



# REPORT TO THE REDEVELOPMENT AGENCY of the City of Sacramento

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

Staff Report  
March 7, 2006

Honorable Chair and Members of the Board:

**Subject:** 717 K Street Owner Participation Agreement and Lease

**Location/Council District:** 717 K Street, Council District 1

**Recommendation:**

Adopt Redevelopment Agency of the City of Sacramento (Agency) Resolution that: 1) authorizes the approval of an Owner Participation Agreement and related loans totaling \$594,000 with Sequoia Investments L.P. (Owner) for the structural upgrade of the Sun Building at 717 K Street; 2) allocates \$594,000 from the Merged Downtown 2005 Tax Allocation Bond Funds to the 717 K Street Structural Upgrade project; and 3) approves a lease with Sequoia Investment L.P. for a portion of Agency property adjacent to 717 K Street for outdoor restaurant seating.

**Contact:** Michelle Nelson, Senior Project Manager, 808-7064  
Leslie Fritzsche, Downtown Development Manager, 808-5450

**Presenters:** Michelle Nelson, Senior Project Manager

**Department:** Economic Development

**Division:** Downtown Development

**Organization No.:** 4451

**Summary:**

In an effort to revitalize the blighted area in and around the 700 Block of K Street, the Agency has partnered with the Owner of the historic Sun Building (Attachment 1), 717 K Street, to assist in the development of a new restaurant on the ground floor. The proposed assistance would be in the form of financing for the structural upgrade of the building and a lease for a portion of adjacent Agency property for use as an outdoor dining area.



**Committee/Commission Action:** Not Applicable.

**Background Information:**

Portions of the 700/800 blocks of K Street are identified in the Second Amendment to the Merged Downtown Sacramento Redevelopment Plan as having continuing blighting conditions characterized by vacant and deteriorating buildings, uneconomic land uses, and small and irregularly sized lots not suitable for modern use.

In October 2004, the JKL Corridor Charrette brought together over 250 community members to discuss the future of Downtown Sacramento, specifically the area between J and L streets and 7<sup>th</sup> and 12<sup>th</sup> streets. Community members participated in crafting an overall vision with specific development objectives for key catalyst sites, including the 700 block of K Street. For this block, the community members recommended, focusing on significant, regionally unique destination retail that takes advantage of the location adjacent to Downtown Plaza and maintains the historic scale and nature of the K Street storefronts.

717 K /Sun Building- Structural Improvements

The Sun Building is located adjacent to St. Rosa of Lima Park at 7<sup>th</sup> and K streets. Three years ago, the Owner purchased the building and invested approximately \$560,000 in improvements to the building. The upper floors are fully occupied with a variety of office tenants, including lobbyists, attorneys, and public interest groups. Currently, the ground floor contains a Starbucks and a long-vacant office space along the park side. The ground floor was previously occupied by Emma's Tacos on the K Street side.

The Owner has signed a 30-year lease with Harvest Ventures to operate a restaurant in the vacant ground floor space. Building code requirements for changing the ground-floor use from office space to a restaurant mandate significant structural improvement throughout the building, including:

- Basement/ground floor – two new transverse shear walls added for east-west seismic loads; new footings for the walls; re-routed sewer, sprinkler and other piping and electrical conduits;
- 2<sup>nd</sup> through 5<sup>th</sup> floors – anchoring of all walls to the existing floor framing on all four sides of the building at every floor;
- New masonry added to infill existing openings at the basement and first floor levels in order to provide additional lateral load resistance.

Unfortunately, the cost of the structural improvements is not fully captured in the project's rent structure. The project pro forma indicates the need for a subsidy to assist the Owner in realizing a financially viable project. The proposed subsidy for structural improvements to the building will be in the form of two loans: one is fully repaid to the Agency; the other loan is forgiven upon completion of the structural improvements. The loans (terms are outlined in the Financial Considerations Section of this report) and

other developer responsibilities are documented in the proposed 717 K Street Owner Participation Agreement (Exhibit A).

### 3 Monkeys Restaurant

The new 3 Monkeys Restaurant will occupy the entire ground floor, approximately 9,900 square feet, except for Starbucks. The design provides for approximately 230 indoor seats and 50 seats in the outdoor patio area. Access to the restaurant will be through a new main entrance on the 7<sup>th</sup> Street face of the building. The former entrance to Emma's Tacos on the K Street Mall will be utilized for take-out orders. An additional opening is being constructed on the 7<sup>th</sup> Street face of the building to provide for access to the outdoor dining area.

3 Monkeys will be a fine-dining, value-oriented restaurant that will offer both traditional western dishes and meals typical for the Pacific Rim. The operation will feature a full bar serving liquor, fine wines, and sake and will also include a sushi bar. The restaurant will be developed and operated by Harvest Ventures, a California corporation formed to develop and operate restaurants in the Northern California market. It is currently developing a 3.1-acre project in Auburn. The Chief Operations Officer is the founder of the "I Love Teriyaki" restaurant chain, and currently owns and operates Tokyo Dori, located in Rocklin. The entire management team has over 60 years of restaurant and business experience.

### Outdoor Dining Area Lease

In addition to the request for assistance for structural improvements, the Owner has requested use of a portion of the Agency's property immediately adjacent to the park-side of the building for the restaurant's outdoor dining area (Attachments 2 and 3).

The lease terms are outlined below and are fully documented in the proposed Public Access and Outdoor Restaurant Seating Lease Agreement (Exhibit B):

- 10-year initial term at \$1 per year with an option for an additional 10-year term at 50% of the restaurant per-square-foot lease rate.
- Signage and canopy approved by the Preservation Director
- Agency and Preservation Director review and approval of all outdoor furnishing, fixtures, signage and canopy.
- Cooperation with all activities and events at St. Rose of Lima Park.

This project is a significant addition to the 700 block of K Street. It will add a vibrant, active use to an underutilized ground-floor space in an area that is currently blighted. It will draw people from the Downtown Plaza and help to activate St. Rose of Lima Park during the spring and summer season. The restaurant will tentatively be open seven days a week from 11:00 a.m. to 10:00 p.m. Monday through Friday, and 3:00 p.m. to 10:00 p.m. on the weekend.

### **Financial Considerations:**

Funding for the project shall come from the 2005 Merged Downtown Tax Allocation Fund. The proposed \$594,000 assistance from the Agency is required to address the gap between construction costs and financial viability. The Owner's total cost to retrofit the building for the restaurant is \$1.7 million and includes the structural upgrade, the Owner's tenant improvements and other renovation costs. Harvest Ventures will invest an additional \$1.4 million into the tenant improvements and soft costs for the restaurant. The total project cost is \$3.1 million.

The Agency's participation is split into two loans. The first Agency loan (financed through tax-exempt funds) includes the following terms:

- Loan Amount up to \$320,000; payable upon submittal of paid invoices;
- Forgivable upon completion of structural improvements as evidenced by written acceptance from the Chief Building Official; and
- Loan funds shall be used for structural improvements to the building.

The second Agency loan (taxable funds) includes the following terms:

- Loan up to \$274,000, payable upon submittal of paid invoices;
- Loan funds shall be used for structural improvement to the building;
- 5-year deferral of principal and interest payments;
- 6% interest rate with full amount due in 10 years; and
- Entire loan balance paid if Owner sells or refinances the property before the maturity date.

The restaurant is projected to employ approximately 150 people and generate about \$4 million in taxable sales annually.

