RESOLUTION NO. 2007-035

Adopted by the Redevelopment Agency
of the City of Sacramento

June 26, 2007

THE HOTEL BERRY: APPROVAL OF OWNER PARTICIPATION AGREEMENT CONTAINING TERMS AND CONDITIONS FOR A GRANT OF UP TO $5,000,000, AND RELATED DOCUMENTS WITH THE TRINITY HOUSING FOUNDATION, A CALIFORNIA NON-PROFIT CORPORATION; RELATED BUDGET AMENDMENT; APPROVAL OF REPLACEMENT HOUSING PLAN

BACKGROUND

A. The Trinity Housing Foundation has applied for under the Agency's Request for Applications for Efficiency Apartment Housing to assist its acquisition of the Hotel Berry, an existing downtown residential hotel.

B. It is anticipated that The Trinity Housing Foundation will form a Limited Partnership with a qualified development entity to undertake a substantial rehabilitation project, and re-operate the Hotel Berry as supportive housing.

C. In 1994 the Redevelopment Agency extended a commercial loan (Loan Number 87403) in the amount of $100,000 to assist in rehabilitation of first floor commercial space. The borrowers have had difficulty making payments on the loan.

D. Suspension of payments and interest accrual on Loan Number 87403, and forgiveness of that loan upon sale of the Hotel Berry to the Trinity Housing Foundation will facilitate the substantial rehabilitation and re-operation of the Hotel Berry as supportive housing.

E. To compensate for costs incurred to secure the property, The Trinity Housing Foundation has requested an advance of not more than $284,000 prior to the closing to be used as extension payments for the purchase option.

F. It is anticipated that the eventual substantial rehabilitation project will result in the loss of 15 low-income units at the hotel, necessitating the approval of a Replacement Housing Plan as required under State Redevelopment Law.

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

Section 1. It is determined that the action proposed by this resolution is the operation, repair, and minor alteration of an existing facility with negligible expansion beyond the current use, and is therefore exempt from environmental review under the California Environmental Quality Act Guidelines Section 15301. All environmental reviews pursuant to National Environmental Policy Act (NEPA) are complete per HUD regulations.

Section 2. The Agency Budget is amended to transfer $5,000,000 from the Merged Downtown ("TI Funds") and to the Hotel Berry Project ("Project").

Section 3. The Owner Participation Agreement, attached to and incorporated in this resolution by this reference, for financing the Hotel Berry project is approved and the Agency is authorized to execute and transmit the Agreement to The Trinity Housing Foundation.

Section 4. Subject to the execution of the Owner Participation Agreement, the Agency is authorized to suspend payments and interest accrual on loan number 87403 until December 31, 2007, to implement the Owner Participation Agreement.

Section 5. Subject to the satisfaction of conditions in the Owner Participation Agreement, the Agency is authorized to prepare and execute all other documents reasonably required for making the $5,000,000 grant to The Trinity Housing Foundation to fund the acquisition of the Hotel Berry.

Section 6. On condition that the Hotel Berry transfers ownership to The Trinity Housing Foundation prior to December 31, 2007 and the Trinity Housing Foundation, or its affiliated assignee approve by the Agency's Executive Director, enter into an Owner Participation Agreement for the rehabilitation and operation of the property as an affordable supportive housing project, the Agency is authorized to forgive loan number 87403.5.

Section 7._ After due consideration of the facts presented, the Replacement Plan (Exhibit A) for the anticipated loss of 15 single room occupancy units at the Hotel Berry is approved.

Section 8. In consideration of the nonprofit ownership, waiver of Payment In Lieu of Taxes is approved for the Hotel Berry property, subject to development and operation of the project in accordance with the Owner Participation Agreement.

Section 9. The Agency is authorized to enter into and execute other documents and perform other actions necessary to fulfill the intent of the staff report that accompanies this resolution, in accordance with their respective terms, all as approved by Agency Counsel.

Section 10. The Agency is authorized to make technical amendments to said agreements and documents with approval of Agency Counsel, which amendments are in accordance with the Owner Participation Agreement, with Agency policy, with this resolution, with good legal practices for making of such a grant.

Table of Contents:

Exhibit A – Replacement Housing Plan
Exhibit B – Owner Participation Agreement

Adopted by the City of Sacramento Redevelopment Agency on June 26, 2007 by the following vote:

Ayes: Members Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Chair Fargo.

