



REPORT TO THE REDEVELOPMENT AGENCY of the City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
March 7, 2006

Honorable Chair and Members of the Board:

Subject: Owner Participation Agreement for Continued IMAX Operations

Location/Council District: 13th and K streets, Council District 1

Recommendation:

Adopt the attached Redevelopment Agency of the City of Sacramento ("Agency") Resolution that authorizes: 1) the approval of an Owner Participation Agreement ("OPA") between the Agency, IMAX Theater Holding (California I), Inc. ("IMAX"), and Tsakopoulos 523 Investors and the Tsakopoulos Family LLC ("Owner) to partially offset rental adjustments negotiated in an amended lease between IMAX and Owner; 2) allocation of \$375,000 from the Merged Downtown 2005 Tax Allocation Bond Funds to the Esquire IMAX project.

Contact: Wendy Saunders, Economic Development Director, 808-8196

Presenters: Wendy Saunders, Economic Development Director

Department: Economic Development

Division: Downtown Development

Organization No: 4451

Summary:

This report recommends that the Agency enter into an OPA with the Owner and IMAX to assist the continued operation of the IMAX Theater for the next five-year period.

Committee/Commission Action: None

Background Information:

Prior Owner Participation Agreement

In 1998, the Agency executed an Owner Participation Agreement ("Esquire OPA") with Esquire Partners to provide \$6 million in funding for the Esquire Plaza Project located at the northwest corner of 13th and K streets. The entire project was a 245,500-square-foot Class A office building with 425 parking spaces and a number of public components, including:

- 65 public parking spaces
- 450-seat three-dimensional IMAX theater
- Restoration and reuse of the historically significant facades and marquees of the Esquire and Encore theaters

- Streetscape improvements, public art and landscaping to create a two-way lane along 13th Street from J Street to L Street
- Tenant improvements for a quality restaurant.

One of the conditions of the Esquire OPA was the operation of an IMAX theater at the site for not less than five years. The Agency also had the option to assume the remainder of the IMAX lease if it ceased to operate for a period of six months or more. The Agency would then be bound to all the terms of the IMAX lease after the assumption, except those related to cinema operations.

IMAX Theater Lease

During the original IMAX lease negotiations, the Agency was in active negotiations with AMC theater for the 10th and K Street site. Entering into their lease with Esquire Partners, the former owner, IMAX was counting on significant foot traffic being generated by the AMC theater, which would have resulted in significantly more patronage. At that time, IMAX’s projected attendance was 650,000 to 700,000 each year. Actual annual attendance has averaged just over 226,000 for the last seven years.

Under the Esquire OPA, Esquire Partners was required to enter into a lease and operating agreement with IMAX for a continuous operation of not less than five years. After only the second year of operations, Esquire Partners offered an interim rent reduction to IMAX to help offset losses. IMAX has paid only seventy-five percent of the base rent since 2002 but has continued to sustain losses of \$75,000 to \$100,000 per year. The original five-year covenant requiring continued operations has expired.

Although IMAX has a 20-year lease, the losses it has sustained over the course of the lease has lead IMAX officials to the conclusion that it would be more cost effective to cease operations than to continue.

New OPA

The Agency has participated in discussions with the Owner and IMAX to assist in resolving the financial disparity related to the existing lease terms. The Owner is willing to consider reducing the rent to an amount necessary to keep IMAX operational but only if the Agency contributes equally.

The negotiated terms of a Lease Amendment between the Owner and IMAX would result in the following Agency participation:

Lease Amendment Term	Annual Agency Contribution	Total 5-year Contribution
Reduction of base rent by \$106,250 per year for five years	\$53,000	\$265,000
Reduction of Common Area Maintenance expenses by \$20,000	10,000	\$50,000
Elimination of percentage rent between \$2 million and \$2.3 million (estimated \$24,000 per year)	\$12,000	\$60,000
TOTAL	\$75,000	\$375,000

The Agency's payment to the Owner will offset one-half of the rent adjustment resulting from the Lease Amendment, but not exceed \$75,000 for any calendar year. The term of the offset is for a period of five years. With the Agency's contribution and the owner's rent reduction, IMAX will pay a total rent of \$275,000 per year, which is the same amount IMAX has paid in the past five years.

The Agency's funding participation in this new OPA would be to solidify the above-negotiated lease structure by purchasing a five-year continuation of the theater covenants under the existing Agreement Concerning Covenants Running with the Land between the Agency and Esquire Partners. This would allow for the continued operation of the IMAX theater.