### **Environmental Considerations:**

The activities outlined in the Owner Participation Agreement and Lease Agreement have been analyzed in accordance with the California Environmental Quality Act (CEQA). The City's Historic Preservation Officer has found that the improvements are being done in compliance with the Secretary of the Interior Standards. As such, the improvements are exempt under the CEQA Guidelines Section 15331.

### **Policy Considerations:**

#### 2005 Downtown Sacramento Redevelopment Strategy

The structural upgrade of the Sun Building is consistent with the goals mentioned in the 2005 Downtown Sacramento Redevelopment Strategy including;

- 1) The strengthening of retail and other commercial functions in the downtown area by the installation of needed site improvements either inside or outside the Merged Project Area to stimulate new commercial expansion, employment and economic growth;

- 3) The establishment and implementation of performance criteria to assure high quality site design standards and environmental quality and other design elements, which provide unity and integrity to the entire Merged Downtown Project Area.

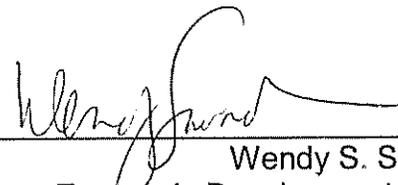
City of Sacramento Strategic Plan and Guiding Principles

Additionally, the 717 K Street structural upgrade project is consistent with the following goals identified in the 2005-2008 City of Sacramento Strategic Plan:

- 1) Improve and expand public safety
- 2) Achieve sustainability and livability; and
- 3) Expand economic development throughout the City

**M/WBE Considerations:**

Minority and Women's Business Enterprise requirements will be applied to all activities to the extent required by federal funding.

Respectfully submitted:   
 Wendy S. Saunders  
 Economic Development Director  
 on behalf of the Redevelopment Agency  
 of the City of Sacramento

Recommendation Approved:

  
 RAY KERRIDGE  
 City Manager

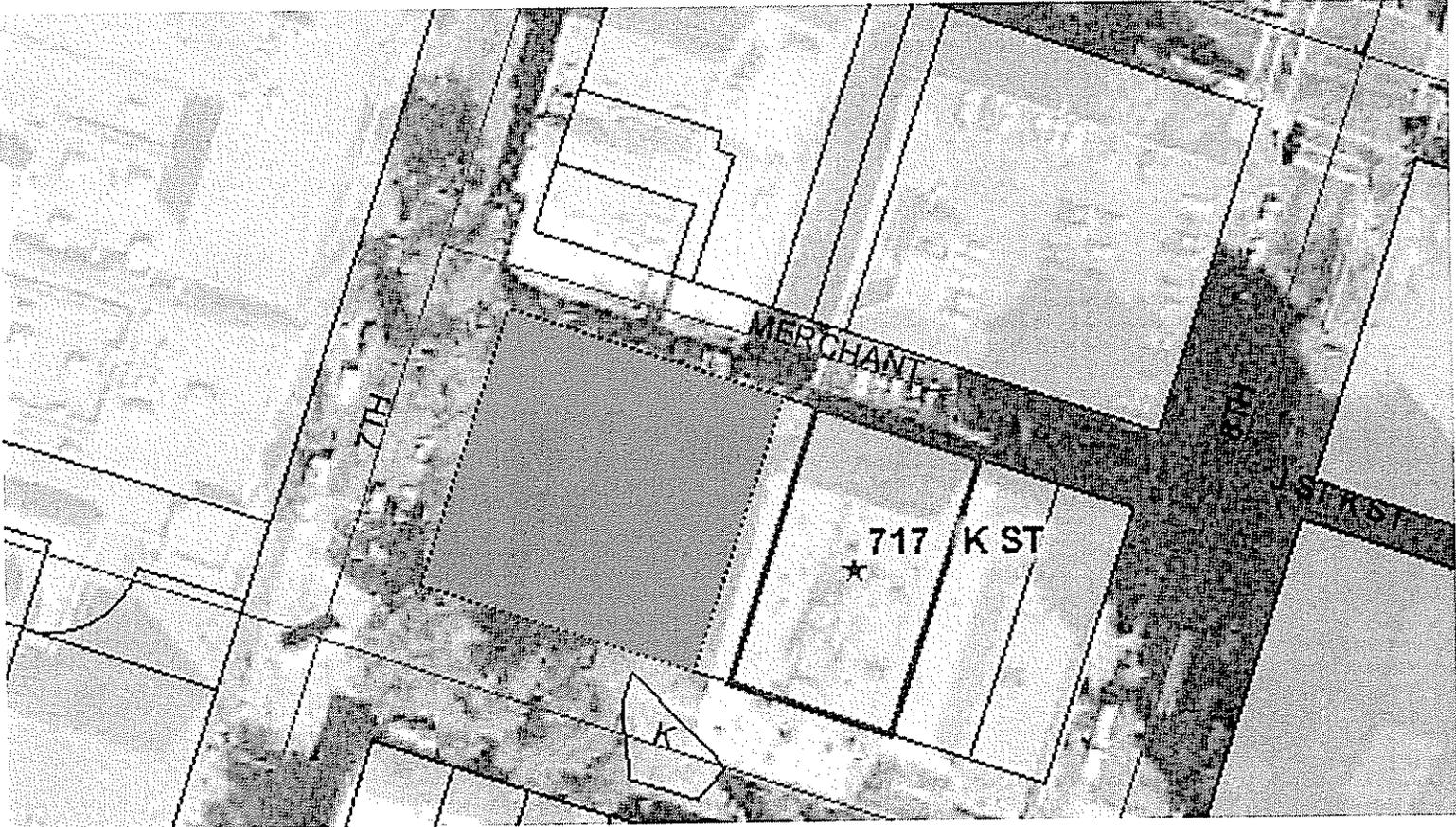
Table of Contents:

Pg	1-5	Report
Pg	6	Attachment 1: Sun Building
Pg	7	Attachment 2: Site Map
Pg	8	Attachment 3: Leased Area
Pg	9-10	Resolution
		Exhibit A: Owner Participation Agreement
		Exhibit B: Lease Agreement

