

NO FEE DOCUMENT:

Entitled to free recording
Per Government Code 6103.

WHEN RECORDED, RETURN TO:

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
C/O DOWNTOWN DEVELOPMENT GROUP
1030 15th Street, 2nd Floor
Sacramento, CA 95814
Attn: Laura Sainz

WITH A COPY TO:

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
630 "I" Street
Sacramento, CA 95814
Attn: Legal Department

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

PROJECT NAME:	Ebner Empire Redevelopment Project
PROJECT ADDRESS:	116 & 118 K Street, Sacramento, California 95814

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

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

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

2.**DEFINITIONS.** The capitalized terms in this Regulatory Agreement shall have the meanings assigned below. Terms being defined are indicated by quotation marks. The Agency is providing the Agency Funding pursuant to the terms and conditions of the Funding Agreement.

TERM	DEFINITION
"Effective Date"	This Regulatory Agreement shall be effective as of the date it is recorded, which shall be the same date as the recording of the Disposition and Development Agreement between Agency and Developer.
"Agency"	Redevelopment Agency of the City of Sacramento - Downtown Development Group, a public body, corporate and politic.
"Owner" and "Developer"	The Scurfield Company/Carson Development
"Agency Address"	1030 15 th Street, 2 nd floor, Sacramento, California 95814, Attention: Laura Sainz
"Owner Address"	1720 3 rd Street, Suite 202, Sacramento, CA 95816
"Jurisdiction"	City of Sacramento
"Property"	That certain real property which is subject to this Regulatory Agreement as further described in the legal description, attached as Exhibit 1 – Legal Description of the Property.

“Funding Agreement”	This Regulatory Agreement is subject to a Disposition and Development Agreement effective as of January 5, 2006, which is considered to be the Funding Agreement (a term of convenience) for purposes of this Regulatory Agreement.
“Agency Funding Amount”	\$3,350,000 (Three Million Three Hundred and Fifty Thousand Dollars. Additionally, the Agency is writing down the land to be conveyed to Owner.
“Funding Requirements”	In part consideration of the conveyance of Property from the Agency to Developer/Owner for One Dollar, the Developer has agreed to restrict the use and operation of the Property pursuant to the covenants, conditions and restrictions (“CC&Rs”) contained in this Regulatory Agreement.
“Term”	The CC&Rs pertaining to the ground floor destination-type restaurant or other uses as approved by the City of Sacramento Economic Development Director or his/her designee shall remain in effect for a period of ten (10) years. The CC&Rs regarding the covenants in Section 2, below, shall remain in effect for a period of thirty (30) years.
“Special Provisions”	<p>1. Developer will obtain ground-floor retail tenants that meet the reasonable approval of the City’s Economic Development Director, or his/her designee. Agency’s intent in obtaining the covenant is to assure that the Project contains on the ground floor a restaurant, high-end retail, or such other uses that the Agency reasonably considers to have similar redevelopment and economic benefits for the Project Area.</p> <p>2. For the term of the Merged Downtown Redevelopment Project Area Plan, as that plan may be amended from time to time, all tenants of the ground floor shall be subject to the City of Sacramento’s Economic Development Director’s, or his/her designee, reasonable approval, with the same requirements as the original approval in subsection 1 of these Special Provisions.</p> <p>3. Owner must maintain, for the life of the Merged Downtown Redevelopment Project Area Plan, as it may be amended from time to time, the proposed uses for the Property, as follows: ground-floor retail, second and third floor uses consistent with zoning and the Merged Downtown Sacramento Redevelopment Plan.</p>
“Approved Use”	<p>Owner shall assure that the property is used in conformance with the Merged Downtown Sacramento Redevelopment Plan and only for the following Approved Uses:</p> <p>First Floor: restaurant, retail, in accordance with the Special Provisions, above. Second Floor: Any uses consistent with any plans and zoning of the City of Sacramento.</p>
“Disapproved Uses”	<p>Owner shall assure that the property is not used, in whole or in part, for any of the following Disapproved Uses:</p> <p>Establishment deriving more than five percent (5%) of its gross revenues from the sale of bulk candy; establishment deriving more than five percent (5%) of its gross revenues from the sale of adult -oriented materials, as for example adult videos and sexual devices, whether for sale or rent or for use offsite or onsite; a tattoo parlor; veterinary office or kennels; mortuary or funerary supplies business; arcade for video games or other such gaming activities, except as incidental to a permitted activity; bowling alley; manufacturing facility; facility for repair of any appliances, vehicles or other products; vehicle sales, parts supply or service business; service station for the sale of oil, gasoline and vehicle-related products; facility using, storing, manufacturing or treating hazardous materials; facility for public storage or for warehousing; facility for the housing of passive electronic components such as digital switching units; and establishments creating nuisances or other activities that unreasonably intrude on the peaceful enjoyment of their property of nearby tenants and property owners, including without limitation strong odors, loud noises, bright or flashing lights, loiterers, trash and garbage, and unhealthful or dangerous situations and any uses prohibited by the land use regulations of the City of Sacramento.</p>