The proposed OPA is not intended to change, limit or replace the original Esquire OPA.

Financial Considerations:

Total funding in the amount of \$375,000 for the Agency's proposed participation will come from Merged Downtown Tax Allocation Bond Funds. The Agency will pay no more than \$75,000 for any calendar year for the next five years to offset rent adjustments resulting from the IMAX Lease Amendment.

Annual Agency payments will be based on certified accounting statements submitted by the Owner.

Environmental Considerations:

The proposed action to provide funding for an existing business is not a project subject to environmental review under CEQA Guidelines Section 15378(a) because the action will not result in a physical change to the environment.

Policy Considerations:

The IMAX theatre is a significant component of the arts, entertainment and restaurant district that has emerged with the Esquire project. At this time, it would be a significant loss for K Street to endure the closure of the IMAX theater.

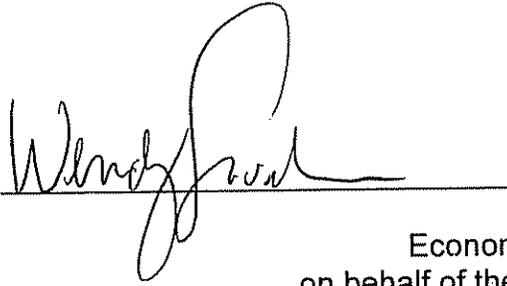
There are a number of significant projects underway on K Street that should be completed within the next three years. At that time, the pedestrian traffic is anticipated to increase sufficiently to allow IMAX to continue operation under the terms of the unadjusted lease.

The recommended actions are consistent with the goals of the Merged Downtown Redevelopment Plan to stimulate economic growth, to strengthen the appeal of downtown and to enhance public places. These actions are also consistent with the 2005 Merged Downtown Project Implementation Plan.

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 by



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

Recommendation Approved:

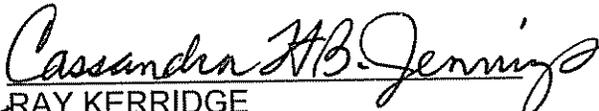

for RAY KERRIDGE
City Manager

Table of Contents:

Pg 1-3	Report
Pg 5 - 6	Resolution
Pg 7-17	Exhibit A to Resolution – Owner Participation Agreement

RESOLUTION NO. _____

Adopted by the Redevelopment Agency of the City of Sacramento

APPROVAL OF OWNER PARTICIPATION AGREEMENT WITH IMAX THEATER HOLDING (CALIFORNIA I), INC., AND TSAKOPOULOS 523 INVESTORS, L.P. AND THE TSAKOPOULOS FAMILY LLC; RELATED ACTIONS

BACKGROUND

- A. In 1998, the Redevelopment Agency of the City of Sacramento ("Agency") executed an Owner Participation Agreement ("Esquire OPA") with Esquire Partners to provide \$6 million in funding for the Esquire Plaza Project located at the northwest corner of 13th and K streets. The project was a 245,500-square-foot Class A office building with 425 parking spaces and a number of public components, the restoration of the historic Esquire marquee and theater façade and the installation and operation of an IMAX theater in the project was a primary consideration for the Agency's participation.
- B. The IMAX theatre is a significant component of the arts, entertainment and restaurant district that has emerged with the Esquire project, and the Agency views its continued operation as essential to the continued redevelopment of the western portion of K Street;
- C. After five years of continuous operation as required under the Esquire OPA, the IMAX operator has determined it can no longer continue to operate under the existing Lease between IMAX Theater Holding (California I), Inc ("IMAX") and the new owner of Esquire Plaza, Tsakopoulous 523 Investors and Tsakopoulous Family, LLC (collectively, "Owner");
- D. The Agency desires to enter into a New Owner Participation Agreement ("New OPA") with the Owner and IMAX to obtain an additional five-year operating covenant in exchange for a partially offsetting rent increases.

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 the environmental findings regarding this action, as stated in this resolution and the staff report, are approved.

- Section 2. The Owner Participation Agreement between the Agency, IMAX and the Owner, containing terms as described above, a copy of which is attached as Exhibit A, is hereby approved.
- Section 3. The City Manager is authorized on behalf of the Redevelopment Agency of the City of Sacramento to enter into the OPA and take all actions reasonably necessary to implement the OPA.
- Section 4. The Agency budget is amended to allocate \$375,000 from the Merged Downtown 2005 Tax Allocation Bond funds to the Esquire IMAX project.