Attachment 1

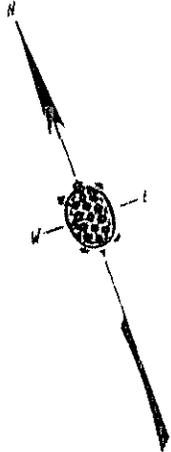
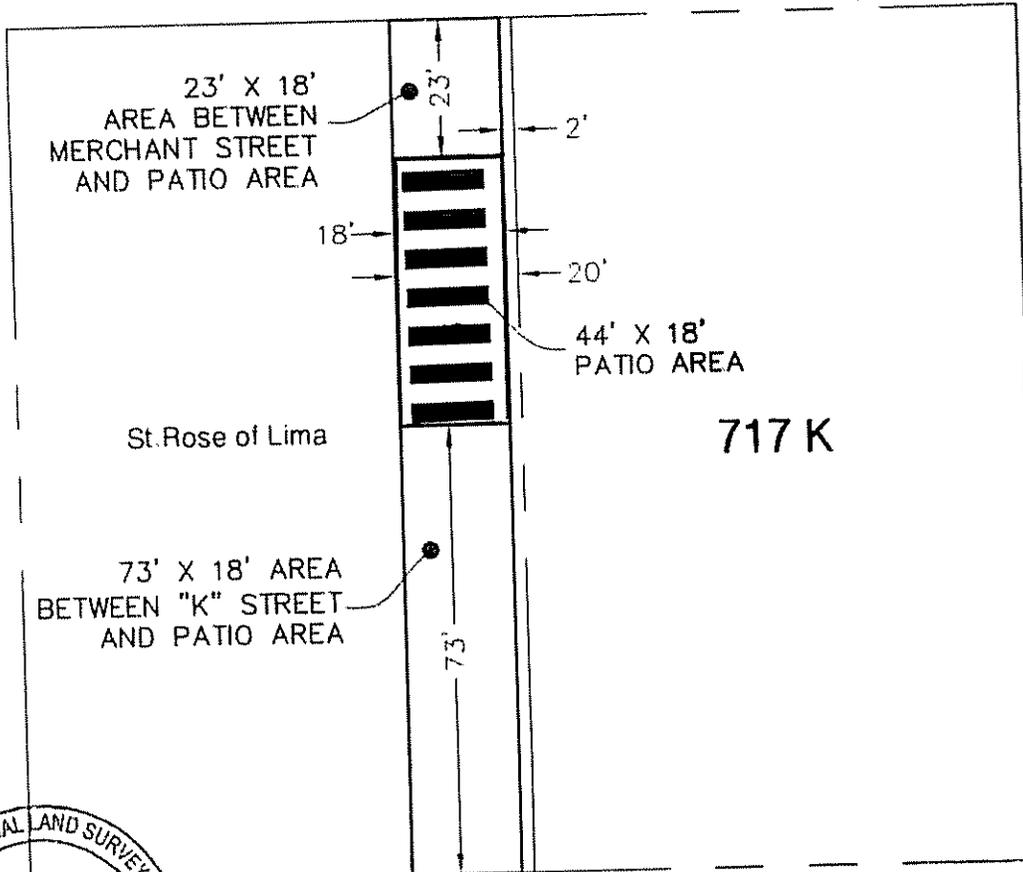
Sun Building / 717 K Street





Attachment 3  
Leased Area

**MERCHANT STREET**



*C. H. Wecker*

**K STREET**

Project Path: W:\AI\Projects\Sacramento\K St 717. Sac\  
Drawing Name: Lease Exhibit.dwg

SCALE: 1" = 30'

EXHIBIT FOR LEASE  
  
City of Sacramento,  
County of Sacramento, State of California

**WECKER  
SURVEYS**

1111 KENNEDY PLACE  
SUITE 4  
DAVIS, CA 95616  
530-792-7252  
FAX 530-792-7171

## **RESOLUTION NO.**

Adopted by the Redevelopment Agency of the City of Sacramento

### **717 K STREET OWNER PARTICIPATION AGREEMENT AND LEASE AGREEMENT**

#### **BACKGROUND**

- A. The Redevelopment Agency of the City of Sacramento ("Agency") has adopted the Merged Downtown Sacramento Redevelopment Project Area Redevelopment Plan ("Redevelopment Plan") and an Implementation Plan for the Merged Downtown Sacramento Redevelopment Project Area ("Project Area");
- B. The Agency and Sequoia Investments, L.P. ("Owner") desire to enter into an Owner Participation Agreement ("OPA"), which would provide Agency funds to assist in the construction of structural upgrades to the 717 K Street building, as required by the City's Building Department, for rehabilitation of the ground-floor space into a new restaurant;
- C. The Agency also desires to enter into a Public Access Lease ("Lease") with the Owner to allow the use of a portion of Agency property for an outdoor dining area for the restaurant.

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

Section 1. After due consideration of the facts presented, the findings, including but not limited to the environmental findings regarding this action, as stated in the staff report that accompanies this resolution, are approved.

Section 2. The Owner Participation Agreement, in substantially the same form as Exhibit A, is approved and the Executive Director or her designee is authorized to execute the OPA and to take such actions, execute such instruments, and amend the budget as may be necessary to effectuate and implement this resolution and the OPA.

Section 3. The Lease, in substantially the same form as Exhibit B, is approved and the Executive Director or her designee is authorized to execute the lease and to take such actions, execute such instruments, and amend the budget as may be necessary to effectuate and implement this resolution and the OPA.

Section 4. The Executive Director is authorized and directed to transfer \$594,000 from the Merged Downtown 2005 Tax Allocation Bond Funds to the 717 K Street Structural Improvement project.

**Table of Contents:**

Exhibit A – Owner Participation Agreement

Exhibit B – Lease Agreement

EXHIBIT A

Owner Participation Agreement  
USING FUNDS FROM DOWNTOWN PROJECT AREA TAX INCREMENT

**Redevelopment Agency of the City of Sacramento**  
Merged Downtown Sacramento Redevelopment Project Area  
717 K Street Structural Upgrade Work  
717 K Street, Sacramento, CA 95814

Owner Participation Agreement  
DOWNTOWN PROJECT AREA TAX INCREMENT

**Redevelopment Agency of the City of Sacramento**  
Merged Downtown Sacramento Redevelopment Project Area  
717 K Street Structural Upgrade Work  
717 K Street, Sacramento, CA 95814

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, and SEQUOIA INVESTMENTS, L.P. also called Agency and Developer, respectively, enter into this Owner Participation Agreement, also called OPA, as of \_\_\_\_\_. [For purposed of this Agreement, the capitalized terms shall have the meanings assigned in Section 14.]

**RECITALS**

Developer is the owner of real property located at 717 K Street, Sacramento, CA 95814, in the City of Sacramento, California, more particularly described in attached Exhibit A: Property Description, which is incorporated into this OPA by this reference. The Property is located in Merged Downtown Sacramento Redevelopment Project Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan.

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

The Agency is participating in this OPA is because this OPA is consistent with, and furthers, the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Project will eliminate the following blighting influences: Low values/impaired investment

Deficient buildings. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: The elimination of environmental deficiencies in the Merged Project Area, including, among others, mixed and shifting uses, obsolete, aged and deteriorated building types; the strengthening of retail and other commercial functions in the downtown area; the strengthening of the economic base of the Merged Project Area and the community by the installation of needed site improvements either inside or outside the Merged Project Area to stimulate employment and economic growth; the establishment and implementation of performance criteria to assure high site design standards and environmental quality and other design elements, which provide unity and integrity to the entire Merged Project; the provision of an environment for social and economic growth; and the provision of opportunities for participation by owners and business tenants in the revitalization of their properties.

B. In order to accomplish such Agency goals and purpose, the OPA provides that the Developer will redevelop the Property in the manner and for the uses described in this

OPA. Therefore, Developer desires to redevelop the Property, and Agency desires to assist development of the Property, on the terms and conditions in this OPA.

#### AGREEMENT

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

1. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: This project is the structural strengthening of a historic building to facilitate the change in use from office to restaurant for use as a fine dining restaurant with outdoor seating. The Agency will provide financial assistance up to \$320,000 in the form of a 30-year forgivable loan due in five years and up to \$274,000 in the form of a Construction and Permanent Loan due in 10 years for the seismic upgrade of the building which will be forgiven upon completion of the structural improvements. This Project will put back into active use the ground floor of a historic building on 7<sup>th</sup> Street, a key focus of revitalization adjacent to St. Rose of Lima Park and the Downtown Plaza. The re-use as a restaurant, of approximately 9,900 square feet, will help enliven the entrance to K Street during the day and more importantly during the nights and weekends. It will complement and reinforce an emerging restaurant and entertainment district along the JKL corridor within walking distance of the State Capitol, Downtown Plaza and Old Sacramento.

