



**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**

APPROVED
BY THE CITY COUNCIL



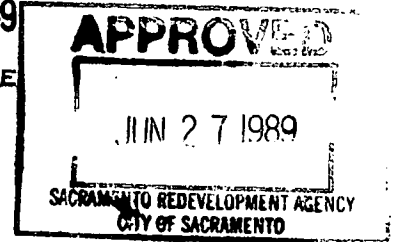
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June 27, 1989

Redevelopment Agency and
City Council of the
City of Sacramento
Sacramento, California

JUN 27 1989

OFFICE OF THE
CITY CLERK



AG 88 279
AG 88 280

Honorable Members in Session:

SUBJECT: Authorization to Terminate an Agreement with Mr. Chuck O'Neal and Mr. Kenneth L. Kirby and to Approve Various Agreements for the Redevelopment of the City Market Building Site, Old Sacramento Parcel No. 54, 118-120 "J" Street

SUMMARY: In conjunction with actions previously approved by the Agency, adoption of the attached resolutions will:

1. Authorize the Acting Executive Director to terminate the existing contract for Sale of Land for private redevelopment related to the redevelopment of Old Sacramento Parcel No. 54, 118-120 "J" Street.
2. Upon reimbursement of the Agency's legal costs relating to this transaction, the Acting Executive Director is authorized to execute an amendment to the Special Warranty Deed for Parcel No. 54 and to execute an Owner Participation Agreement, substantially in the form attached and as approved by Agency Counsel, with Kenneth L. Kirby for the reconstruction of the City Market Building as a ten (10) room bed and breakfast hotel facility.
3. Authorize the Acting Executive Director to execute an agreement for the Redeveloper's construction of service court improvements on a shared cost basis.
4. Authorize the Acting Executive Director and the City Manager to execute an agreement for parking with the Redeveloper in conjunction with the redevelopment of the City Market Building site.
5. Facilitate the settlement of the Agency's litigation to revest ownership of Old Sacramento Parcel No. 54 by authorizing the Agency's counsel to file for a "Stipulated Judgement". (Filing with the court must occur by June 29, 1989).

6-27-89

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SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

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BACKGROUND:

On August 2, 1988, the Agency adopted Resolution No. 88-060 which authorized the Executive Director to terminate the contract for Sale of Land for Private Redevelopment between Mr. Chuck O'Neal and Mr. Kenneth L. Kirby and the Agency for the reconstruction of the City Market Building, 118-120 "J" Street, Old Sacramento Parcel No. 54 and authorized the Executive Director to commence litigation for revestment of the parcel to the Agency. As a result of the subsequent litigation the parties have reached a settlement agreement subject to the approval of the Agency.

The principal points of the settlement require that:

1. Mr. Kirby shall obtain full assignment of Mr. O'Neal's interest in the redevelopment of the City Market Building and shall become the Redeveloper.
2. The Redeveloper and Agency shall terminate the existing contract for Sale of Land for Private Redevelopment and shall execute an Owner Participation Agreement for the reconstruction of the City Market Building as a ten (10) room Bed and Breakfast Hotel facility. The Owner Participation Agreement will be substantially in the form as attached as Exhibit "A".
3. The Owner Participation Agreement will contain a Performance Schedule, and if at any point the Redeveloper fails to perform, the ownership of the parcel will transfer to the Agency. The Agency or Agency's designee shall hold the Deed to the Parcel in escrow pending Redevelopers successful performance.
4. The Redeveloper will provide the Agency with a Performance Bond in an amount sufficient to complete the reconstruction of the City Market Building.
5. The Redeveloper and Agency will execute an Agreement for the Redeveloper's construction of the Service Court area improvements in conjunction with the reconstruction of the City Market Building on a shared cost basis.
6. The Redeveloper, the City and the Agency will execute an Agreement to provide ten (10) parking spaces in Old Sacramento Parking Structure P-2 for the use of Hotel guests. The Redeveloper or Redeveloper's Hotel Operator shall pay the total cost of Hotel guest parking at the prevailing parking rates to the City.

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

Per the Schedule of Performance, the Redeveloper will be afforded eighteen (18) months in which to revise previously approved final plans, secure financing and a building permit and complete all the improvements. Agency Legal Counsel has determined that it will take the Agency at least the same period of time to successfully revest title to parcel through the litigation. The Agency would then need to seek a new redeveloper for the project who would need approximately eighteen (18) months to two (2) years to develop plans and complete construction. In a "best case" scenerio, Mr. Kirby will complete the redevelopment of the City Market Building within the Schedule of Performance. In a "worst case" scenerio, should Mr. Kirby fail to perform at any point per the Schedule of Performance, the ownership of property will immediately return to the Agency without the lengthy revestment process.