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
IMAX Theater Continuation Project
Esquire Plaza, 13th and L Streets

Owner Participation Agreement

OWNER PARTICIPATION AGREEMENT
Downtown Project Area Tax Increment

Redevelopment Agency of the City of Sacramento
 Merged Downtown Sacramento Redevelopment Project Area
 IMAX Theater Continuation Project
 Esquire Plaza, 13th and L Streets

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO (the "Agency"), IMAX THEATER HOLDING (CALIFORNIA I), INC. ("IMAX"), and TSAKOPOULOS 523 INVESTORS, a California limited partnership and THE TSAKOPOULOS FAMILY L.L.C, a single member California limited liability company (together, "Owner"), enter into this Owner Participation Agreement, also called OPA, as of January ____, 2006. For purposes of this Agreement, the capitalized terms shall have the meanings assigned in Section 12, or in the Lease, as the case may be.

RECITALS

- A. Owner has purchased from Esquire Partners and is currently the owner of the Property known as Esquire Plaza, including the Leasehold held by Tenant under the Lease, both of which are more particularly described in attached Exhibit A: Property Description, which is incorporated into this OPA by this reference.
- B. The Property is located in Merged Downtown Sacramento Redevelopment Project Area and is subject to the Project Area's Redevelopment Plan. 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).
- C. Agency provided financial assistance for the development of the Property to Esquire Partners under the Prior OPA. One of the conditions to Agency funding is the continuation of theater operations in the Leasehold for not less than five years. The Agency also retains certain rights under the Prior OPA related to changes of use in the Leasehold.
- D. The Tenant is currently using the Leasehold as an IMAX Theater. The original five-year IMAX Theater requirement of the Lease has expired, and Tenant has informed Owner and Agency that operation of the IMAX Theater cannot be continued under the existing lease arrangement because it is no longer financially feasible. Tenant desires to enter into this OPA to assure its ability to continue its IMAX Theater operation. Owner desires to enter into this OPA to avoid loss of a signature tenant which benefits the visibility and marketability of the office operations, as well as providing pedestrian traffic which benefits Owner's restaurant tenants. Agency desires to enter into this OPA to assure the continued operation of a signature theater tenant, whose operations bring vitality to K Street Mall and gives incentives to further development of K Street, especially with regard to theater, entertainment, and restaurant development.
- E. The Agency is participating in this OPA because this OPA is consistent with and furthers the Redevelopment Plan. Specifically and without limitation, the Agency has determined that the Project will help eliminate the blighting influences of high vacancy rates and impaired

8

Owner Participation Agreement

investments. The Agency has also determined that the Project will meet the following goals of the current "Implementation Plan" adopted for the Project Area in that the continuation of the IMAX theater operation is significant to the revitalization of K Street and the promotion of a theater and entertainment area as identified in the Implementation Plan.

F. In order to accomplish such goals and purposes, the OPA provides that the Tenant will continue the IMAX Theater operations, that Owner will give lease concessions as provided and in exchange for such covenants that the Agency will provide funds to pay for such covenants.

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. **PURPOSE.** Agency is providing funding to the Project as stated in Section 4 for purchase of a covenant for the continued operation of the IMAX Theater in the Leasehold, as well as other obligations and restrictions, including without limitation, use restrictions, as evidenced by the Agreement Concerning Covenants. This OPA is not intended to change, limit or replace the Prior OPA.

2. **PROJECT DESCRIPTION.** The Project being assisted with the Agency Funding is the following: Agency is purchasing a continuation of the theater covenants under the existing Agreement Concerning Covenants Running with the Land Including Covenants Against Discrimination in Perpetuity ("Agreement Concerning Covenants") between the Agency and the predecessor to Owner, dated August 27, 1997 and recorded simultaneously with the Prior OPA on January 26, 1998, Series No. 199801261902 in the official records of Sacramento County, as well as operating covenants of Tenant as provided in this Agreement.