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

2.1. The Agency Funding Agreement consists of a forgivable loan in an amount not to exceed Three Hundred and Twenty Thousand Dollars (\$320,000) and a Construction and Permanent Loan not to exceed Two Hundred and Seventy-four Thousand Dollars (\$274,000). The actual loan amounts will be based upon cost incurred and may be less than \$594,000. If not forgiven, the forgivable loan portion will be amortized over 30 years with the loan balance due five years from the date of the first payment. Both Loans shall be evidenced by a Note and a recorded Trust Deed.

**DEVELOPER'S POWER TO HAVE THE FORGIVABLE LOAN FORGIVEN.** Developer shall have the sole power to have the forgivable loan in the amount of the \$320,000 for the

structural upgrade of the building forgiven in whole or in part. This loan shall be forgiven upon Agency verification of completion of the structural improvements and seismic retrofit of the building as approved in writing by the City of Sacramento Chief Building Official.

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

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

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

**3.3. PREPARATION OF FINAL PLANS AND RELATED DOCUMENTS.** Developer shall prepare the Final Plans which shall include all construction plans, drawings, specifications and other documents necessary to obtain all required building permits for the construction of the Project. Developer shall submit the Final Plans to the Agency for Agency's review. The Final Plans shall conform in all material respects to the Preliminary Plans and the Scope of Development. To the extent that the Preliminary Plans and Scope of Development have insufficient detail or are unclear, the Preliminary Plans shall be deemed to provide that the

Project shall contain high-quality materials, and shall conform to all applicable zoning, design and usage guidelines. The Final Plans shall be considered to include all changes or corrections approved as provided in this OPA. The Final Plans shall incorporate all related mitigation measures required for compliance with CEQA approvals, as stated in the Mitigation Monitoring Plan. Developer agrees that it will comply with the requirements of the Design Review Board to the extent of its jurisdiction.

**3.4. DELIVERY.** Developer shall deliver the Final Plans or changes to the Final Plans for Agency review as soon as available. Said delivery shall be made to the office of the Redevelopment Agency c/o Economic Development Department of the City of Sacramento located at 1030 15<sup>th</sup> Street, Second Floor, Sacramento, California 95814, and shall have clearly marked on its exterior "URGENT: 717 K Street Structural Upgrade Work PROJECT PLAN REVIEW" or the equivalent.

**3.4.1. DEEMED APPROVAL.** The Final Plans or changes to the Final Plans shall be deemed approved unless disapproved in whole or in part, in writing, within fifteen (15) days after their proper delivery to Agency.

**3.4.2. AGENCY DISAPPROVAL.** If Agency disapproves, in whole or in part, the Final Plans or any change to the Final Plans, Agency shall state, specifically and in writing, at the time of disapproval, the reasons for disapproval and the changes which the Agency requests to be made. Agency's reasons for disapproval and such Agency-requested changes shall be consistent with the Preliminary Plans, the Approved Final Plans, the Scope of Development and with any items previously approved under this Section. If the Agency rejects the proposed Final Plans, Developer shall obtain no rights to develop the Property under this OPA and Agency shall have no obligations regarding the Project until such time as Developer has modified the proposed Final Plans and received the Agency's approval of the Final Plans as modified.

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

**3.6. APPROVAL OF SUBSTANTIAL CHANGES TO FINAL PLAN.** If the Developer desires to make any substantial changes in the Final Plans as approved by the Agency, the Developer shall submit such proposed changes, in writing, to the Agency for its approval. The Final Plans shall be construed to include any changes approved in the same manner as for approval of the original Final

Plans. The Agency shall approve or disapprove the proposed change as soon as practicable. Nothing in this Section shall be construed to relieve Developer of its obligations under all applicable laws regarding such changes.

**3.6.1. SUBSTANTIAL CHANGE.** A substantial change in the Final Plans shall include, without limitation, the following changes, excluding those items generally considered to be tenant improvements. For purposes of this Section 3.6.1, a "material change" is a change that is material to the Agency in accomplishing its purposes under this OPA.

- a) Material changes in the layout, elevation design, square footage.
- b) Material changes in use of exterior finishing materials substantially affecting architectural appearance or functional use and operation.
- c) Material changes in site development items for the Property that are specified in the Final Plans.
- d) Any changes requiring approval of any city, county or state board, body, commission or officer, or any change required by any city, county or state board, body, commission or officer.
- e) Any change which would preclude or materially reduce the ability to use the Project as intended by this OPA.

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

**4. DEVELOPMENT PROVISIONS.** As stated in detail in this Section 4, Developer shall construct and manage the Project according to the requirements established in this OPA, which includes, without limitation, the Scope of Development, the Schedule of Performances and the Plans. Developer shall promptly begin, diligently prosecute and timely complete the construction of the Project. In interpreting the provisions of this OPA, the provisions which specifically enforce the Redevelopment Plan and the applicable provisions of the California Redevelopment Law [commencing at Health and Safety Code Section 33000] shall control.

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

**4.2. GOVERNMENTAL REVIEW PROCESS.** Notwithstanding any other provision of this OPA, Developer is subject to all building, planning, design and other plan review requirements that are otherwise applicable to the project, including without limitation those of the City of Sacramento. To assure proper review by the City, Developer shall, within thirty (30) days of the date of this OPA, make an initial deposit toward "plan check fees" with the City's Planning Department. In addition, Developer shall, as applicable, take designs before the Design Review/Preservation Board or its appropriate subcommittee for comment as soon as practicable. Conditions to the project imposed by the City shall be considered obligations of the Developer under this OPA. If a dispute with City staff arises regarding such City conditions, Developer shall accept the decision of the City's Planning Commission interpreting, imposing and enforcing such City conditions, subject to any applicable appeals process of the Planning Commission.

**4.3. SUBSTANTIAL CHANGES.** Developer covenants and agrees that Developer shall not make or permit to be made any construction of the Project which incorporates a substantial change in the Final Plans, as described in Section 3.6, without Agency approval of such changes as provided in Section 3.6.

**4.4. LOCAL, STATE AND FEDERAL LAWS.** The Developer shall assure that the construction of the Project is carried out in conformity with all applicable laws and regulations, including all applicable federal and state labor standards. Developer acknowledges and agrees that all wage and hour laws and other labor laws as applicable, including without limitation prevailing wage requirements, are the sole responsibility of Developer and Developer's contractors and subcontractors. Developer and its contractors and subcontractors have undertaken to ascertain the applicability of such laws prior to preparation of the final Project budget and have included the costs arising from such laws in the final Project budget. Developer shall keep, or cause to be kept, all records and make all payments, of any kind, that may be required for compliance with said laws and regulations. Before commencement of construction or development of any buildings, structures or other work of improvement upon the Property, Developer shall at its own expense secure any and all certifications and permits which may be required by any governmental agency having jurisdiction over such construction, development or work. Developer shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform work on or for the Project.

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

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

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

**4.7.1. EMPLOYMENT.** Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

4.11.1. Such certification and such determination shall not constitute evidence of compliance with any governmental requirements regarding the Project other than those of Agency or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Project. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any provision of this OPA that is not related to construction of the Project.

4.11.2. If the Agency fails to provide a Certificate of Completion within fifteen (15) days after written request by Developer, the Agency shall, within an additional (15) days after a second written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Project in accordance with the provisions of the OPA, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Developer to take or perform in order to obtain such certification.

