES.** Grantee certifies to Grantor that all representations and warranties made in this Grant Agreement and all other Grant Documents are true and correct in all material respects and do not contain any untrue statement of a material fact or omit any material fact necessary to make the representations and warranties not misleading. All representations and warranties will remain true and correct in all material respects and will survive so long as any of Grantee's obligations have not been satisfied or the Grant or any part of it remains outstanding, and for any applicable statute of limitations period. Each request by Grantee for a disbursement will constitute an affirmation that all representations and warranties remain true and correct as of the date of that request. Each representation and warranty made in this Grant Agreement, in any other Grant Documents, and in any other document delivered to Grantor by Grantee, will be deemed to have been relied on by Grantor, regardless of any investigation, inspection, or inquiry made by Grantor or any related disbursement made by Grantor. The representations and warranties that are made to the best knowledge of Grantee have been made after diligent inquiry calculated to ascertain the truth and accuracy of the subject matter of each representation and warranty.

12.2. **NO WAIVER.** No failure or delay on the part of Grantor in exercising any right or remedy under the Grant Documents will operate as a waiver nor will Grantor be estopped to exercise any right or remedy at any future time because of any such failure or delay. No express waiver will affect any matter other than the matter expressly waived and that waiver will be operative only for the time and to the extent stated. Waivers of any covenant, term, or condition in this Grant Agreement will not be construed to waive any subsequent breach of the same covenant, term, or condition.

12.3. **NO THIRD PARTIES BENEFITED.** This Grant Agreement is made and entered into for the sole protection and benefit of the parties and their permitted successors and assigns, and no other person will have any right of action or any rights to Grant funds.

12.4. **NOTICES.** Grantee irrevocably appoints Grantor as its agent (the agency being coupled with an interest) to file for record any notices of completion, cessation of labor, or any other notice that Grantor deems necessary or desirable to protect its interests under this Grant Agreement or under the Grant Documents.

12.4.1. **METHOD.** All notices to be given under this Grant Agreement shall be in writing and sent to the addresses stated above for the respective recipient by one or more 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

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

12.4.3. Notices, including requests for approval, requiring action in less than thirty (30) days may only be given by the foregoing overnight courier or hand delivery method, and shall include the following language on its face: "URGENT – TIME SENSITIVE – IMMEDIATE ACTION REQUIRED" and marked for delivery to Portfolio Management. Such notice shall include the time allowed under this Grant Agreement for action.

12.5. **ACTIONS.** Grantor will have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties, or the disbursement of any funds under this Grant Agreement. In connection with that, Grantor may incur and pay costs and expenses, including, without limitation, reasonable attorney fees. Grantee agrees to pay to Grantor on demand all these expenses. This Section does not apply to actions or proceedings between the parties.

12.6. **ASSIGNMENT.** The terms of this Grant Agreement will be binding on and inure to the benefit of successors and assigns of the parties. However, Grantee shall not assign this Grant Agreement or any interest it may have in the monies due or, except as otherwise provided, convey or encumber the Property without the prior written consent of Grantor to a party other than a general partner or managing member of Grantee or a single asset entity wholly owned and controlled by Grantee or a general partner or managing member of Grantee.

12.7. **NONLIABILITY FOR NEGLIGENCE, LOSS, OR DAMAGE.** The relationship between Grantee and Grantor is, and will at all times remain, solely that of Grantee and Grantor, and Grantor neither undertakes nor assumes any responsibility for or duty to Grantee, except as to matters which are within the intent and purpose of the Grant.

12.8. **CONTROLLING LAW; VENUE.** The Grant will be governed by and construed in accordance with California law. The venue for any legal action or proceeding will be in the County of Sacramento, California.

12.9. **CONSENTS AND APPROVALS.** All consents and approvals by Grantor required or permitted by any provision of this Grant Agreement will be in writing. Grantor's consent to or approval of any act by Grantee requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

12.10. **SURVIVAL OF WARRANTIES AND COVENANTS.** The warranties, representations, conditions, covenants, and agreements in this Grant Agreement and in the other Grant Documents will survive the making of the Grant and the execution and delivery of the Note and will continue in full force. Nothing in this Section is intended to limit any other provision of the Grant Documents that by their stated terms survive the repayment of the Indebtedness or the termination of any Grant Document.

12.11. **AMENDMENT.** The Grant Documents and the terms of each of them may not be modified, waived, discharged, or terminated except by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge, or termination is asserted.

12.12. **TERMINATION.** Except as otherwise provided in the Grant, all rights and obligations under this Grant Agreement will terminate except as to any accrued obligations effective on Satisfaction of Condition.

12.13. **COUNTERPARTS.** The Grant Documents may be executed in any number of counterparts and by different parties in separate counterparts, each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

12.14. **SEVERABILITY.** If any term, provision, covenant, or condition or any application is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all terms, provisions, covenants, and conditions and all applications not held invalid, void, or unenforceable will continue in full force and will in no way be affected, impaired, or invalidated.

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12.15. CAPTIONS. All Article and Section headings in the Grant Documents are inserted for convenience of reference only and do not constitute a part of the Grant Documents for any other purpose.

12.16. INDEMNITY Grantee agrees to defend, indemnify, and hold Grantor harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney fees that Grantor may reasonably incur as a direct or indirect consequence of the making of the Grant, Grantee's failure to perform any obligations as and when required by this Grant Agreement or any of the other Grant Documents, the failure at any time of any of Grantee's representations or warranties to be true and correct, or any act or omission by Grantee, any contractor, subcontractor, engineer, architect, or other Person with respect to the Property, the Project, or any portion of them.

12.17. FURTHER ASSURANCES. At Grantor's request and at Grantee's expense, Grantee will execute, acknowledge, and deliver all other instruments and perform all other acts necessary, desirable, or proper to carry out the purposes of the Grant or to perfect and preserve any liens created by the Grant.

12.18. INTEGRATION AND INTERPRETATION. The Grant Documents contain or expressly incorporate by reference the entire agreement between Grantor and Grantee with respect to the covered matters and supersede all prior negotiations. Any reference to the Property or Project in any of the Grant Documents will include all or any portion of them. Any reference to the Grant Documents themselves in any of the Grant Documents will include all amendments, renewals, or extensions approved by Grantor.

12.19. NUMBER, IDENTITY AND GENDER. When the context and construction so require, all words used in the singular will be deemed to have been used in the plural and vice versa. Person means any natural person, corporation, firm, partnership, association, trust, government, governmental agency, or any other entity, whether acting in an individual, fiduciary, or other capacity. When the context and construction so require, all words which indicate a gender will be deemed to have been used to indicate the gender as indicated by the context.

THE PARTIES HAVE EXECUTED THIS GRANT AGREEMENT in Sacramento, California as of the Effective Date.

GRANTEE :  
THE TRINITY HOUSING FOUNDATION

By: \_\_\_\_\_  
William M. Leone  
Executive Director

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Grantee Counsel

GRANTOR:  
REDEVELOPMENT AGENCY OF THE CITY OF  
SACRAMENTO

By: \_\_\_\_\_  
Anne M. Moore, Executive Director

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Grantor Counsel