3. **LEASE AMENDMENT.** This Agreement shall not be effective unless and until Owner and Tenant enter into an amendment of the Lease (the "Lease Amendment") approved by the Executive Director of the Agency, that, among other things, will provide the following:

a. During the Rental Adjustment Period (January 1, 2006 through December 31, 2010), the "Base Rent" will be reduced by \$106,250 per year from the Base Rent that would otherwise apply.

b. During the Rental Adjustment Period, "Operating Expenses" and "CAM Charges" together will be reduced by \$20,000 per year from the combined sum that would otherwise apply.

c. During the Rental Adjustment Period, "Percentage Rent" on annual "Gross Revenues" between \$2,000,000 and \$2,300,000 will be eliminated, but "Percentage Rent" on annual "Gross Revenues" between \$2,500,000 and \$4,000,000 will be at a rate higher than that which would otherwise apply by an amount equal to two percent of Gross Revenues in excess of \$2,500,000 per year. Percentage Rent shall otherwise be as provided in the Lease, and after December 31, 2010, all Percentage Rent shall be as provided in the Lease.

Owner Participation Agreement

d. During the Rental Adjustment Period Tenant shall operate an IMAX Theater in the Leased Premises continuously and uninterruptedly in all of the Rentable Area of the Leased Premises with due diligence. The days and hours of operation shall be consistent with the normal operating hours of other IMAX theaters in major metropolitan areas, and not fewer than nine hours per weekday and nine hours on each Saturday and Sunday, other than during Permitted Closures as defined in the Lease.

4. **AGENCY FUNDING.** With respect to the period, January 1, 2006 through December 31, 2010, Agency shall pay to Owner, as offset to the rent adjustments resulting from the Lease Amendment, the amount of one-half of the net rent reduction in any calendar year resulting from such adjustments, but in any event, not more than \$75,000 for any calendar year. Agency shall pay said amount within thirty (30) days after submission of a certification to Agency signed by Owner, certifying the annual rent paid for the respective calendar year for each of the "Base Rent", "Operating Expenses", "CAM Charges", and "Percentage Rent", and an accounting of the rental adjustment under the Lease Amendment for each such rent category, whether such adjustment is for rental decrease or for increase due on account of "Percentage Rents."

5. **USE COVENANTS.** Tenant and Owner shall operate and manage the Property in accordance with this OPA including the following:

a. **NONDISCRIMINATION.** Tenant 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.

1) **EMPLOYMENT.** Tenant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, creed or national origin. Tenant 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 be 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. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

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

b. **AGREEMENT CONCERNING COVENANTS.** Tenant and Owner, each, covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that the Property shall be used strictly in accordance with the provisions of the Agreement Concerning Covenants.

6. **INDEMNIFICATION.** Each of the parties shall indemnify, protect, defend and hold harmless each of the other parties and its respective officers, directors, employees, advisors, and agents from any and all liability from bodily injury, death and property damage caused by or resulting

Owner Participation Agreement

from the acts or omissions of such party, its officers, employees, agents or independent contractors and for any and all costs incurred by the other party in defending against such liability claims, including attorney's fees, excepting only indemnification for injury, death or property damage caused by the negligent act or willful misconduct of the other party. This indemnification provision shall survive the termination of this agreement.

7. DEFAULTS AND REMEDIES. Except as otherwise provided in the OPA, if any 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 any other party or such longer time as is reasonably necessary to remedy such default if such default cannot reasonably be cured within thirty (30) days for reasons beyond the control of the defaulting party. If the defaulting party does not promptly begin and diligently cure the default within a reasonable time, the other party may institute proceedings to cure the default, including without limitation, proceedings to compel specific performance by the defaulting party. Subject to any extension of time permitted by this OPA, a failure or delay by a party to perform any term or provision of this OPA constitutes a default of this OPA. As a condition precedent to termination of the OPA under this Section, each party shall first tender the return of all property or funds received from or on behalf of the other party. After such return of property and funds and termination of the OPA, neither Agency nor Tenant 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.

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

b. ATTORNEY'S FEES AND RELATED. In any action arising out of this Agreement, 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.

8. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER. Substantial public financing and other public aids have been made available by law and by the federal and local governments to assure the continued operation of the IMAX Theater operation. Tenant shall not assign Tenant'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 Tenant or the degree of their control of Tenant without the prior written consent of Agency. Agency shall consent to such assignment if the assignor has the financial capability and experience of Tenant in the operation of a theater substantially similar to the IMAX Theater operation, and the transferee or assignee executes and

Owner Participation Agreement

delivers to Agency a valid, binding, written assumption of all obligations of Tenant. Such a transfer as permitted in this Section 8 shall not relieve Tenant, 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 Tenant and the parties signing the OPA on behalf of the Tenant represent that they have the authority of all of Tenant's principals to agree to and bind them to this provision.