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

4.13. **NOTIFICATION OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS.** Developer shall assure that the respective parties through the Project Documents have the responsibility of notifying the Project contractors, architects and engineers for the Project of the requirements of this OPA. Developer shall include, where applicable, the provisions of this OPA in construction contracts and subcontracts for the Project, and Developer shall undertake the enforcement of such provisions...

4.14. **PROPERTY CONDITION.** Except as provided in this OPA, if the condition of the Property is not in all respects entirely suitable for the use or uses to which the Property will be put, it is the sole responsibility and obligation of the Developer to take such reasonable actions as may be necessary to place the condition of the Property in a condition which is entirely suitable for its development in accordance with the construction plans and drawings approved by Agency.

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

4.16. **NO WORK PRIOR TO CLOSE OF ESCROW.** Prior to Close of Escrow, Developer shall not commence any work or take any action that might be construed as commencement of the work of the Project for establishment of mechanic's lien rights.

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

**5.1. EVIDENCE OF AVAILABLE FUNDS.** Unless otherwise approved by the Agency, Developer's evidence of available funds must include only the following: (a) Developer equity (as provided in Section 5.3), (b) firm and binding loan commitments (as provided in Section 5.2) from each Lender, in form and content acceptable to Agency, and (c) Agency contribution, if any, as specified in this OPA. Within ten (10) days after Agency's request, Developer shall provide all additional information requested by the Agency for evaluation of the actual availability of funds included in such evidence, including without limitation, request for clarification, further evidence or audited financial reports.

**5.2. COMMITMENT AND LOAN REQUIREMENTS.** As a material obligation under this OPA, Developer shall assure that the loan documents for the Project are consistent with the Lender's commitment approved by the Agency and comply, in all respects, with this OPA. The Agency may reject a loan commitment unless such commitments : (a) are subject only to Lender's reasonable conditions of title and Developer's execution of standard loan documents (copies of which have been previously provided to and approved by the Agency); (b) contain only usual, customary, and commercially reasonable loan terms; (c) continue in effect until a time when subject financing is reasonably expected to be required; and (d) for construction financing, provide for a Agency Funding term not less than that specified in the Schedule of Performances for completion of construction and any additional time necessary to fulfill all conditions precedent to funding of permanent financing. The Agency may also reject any commitment if it is based upon sources and uses of Project funds that are different from those approved by Agency for the Project. The Agency may also reject any commitment that requires changes to the Project which conflict with this OPA, that require amendment of this OPA or that require the Agency to enter into agreements with any Lender, guarantor, equity partner or any other third-party.

**5.3. EVIDENCE OF DEVELOPER EQUITY.** Unless otherwise agreed in writing by the Agency, Developer may provide evidence of equity by any one or more of the following actions: (a) a deposit of the required equity in a joint account with the Agency, which funds shall be released only upon the joint signatures of the Agency and the Developer; (b) delivery to Agency of an unconditional, irrevocable letter of credit in the amount of the required equity, in form and content as provided by the Agency, which letter of credit shall provide that the Agency may draw to fulfill any Developer obligation related to the development of the Project and necessary to assure its timely & proper completion; and (c) Developer shall provide financial statements prepared by a certified public accountant which show liquid assets available to the Project (and not subject to other existing or contingent claims) in the amount of One Hundred and Fifty Percent (150%) the amount of the required equity. Developer shall not provide evidence of equity that includes funds not available at the commencement of construction or that claims as equity any funds to be generated by development of the Project, including without limitation, anticipated Developer profit or fees or Developer contribution of services to the Project. The Agency may reject any

submitted evidence of equity if the Agency has any reason to believe that such funds may not be available to the Project.

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

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

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

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

**8. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES.** Developer shall indemnify, protect and defend Agency, its respective officers, directors, commission members, employees, advisory committee members, and agents, and hold them harmless from any and all liability, costs, fees, penalties and claims related to (a) the removal, discharge or release of Hazardous Substances on the Property after Developer has taken possession of the Property or (b) the existence of Hazardous Substances on the Property, which were not on the Property prior to Developer's taking possession of the Property.

**9. LIABILITY INSURANCE.** With regard to this OPA, the Developer shall obtain and maintain, and require the contractor and subcontractors for the Project to obtain and maintain such insurance as will protect them, respectively, from the following claims which may result from the operations of the Developer, any contractor, subcontractor or

anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation benefit acts; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of his employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees; (d) claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Developer, or (2) by any other person; claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including resulting loss of use; (e) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and (f) claims for contractual liability arising from the Developer's obligations under this OPA.

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

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

**9.3. COMPREHENSIVE GENERAL LIABILITY.** Commercial general liability coverage shall include premises-operations, independent contractor's protective, products and completed operation (for four years), broad form property damage, and contractual liability coverage (or such other substantially similar coverage as may be approved by Agency Counsel). Such insurance shall have limits of liability which are not less than \$2,000,000, each occurrence, for bodily injury coverage; \$2,000,000 aggregate, for products and completed operations coverage; \$1,000,000 each occurrence for property damage coverage, single limit and aggregate; and which is the same as the foregoing coverages.

**9.4. COMPREHENSIVE AUTOMOBILE LIABILITY.** Comprehensive automobile liability coverage for any vehicle used for, or in connection with, the Project (owned, nonowned, hired, leased) having limits of liability which are not less than \$1,000,000.

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

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

9.7. **ADDITIONAL INSURED.** During the term of construction, Agency shall be additional insured on all insurance policies, except the fire and hazard insurance and the worker's compensation policy, unless otherwise approved by Agency's legal counsel in writing.

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

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

9.8.2. **FAILURE TO MAINTAIN.** If Developer fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this OPA, the Agency shall have the right to purchase the insurance on Developer's behalf, and Developer shall promptly reimburse the full cost of such insurance to the Agency. If Developer fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest, at the maximum rate permissible under the law, until paid.

9.8.3. **BLANKET COVERAGE.** Developer's obligation to carry insurance as required under this Section 16 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.

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

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

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

**10.3. ATTORNEY'S FEES AND RELATED.** If an action is commenced between the parties, the prevailing party in that action shall be entitled to recover from the non-prevailing party all reasonable attorney fees and costs, witness fees, arbitrator's fees, and court and arbitration costs. "prevailing party" shall include without limitation, the party who receives performance from the other party for an alleged breach of contract or a desired remedy where the performance is substantially equal to the relief sought in an action; the party who receives any award for relief through arbitration; or the party determined to be the prevailing party by a court of law. In any event, the prevailing party shall mean the party receiving a judgment, ruling or award that is more favorable than the last firm offer of settlement made by such party, 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.

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

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

[Date]

The undersigned, whose address for notices is stated immediately below its signature, does hereby certify that it is the Lender as such term is defined in that certain Owner Participation Agreement dated \_\_\_\_\_ between the **Redevelopment Agency of the City of Sacramento** and **Sequoia Investments, L.P.** ("OPA"). Lender requests, in accordance with Section 11.1 of the OPA, that if any default notice shall be given to Developer under the OPA, a copy of such default notice shall be given to Lender.

[Lender Name and Address for Notice]

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

**11.3 LENDER NOT OBLIGATED TO CONSTRUCT.** Notwithstanding any of the provisions of the OPA, Lender shall not be obligated by the provisions of the OPA to construct or complete the Project. Nothing in this Section or any other provision of the OPA shall be construed to permit or authorize Lender to devote the Property to any uses, or to

construct any improvements on the Property, other than those uses or improvements provided or permitted in the OPA.