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

OWNER : THE SCURFIELD COMPANY/CARSON DEVELOPMENT

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By: _____
Johan Otto, Member

By: _____
Dave Scurfield, Member

By: _____
Ray Kerridge, Interim City Manager, as Designated Signatory

Date: _____

Date: _____

Approved as to form: _____
Developer Counsel

Approved as to form: _____
Agency Counsel

Regulatory Agreement - Article II General Provisions

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

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

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

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

b. Owner shall assure full compliance with the Special Provisions.

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

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

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

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

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

5. **SUPERSEDING EXISTING COVENANTS, CONDITIONS, & RESTRICTIONS.** This Regulatory Agreement is in addition to and does not supercede existing conditions, covenants and restrictions that have been previously recorded by, or on behalf of, the Agency against the Property. Should there be any conflict between these and previously recorded conditions, covenants and restrictions, this Regulatory Agreement shall take precedence.

6. **TERM.** The term of this Regulatory Agreement shall commence on the Effective Date and continue until the terms of all of the covenants, including without limitation, the terms stated in the Funding Requirements, have expired or otherwise been terminated.

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

8. **AUDIT AND INSPECTION.** The Property and all related equipment, buildings, plans, offices, books, contracts, records, documents and other related items shall at all times be maintained in reasonable condition for audit and shall be subject to examination by the Agency or its agents during business hours, as reasonably necessary to carry out the terms of this Regulatory Agreement. The books and accounts of the operations of the Property and of the Property Owner shall be kept in accordance with generally accepted accounting principles.

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

10. **CHANGES WITHOUT CONSENT OF TENANTS, LESSEES, OR OTHERS.** Only Agency and its successors and assigns, and Owner and its successors and assigns (subject to the reasonable approval of Owner's lender) shall have the right to consent

and agree to changes in, or to eliminate in whole or in part, any of the covenants or restrictions contained in this Agreement. Such changes or termination shall not require the consent of any easement holder, licensee, other mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Property.

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

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

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

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

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

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

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

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

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

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of California.

EXHIBIT "1" – Legal Description of Property

That certain real property situated in the City of Sacramento, County of Sacramento, California, described as follows:

APN: 006-0072-028

All that property known as parcel 31-A, as recorded on metropolitan civil engineering company parcel map entitled: "East one-half block bounded by K, L, and 2nd Streets and the Embarcadero," in the City of Sacramento, California, recorded on the 25th day of February, 1972, I Book 4 of parcel maps at page no. 31a, excepting therefrom any portion of said parcel 31-A lying within the boundaries of parcel E-1, as shown on said parcel map.

APN: 006-0072-029

Parcel A, as shown on the parcel map of "parcel 33B and 33C, of the parcel map recorded in Book 4, of parcel maps, Map No. 31," recorded in Book 8 of parcel maps, at page 26, records of said county.

Excepting therefrom any portion thereof lying within the boundaries of parcel E-1 as shown on said parcel map.