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

a. 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.

b. CONFLICTING PROVISIONS. If conflicts are discovered in provisions of this OPA and such incorporated documents, this OPA shall control with regard to Agency funding terms and the Agreement Concerning Covenants shall control with regard to Property covenants, conditions, and restrictions. In any event, the conflicts shall be interpreted so as to meet the intent of this OPA.

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

d. 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.

e. 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.

f. 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.

Owner Participation Agreement

g. **TIME FOR PERFORMANCE.** In determining time for performance, it shall be construed that Agency and Tenant 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.

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

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

j. **SUCCESSORS.** Subject to the provisions of this OPA, 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.

10. **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:

a. Addresses for notices are as follows:

1) Agency: Redevelopment Agency of the City of Sacramento, 630 I Street, Sacramento, California 95814, Attention: Legal Department.

2) Tenant: IMAX Theater Holding (California I), Inc., 2525 Speakman Drive, Sheridan Park, Mississauga, Ontario L5KB1, Canada, Attn: Senior V. P. Legal Affairs.

3) Owner: Tsakopoulos 523 Investors, and The Tsakopoulos Family LLC, 1215 K Street, Suite 980, Sacramento, CA 95814; Attention: George Tsakopoulos

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

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;

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;

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

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

Owner Participation Agreement

11. **NONDISCRIMINATION.** Tenant and Owner and their respective successors and assigns, agree that the following provisions shall apply to, and be contained in all contracts and sub-contracts for the Project.

12. **DEFINITIONS.**

a. "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.

b. "Agency Funding" is the funding provided by the Agency under this OPA to Tenant for the Project.

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

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

e. "Tenant" is IMAX Theater Holding (California 1), Inc., a Delaware corporation, duly authorized to do business in the State of California. Notwithstanding any other provision of this OPA, Tenant may assign this OPA to a single asset entity in which Tenant 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 Tenant is located at 2525 Speakman Drive, Sheridan Park, Mississauga, Ontario L5KB1, Canada.

f. "Esquire Partners" refers to Owner's predecessor in interest to the Property, Esquire Partners, LLC.

g. "Lease" is the lease between Owner's predecessor in interest to the Property and Tenant for the IMAX Theater.

h. "Lease Amendment" shall mean the amendment to the Lease described in Section 3, which amendment has been approved by Agency and executed by Owner and Tenant, as provided in Section 3.

i. "Leaschold" is the leasehold interest in the Property granted by the Lease.

j. "Legal Description" is the legal description of the real property affected by this OPA, including the Leaschold.

Owner Participation Agreement

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

l. "Prior OPA" is the Owner Participation Agreement between the Agency and Esquire Partners, dated _____, regarding the Agency funding and funding requirements for the development of the Property.

m. Property is the real property located at Esquire Plaza, 13th and L Streets, in the City of Sacramento, California, as more particularly described in the Legal Description.

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

o. "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.

p. "Agreement Concerning Covenants" is the agreement containing covenants, conditions and restrictions, including without limitation, use restrictions that run with the Property pursuant to the Prior OPA.

q. The "Rental Adjustment Period, shall mean the period from January 1, 2006 through December 31, 2010, inclusive, which is the period during which the rent schedule for the Lease hold shall be adjusted by the Lease Amendment.

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

TENANT: IMAX THEATER HOLDING (CALIFORNIA I), INC.

AGENCY: THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

By:

Tenant signatory

Tenant signatory title

G. Mary Reilly

Approved as to form:

Tenant Counsel

Ed MacNeil
Vice President

By:

Ray Kerridge, City Manager

Approved as to form:

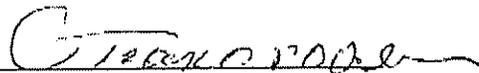
Agency Counsel

Owner Participation Agreement

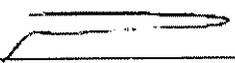
OWNER:

TSAKOPOULOS 523 INVESTORS,
A California Limited Partnership

THE TSAKOPOULOS FAMILY LLC,
a single member California limited liability
company

By: 
George Tsakopoulos

Approved as to form:



Owner Counsel

EXHIBIT A

PROPERTY DESCRIPTION

1. Property Description: The IMAX theater at 1215 K Street, Sacramento, California.
2. Identification of the Lease: That certain lease dated September __, 1997 (date not completed, executed September 25, 1997) and Interim Rent Rider dated January 1, 2002, between Tenant and Landlord's predecessor in interest, Esquire Partners, LLC, a California limited liability company, and the Lease Amendment contemplated by Section 3 of this Agreement.

17