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

**11.5 DEFAULT BY DEVELOPER.** In the event of a default by Developer, Agency shall not terminate this OPA unless and until the Agency has given notice to Lender of such default, as provided in this Section 11.5 and Lender has failed to cure such default provided, however that if such default cannot practicably be cured by the Lender without taking possession of the Property, then the Schedule of Performances (and, therefore, the Agency's right to terminate this OPA) shall be tolled if and so long as:

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

**11.5.2** Lender or its designee has rights to obtain possession of the Property (including possession by receiver) through foreclosure, deed in lieu of foreclosure or otherwise, and Lender or its designee promptly commences and diligently proceeds to obtain possession of the Property, and if Lender is prevented by

court action or by any statutory stay from prosecuting foreclosure proceedings, that Lender is diligently seeking relief from such action or stay; and

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

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

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

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

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

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

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

**11.10 PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER.** In reliance on the financial capability and experience of Developer, substantial public financing and other public aids have been made available by law and by the federal and local governments to make development of the Property possible. Developer shall not, prior to issuance of a Certificate of Completion, assign Developer's interests or obligations under this OPA or undertake any act or transaction resulting in a significant change in the interests of the principals of Developer or the degree of their control of Developer without the prior written consent of Agency. The transfer or assignment, pursuant to this Section, requires the transferee or assignee to execute and deliver to Agency a valid, binding, written assumption of all obligations of Developer. Such a transfer as permitted in this Section 23 shall not relieve Developer, or any other party bound in any way by the OPA, from any of its obligations under the OPA. With respect to this provision, the Developer and the parties signing the OPA on behalf of the Developer represent that they have the authority of all of Developer's principals to agree to and bind them to this provision.

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

**12.1. INTEGRATED DOCUMENTS; SEVERABILITY.** This OPA and the documents incorporated in this OPA are to be considered as one document and default of any of them shall be considered a default of all of them. This OPA including the incorporated documents integrates all of the terms and conditions related or incidental to its subject matter, and supersedes all negotiations or previous agreements between the parties with respect to its subject matter. If any term or provision of this OPA shall, to any extent, be held invalid or unenforceable, the remainder of this OPA shall remain in full force and effect, and, the invalid or unenforceable provision shall be valid and enforceable as to any other person or circumstance.

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

**12.3. WAIVERS AND AMENDMENTS.** All waivers of the provisions of this OPA must be in writing and signed by Agency or Developer, as applicable, and all amendments to this OPA must be in writing and signed by Agency and Developer. Any delay by Agency in asserting any rights under this Section shall not operate as a waiver of such rights or to deprive Agency of or limit such rights in any way. Any waiver in fact made by Agency with respect to any specific default by Developer under this Section shall not be considered as a waiver of the rights of Agency with respect to any other defaults by Developer under this Section or with respect to the particular default except to the extent specifically waived in writing.

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

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

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

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

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

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

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

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

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

13.1. Addresses for notices are as follows:

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

13.1.2. Developer: Sequoia Investments, L.P., P.O. Box 1726, Novato, CA 94948-1726; Attention: Thilo Koehler.

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

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

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

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

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

#### 14. **DEFINITIONS.**

14.1. "Agency" is the Redevelopment Agency of the City of Sacramento. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of California. The principal office of the Agency is located at 630 I Street, Sacramento, California 95814. Agency as used in this OPA includes the Redevelopment Agency of the City of Sacramento and any assignee

of or successor to its rights, powers, and responsibilities. The Sacramento Housing and Redevelopment Agency is a joint powers agency which provides staffing for the operation of the Agency.

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

14.3. "Agency Funding Agreement" is the Forgivable Construction and Permanent Loan Agreement, a copy of which is attached as **Exhibit 1) Agency Funding Agreement**.

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

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

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

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

14.8. "Completion Date" is the date on or before which Developer must complete the construction of the Project. The Complete Date for the Project is \_\_\_\_\_.

14.9. "Construction Extension Fee" is the fee payable by Developer for each day by which the completion of construction is delayed beyond the date for completion of construction.

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

14.11. "Developer" is Sequoia Investments, L.P., a California limited partnership. Notwithstanding any other provision of this OPA, Developer may assign this OPA to a single asset entity in which Developer has a substantial interest and is the managing member, the general partner or the controlling shareholder and chief operations officer; provided (i) that the entity form and organizational documents have been approved by Agency Counsel, (ii) that the new entity has agreed in writing to be bound by all the provisions of this OPA and all agreements related to this OPA, and (iii) that the entity has been approved in writing, in advance, by the Agency's Executive Director. The principal office of the Developer is located at 717 K Street, Sacramento, CA 95814.

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

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

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

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

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

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

in consideration of the commercially reasonable protection of its interests under this OPA.

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

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

14.20. "Recission of Regulatory Agreement" is the document that may be recorded upon the happening of certain events to remove the regulatory restriction related to the funding source, a copy of which document is attached as **Exhibit 4) Recission of Regulatory Agreement**.

14.21. "Preliminary Plans" are the Project designs prepared by the Project engineer, Wallace & Kuhl, CYS Engineers, dated «Date of Preliminary Plan: June 12, 1990», a portion of which (consisting of various elevations) is attached as **Exhibit 5) Preliminary Plans**. Agency has approved the Preliminary Plans concurrently with the approval of this OPA.

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

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

14.24. "Project Area" is the Merged Downtown Sacramento Redevelopment Project Area, as defined the Redevelopment Plan.

14.25. "Redevelopment Plan" is the redevelopment plan for the Project Area (as it may be amended from time to time) as adopted by the City Council of the City on June 17, 1986, by City Ordinance Nos. 86-064, 86-065, 86-066 and 86-067, Fourth Series. A copy of the Redevelopment Plan as initially adopted was recorded on July 29, 1986, in the Official Records of the County of Sacramento, in Book 86-07-29, beginning at pages 1633, 1738, 1690 and 1787, respectively.

"Regulatory Agreement", a copy of which is attached as **Exhibit 6) Regulatory Agreement** is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Property as a condition of Agency Funding.

14.26. "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 7): Schedule of Performances**.

14.27. "Scope of Development" is the detailed description of the work to be done under this OPA for the Project. The Scope of Development attached as **Exhibit 8): Scope of Development**.

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

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

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

**DEVELOPER :**  
**SEQUOIA INVESTMENTS, L.P.**

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

By: Euro –Pacific Properties, Inc.,  
It's General Partner

By: \_\_\_\_\_  
Ray Kerridge, Interim City Manager  
As Designated Signatory

\_\_\_\_\_  
Thilo Koehler  
Vice President

Approved as to form:

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

## Exhibit B

### LEASE

#### A Portion of St. Rose of Lima Park for 717 K Street Building Public Access And Outdoor Restaurant Seating

This Lease ("Lease") is dated as of \_\_\_\_\_ ("Effective Date") and is made and entered into between REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO ("Landlord"), and SEQUOIA INVESTMENTS, L.P., a California limited partnership ("Tenant").

### RECITALS

A. Tenant has entered into a lease ("Restaurant Lease") with Harvest Venture Group ("Restaurant Tenant") for the entire first floor of the building commonly known as 717 K Street, Sacramento, CA ("Building"), excepting only the space currently occupied by Starbucks ("Restaurant Space"). The Restaurant Lease is attached hereto as Exhibit A and made part hereof by reference. Tenant has been issued a permit to construct an entry to the premises ("Restaurant Entry") on the westerly portion of the Restaurant Space onto Saint Rose de Lima Park, Sacramento, California 95814 ("Park"). Tenant desires to use a portion of an outside sitting area ("Patio Area") that is located on property owned by the Landlord. Tenant and has been issued a building permit for a second entry from the Restaurant Space onto the Patio ("Patio Entry").