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo, Chair

Attest:

Shirley Concolino, Secretary

Exhibit A

Hotel Berry 729 L Street

Replacement Housing Plan for Low Income Dwelling Units

Description of Property

The Hotel Berry is one of 10 downtown residential hotels that houses low- and very low-income tenants. The hotel contains 115 residential units with 18 of those currently regulated at very low-income, 73 regulated at low-income, and 24 unregulated.

The Trinity Housing Foundation, an affordable housing non-profit organization, has proposed to acquire the property. It is anticipated that the Foundation will enter a development agreement with the AF Evans Company to substantially rehabilitate the property using private debt and nine percent tax credit equity. The proposed project would reduce the number of residential units to 100, but all units would be regulated at very low income. Therefore, the project creates nine additional affordable units and deepens and extends the affordability of all units. However, the loss of 15 market rate units requires a replacement housing plan under redevelopment law.

The project presents a significant opportunity to improve the redevelopment area by substantially rehabilitating a deficient building, improving occupancy levels, and adding services to address the needs of the tenant population.

Project Status

The Foundation has the property under option through October 31, 2007 and is currently seeking acquisition financing from the Redevelopment Agency of the City of Sacramento.

Responsibility of Agency

California statutes require redevelopment agencies to replace low and moderate-income housing lost to residential use if that action involved either a development agreement or financing by the Agency. The specific provision of the California Health and Safety Code (Sec. 33413) is as follows:

> "Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as a part of a redevelopment project which is subject to a written agreement with the Agency or where financial assistance has been provided by the Agency, the Agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or

constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the Agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units."

Replacement Housing Needs

State Guidelines

Because the acquisition and rehabilitation of the Hotel Berry includes the use of local redevelopment tax increment funds, the project is subject to state replacement housing law, California Health and Safety Code 33413. Under state law, if a unit was occupied by a very low or low income family (regardless of actual housing costs), and taken off line through demolition or other actions, that unit must be replaced at the same income level, and must be regulated at that affordability level for the longest feasible time as determined by the Agency but for not less than the period of the land use controls established in the Redevelopment Plan. State law requires that replacement units be created within four years of removal or destruction.

The Sacramento Housing and Redevelopment Agency will replace the 15 residential units located at Hotel Berry within the required four-year time period. All 15 units are zero bedrooms, currently not regulated for affordability, and rented by the day, week, or month. Based on the monthly rent charge of $700 for these units, they are affordable to individuals at 60 percent of area median income. Therefore the replacement units will be affordable to persons in the same or a lower income category.

The affordability level, type and number of units/bedrooms required to be replaced from the Hotel Berry are outlined below:

Address	Owner Occupied	Rental	Bedrooms	Units	Very Low Income	Low Income
729 L Street	no	yes	0	15	0	15
		Totals	**0**	**15**	**0**	**15**

Replacement Dwelling Units

The Agency will replace the 15 zero bedroom units at the Berry Hotel with 15 one bedroom units at the Globe Mills Apartment project. Each unit will be replaced at a level affordable to very low-income households. These apartments will be located at 1131 C Street in Council District 1. The project is currently under construction and is anticipated to receive a certificate of occupancy in early 2008. It includes 79 one-bedroom units affordable to very low income households.

The replacement units are located in the Alkali Flat Project Area, within one mile of the Hotel Berry. All replacement units have recorded affordability restrictions that will run for not less than 55 years.

Schedule for Demolition

The Hotel Berry is anticipated to begin rehabilitation by Spring 2008. The subject 15 units will be effectively lost at the beginning of rehabilitation.

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, Suite 21, Walnut Creek, California 94598	
"Project Area"	Merged Downtown	
"Title Company"	First American Title Company	
"Escrow Number"		
"Closing Date"		
"Purchase Price"	Purchase Price for the covenants conditions and restrictions in the amount of :	Five Million Dollars ($5,000,000.00)
"Special Terms"	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.	

	2. Agency Funding shall be used solely for Property acquisition and costs related to such acquisition and to repairs and maintenance necessary to restore the Property to current code requirements, as applicable. 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. 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.

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. Owner is 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:

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.** During the period of construction, the Owner shall submit to the Agency a written report of the operations of the Project as and when reasonably requested by the Agency, but not more often than once each month.

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

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 approved by Agency Counsel). Such insurance shall have limits of liability which are not less than $1,000,000, each 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 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. 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 Disposition and Development OPA dated _____ 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 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. <u>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.</u>

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 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