B. With Landlord's approval, Tenant has initiated abandonment of a City of Sacramento Pedestrian Easement on Landlord's property to allow unencumbered access to the Patio Area.

C. Landlord is participating in this Lease because this Lease is in support of the Owner Participation Agreement ("OPA") between Landlord and Tenant and is consistent with, and furthers, the Redevelopment Plan (Health & Safety Code Section 33432). Specifically and without limitation, Landlord has determined that the Project as contemplated by the OPA will eliminate the following blighting influences: Low values/impaired investment/deficient buildings. Landlord has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area: The elimination of environmental deficiencies in the Merged Project Area, including, among others, mixed and shifting uses, obsolete, aged and deteriorated building types, the strengthening of retail and other commercial functions in the downtown area; the strengthening of the economic base of the Merged Project Area and the community by the installation of needed site improvements either inside or outside the Merged Project Area to stimulate employment and economic growth; the establishment and implementation of performance criteria to assure high site design standards and environmental quality and other design elements, which provide unity and integrity to the entire Merged Project; the provision of an environment for social and economic growth; and the provision of opportunities for participation by owners and business tenants in the revitalization of their properties. All capitalized terms used but not defined in this Recital C shall have their respective meanings set forth in the OPA.

Landlord and Tenant now agree as follows:

**Premises.**

Landlord leases to Tenant and Tenant leases from Landlord the area described as "Patio Area" in the easterly 20-foot by 49 foot portion of the Park ("Premises"), as shown on the plot map, attached as Exhibit B, further described on Exhibit C, and marked as Area 2 on the site plan attached as Exhibit D, each incorporated by reference.

**Term.**

The initial term of this Lease shall commence on the Effective Date and shall expire ten (10) years from the date on which the Restaurant Tenant opens for business in the Restaurant Space ("Initial Term"). Tenant has the option to renew this Lease for one additional ten (10) year term ("Option Term") by giving written notice of exercise to Landlord not less than sixty (60) days prior to the expiration date of the Initial Term.

**Rent.**

The rent for the Initial Term shall be one dollar (\$1.00) ("Rent"), annually, payable by January 31 of each year. The rent for the Option Term shall be seventy percent (70%) of the current per square foot lease rate for the Restaurant Space including percentage rents, if applicable, paid quarterly.

**Use.**

(a) The Premises are to be used solely for restaurant seating and public access by the Restaurant Tenant and its customers, invitees and contractors to and from Building through the Restaurant and Patio Entries and for access to the Building by Landlord and its contractors. In addition, Areas 1 and 3 shall be used for ingress and egress purposes (including emergency egress) as shown on Exhibit D. No part of the Premises shall be used for any other purpose without the prior written consent of the Landlord. Tenant shall not do or permit any act to be done that will increase the existing rate or cause cancellation of insurance on the Premises. Tenant shall comply with all statutes, ordinances, regulations, and other requirements of all governmental entities that pertain to the occupancy or use of the Premises, and with all rules and regulations that are adopted by Landlord for the safety, care, and cleanliness of the Premises and the preservation of good order on the Premises. These rules and regulations are expressly made a part of this Lease.

(b) Landlord acknowledges that it has reviewed and approved the Restaurant Lease.

(c) Tenant acknowledges that from time to time there will be stage productions held on the St. Rose of Lima Park stage and events, like the Holiday Ice Rink, in St. Rose of Lima Park. Tenant shall use commercially reasonable efforts to not interfere with such stage productions or events in its use of the Patio Area, including but not limited to Tenant's lighting and sound.

(d) Tenant covenants, pursuant to the California Health & Safety Code Section 33436, by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person

claiming under or through him or her establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, subleasees, subtenants, or vendees in the premises herein leased.

**Alterations, Fixtures and Furnishings.**

Landlord and Tenant agree that the alterations described on attached Exhibit E, incorporated by reference, shall be completed prior to the commencement of the term of the Restaurant Lease at Tenant's expense. Except as described in Exhibit E, any substantive alteration to the Premises without the prior written consent of Landlord shall be a breach of this Lease and, at the option of Landlord, shall cause a termination of this Lease.

Landlord shall have the right to review for its approval, prior to installation, all fixtures and furnishings on the Premises. Installation of any fixtures or furnishings on the Premises without the Landlord's prior written consent shall be a breach of this Lease and, at the option of Landlord, shall cause a termination of this Lease. Notwithstanding the foregoing, Landlord agrees not to object to, and Landlord's consent shall not be required for, any fixture or furnishing that has been reviewed and approved by the City's Historic Preservation Office and/or the appropriate permitting Planning and Building official prior to installation as set forth in the plans dated December 12, 2005, as approved by the City's Historic Preservation Office. Any future changes to the fixtures or furnishings shall be subject to Landlord's prior reasonable approval.

**Adjacent Park Areas.**

Throughout the Initial Term and any extensions thereof, Landlord shall keep and maintain the areas of the Park adjacent to the Premises in a clean and attractive condition consistent with the use of the Premises as a sit down dining area.

**Insurance.**

Tenant shall pay for the and maintain insurance throughout the life of this Lease, including coverage for damage to or destruction of Tenant's improvements to the Premises and personal property stored at the Premises, together with general liability coverage of One Million Dollars (\$1,000,000) minimum coverage per occurrence and all risk glass coverage for full cash value. Tenant will furnish Landlord, at each renewal period or change in insurer, with proof of insurance issued by an insurer approved by Landlord showing the coverage to be in force and showing Landlord as a named insured for all periods of the Term. Landlord and Tenant each waive the rights of subrogation that may arise against the other because of any act covered by insurance. Landlord acknowledges and agrees that Tenant may require the Restaurant Tenant to carry the insurance required under this Section 7, and, provided Restaurant Tenant complies with all requirements of this Section 7, Tenant shall be deemed to be in compliance hereunder.

**Default.**

Each of the following shall be an Event of Default under this Lease.

If Tenant fails to provide any services (sec. 10, 27) required by the provisions of this Lease, when due;

If Tenant fails within thirty (30) days after written notice to correct any breach of default of the other covenants, terms, or conditions of this Lease; and

If Tenant fails to use the Premises for the uses specified in this Lease for twelve (12) consecutive months, or more, or for a total of twenty-four (24) months, or more during the term of the Lease; or vacates, abandons, or surrenders the Premises prior to the end of the Term.

**Remedies.**

Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord is entitled at Landlord's option to the following:

To reenter and take exclusive possession of the Premises;

To continue this Lease in force or to terminate it at any time;

To take custody of all personal property on the Premises and to dispose of the personal property, in accordance with applicable law, and to apply the proceeds from any sale of that property to Tenant's obligations under this Lease;

To recover for Tenant the damages described in Civil Code § 1951.2(a)(1),

1951.2(a)(2), 1951(a)(3), and 1951(a)(4), the provisions of which are expressly made a part of this Lease;

To restore the Premises to the same condition as received by Tenant, or to alter the Premises to make them suitable for reletting, all at Tenant's expense; and

To enforce by suit or otherwise all obligations of Tenant under this Lease and to recover from Tenant all remedies now or later allowed by law.

Any act that Landlord is entitled to do in exercise of Landlord's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Landlord in Landlord's reasonable discretion.

**Maintenance and Repairs.**

Tenant acknowledges that the Premises are in good and safe condition and agrees to maintain the Premises in good and safe condition, including, without limitation, all fixtures or equipment installed by Tenant. Tenant promises to surrender the Premises at termination of this Lease in the same condition as received, except to normal wear and tear and except for changes authorized by Landlord. Tenant agrees to make no repairs at the expense of Landlord.

Without limiting its general obligation to maintain the Premises, Tenant shall do the following:

Wash all street fencing and other fixtures every week;

Remove all trash throughout the business day and upon end of each business day;

Water trees as required and promptly replace dead or severely damaged or deceased trees with the same trees of the same species and of a similar size; and

Promptly replace any damaged decorative paving with paving of the same quality and design.

**Estoppel Certificate.**

At any time within ten (10) days after request by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord, without charge, a written statement certifying that

this Lease is unmodified and in full force, or if there have been modifications, that it is in full force as modified. The statement shall also contain the date of commencement of this Lease, the dates to which the rent and any other charges have been paid in advance, and any other information Landlord reasonably requests. It is acknowledged by Tenant that any statement is intended to be delivered by Landlord to and relied upon by prospective purchasers, mortgages, deed of trust beneficiaries, and assignees.

**Severability.**

The invalidity of any portion of this Lease shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

**Assignment or Subletting.**

Any assignment or subletting of any portion of the Premises, whether by operation of law or otherwise, without prior written consent of Landlord is void and shall be a breach of this Lease, and at the option Landlord, shall terminate this Lease. Notwithstanding the foregoing, however, Tenant may assign this Lease to a purchaser of the Building provided it so notifies Landlord and such purchaser assumes all obligations of Tenant hereunder, and Tenant may sublet the Premises to the Tenant of the Restaurant Lease and any successor thereof.

**Entry.**

Landlord reserves the right to enter the Premises at reasonable times except between 11:00 a.m. and 2:30 p.m. and between 4:30 p.m. and 10:00 p.m. to carry out any management or business purpose in or about the Premises.

**Signs; Canopy.**

Tenant shall not place or permit to be placed in, upon, about, or outside the Premises any sign, notice, drapes, shutters, blinds, or display of any kind, without the prior written consent of Landlord, except for customary window coverings inside the Building. All plans for signs and canopies shall be reviewed and approved in writing by the City's Historic Preservation Office.

**"No Build" Easement.**

Landlord agrees to execute and record an easement in favor of Tenant permanently prohibiting construction in or on Areas 1, 2 and 3 (as shown on Exhibit B), in a form acceptable to Tenant and Landlord.

**Holding Over.**

This Lease shall terminate without further notice at the expiration of the Term or, if applicable, the final extension thereof. Any holding over shall not constitute a renewal or extension.

**Destruction and Condemnation.**

If the Premises are damaged to an extent that cannot be lawfully repaired within sixty (60) days after the date of damage, this Lease may be terminated by written notice of either party. IF the Premises can be repaired within the sixty (60) day period, or if this Lease is not terminated in accordance with this provision, Landlord shall proceed with repairs as necessary, subject to a proportionate reduction in the services to be provided by the Tenant, based on the extent to which the damage and repairs shall interfere with the "use" of Tenant on the Premises. In case of damage to one-third (1/3) or more of the building in which the Premises are damaged or not. Tenant waives the benefits of Civil Code §§ 1932(2) and 1933(4).

If all or any portion of the Premises is condemned or is transferred in lieu of condemnation, Landlord or Tenant may, upon written notice given within sixty (60) days after the taking or transfer, terminate this Lease. Tenant shall not be entitled to share in any portion of the award. Tenant shall, however, have the right to claim and recover, from the condemning authority only, but not from Landlord, any amounts necessary to reimburse Tenant for the cost of removing stock and fixtures.

**Indemnity.**

Tenant agrees to indemnify, hold harmless, and defend Landlord from all claims and liability of every kind, including court costs and attorney fees, arising in any way from any occurrence on the Premises, or related to the use of occupancy of the Premises.

**Landlord's Right to Perform for Tenant.**

If Tenant fails to perform any obligation under this Lease and such failure continues for a period of thirty (30) days after written notice thereof, Landlord shall be entitled to make reasonable expenditures to cause proper performance on Tenant's behalf and at Tenant's expense, and Tenant promises to reimburse Landlord for any expenditures within ten (10) days after written notice from Landlord requesting reimbursement, and failure of Tenant to make the reimbursement shall be deemed to be a default the same as a failure to provide services when due.

**Notices.**

Any notice under this Lease shall be given by mailing the notice, postage paid, by certified mail, return receipt requested, to Tenant at the Premises or any other address set forth adjacent to Tenant's signature below and to Landlord at the address set forth adjacent to Landlord's signature below, or to any other place designated in writing by the parties.

**Attorney Fees.**

In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and all other costs incurred.

**Legal Effect.**

All obligations of Tenant are expressly make conditions of this Lease, any breach of which shall, at the option of Landlord, terminate this Lease.

**Titles.**

The titles or headings to paragraphs shall have no effect on interpretation of provisions.

**Successors.**

The provisions of this Lease shall apply to and bind the heirs, successors, and assigns of the parties.

**Waiver.**

The failure of Landlord to enforce a provision of this Lease shall not be deemed a waiver for any purpose.

**Services to be Provided by Landlord.**

Landlord shall be responsible for the following within the Premises:

Landlord shall reinstall, along the easterly boundary in the existing fencing sleeves, the fencing currently used on an interim basis for ice skating rink activities, to the extent of fencing available after the allocation for such skating rink activities; and

Landlord shall assure an unobstructed path of exit from the Premises.

**Services to be Provided by Tenant.**

Tenant shall be responsible for the following within the Premises: utilities (garbage, gas and electricity); custodial services; installation, maintenance and repairs of plumbing and wiring, improvements, fixtures and paving.

**Entire Agreement.**

This Lease, together with each attached exhibit and the Regulatory Agreement regarding Tenant's use of the ground floor in addition to the Patio Area, , shall constitute the entire agreement of the parties, and may be modified only by a writing signed by the parties.

**Time of the Essence.**

Time is of the essence in the performance of Tenant's obligations under this Lease.

**Subordination.**

This Lease, at Landlord's option, shall be subordinate to the lien of any first deed of trust or first mortgage subsequently placed upon the real property of which the Premises are a part, and to any advances made on the security of the Premises, and to all renewals, modifications, consolidations, replacements, and extensions; provided, however, that as to the lien of any deed of trust or mortgage, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant pays the rent and observes and performs all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee, or ground lessor elects to have this Lease prior to the lien of a mortgage, deed of trust, or ground lease, and gives written notice to Tenant, this Lease shall be deemed prior to that mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of that mortgage, deed of trust or ground lease or the date of recording.

**Governing Law.**

This Lease shall be governed by and construed in accordance with California law. THE PARTIES HAVE EXECUTED THIS LEASE on the date first written above.

Sequoia Investments, L. P.

By: Euro-Pacific Properties, Inc., its General Partner

BY: \_\_\_\_\_  
Thilo Koehler, its Vice President

Redevelopment Agency of the City of Sacramento

BY: \_\_\_\_\_  
Ray Kerridge, City Manager  
As Designated Signatory