FINANCIAL IMPLICATION:

Should the Agency reacquire the parcel, it will be readvertised for redevelopment and be offered for sale at the then current market value.

POLICY IMPLICATION:

The requested actions are consistent with previous actions.

ENVIRONMENTAL REVIEW:

Pursuant to California Environmental Quality Act (CEQA) Guidelines 1537:(6) (3), action approved by the adoption of the attached Resolution do not require an environment review. (The project has previously been reviewed and approved as a portion of the ongoing Old Sacramento Restoration Project predating CEQA and NEPA).

MBE/WBE EFFORTS:

The Redeveloper is required to use best faith efforts to meet the Agency's MBE/WBE goals.

VOTE AND RECOMMENDATION OF COMMISSION:

At its regular meeting of June 19, 1989, the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolution. The votes were as follows:

AYES: Moose, Sheldon, Simon, Simpson, Strong, Yew, Wiggins

NOES: None

NOT PRESENT TC VOTE: Wooley

ABSENT: Amundson, Pernell

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY


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RECOMMENDATION:

It is the staff's recommendation that the attached Resolutions be adopted which will:

1. Authorize the Acting Executive Director to terminate the existing contract for Sale of Land for private development related to the redevelopment of Old Sacramento Parcel No. 54.
2. Approve terms and conditions for and authorize the Acting Executive Director to execute an Owner Participation Agreement for the reconstruction of the City Market Building as a ten (10) room Bed and Breakfast Hotel Facility.
3. Authorize the Acting Executive Director to execute an Agreement for the Redeveloper's construction of service court improvements on a shared cost basis.
4. Authorize the Acting Executive Director and the City Manager to execute an Agreement for parking with the Redeveloper in conjunction with the redevelopment of the City Market Building site.
5. Facilitate the settlement of the Agency's litigation to revert ownership of Old Sacramento Parcel No. 54 by authorizing the Agency's counsel to file for a "Stipulated Judgement". (Filing with the court must occur by June 29, 1989).

Respectfully Submitted,


ANDREW J. PLESCIA
Acting Executive Director

TRANSMITTAL TO COUNCIL:


WALTER J. SLIVE, City Manager

3200WPP(249)

RESOLUTION NO. 89-058

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO



ON DATE OF _____

ACTIONS RELATED TO SETTLEMENT OF LITIGATION AND THE REDEVELOPMENT OF OLD SACRAMENTO PARCEL NO. 54

NOW THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

Section 1: The Acting Executive Director is authorized to terminate the existing contract for Sale of Land for Private Redevelopment between Mr. Chuck O'Neal, Mr. Kenneth L. Kirby and the Agency for the Redevelopment of the City Market Building Site, Old Sacramento Parcel No. 54, upon the conditions set out below.

Section 2: Upon reimbursement of the Agency's legal costs relating to this transaction, the Acting Executive Director is authorized to execute an amendment to the Special Warranty Deed for Parcel No. 54 and to execute an Owner Participation Agreement, substantially in the form attached and as approved by Agency Counsel, with Mr. Kenneth L. Kirby for the reconstruction of the City Market Building as a ten (10) room bed and breakfast hotel facility.

Section 3: The Acting Executive Director is authorized to execute an Agreement with Mr. Kenneth L. Kirby for the construction of Service Court improvements on a shared cost basis.

Section 4: The Acting Executive Director is authorized to enter into an Agreement with Mr. Kenneth L. Kirby and the City of Sacramento regarding parking in conjunction with the redevelopment of the City Market Building Site for Hotel guest use.

Section 5: The Amendments to the Agreements for Operation and Maintenance of the five (5) Agency-owned Parking Facilities, Lots G, K, P, R and V, adopted March 29, 1988 by City Resolution Nos. 88-251 and 88-252 and Agency Resolution No. 88-026 are applicable to the Parking Agreement between the Redevelopment Agency, Kenneth L. Kirby and the City of Sacramento.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

1950

1951

Section 6: The Acting Executive Director is authorized to take all necessary actions to settle the litigation to re-vest ownership of Old Sacramento Parcel No. 54 in accordance with the terms and conditions of the above described Owner Participation Agreement.

Section 7: The Acting Executive Director is authorized to amend the special warranty deed on such parcel 54, as needed to conform to the owner participation agreement.

Section 8: This Resolution shall be effective upon adoption.

CHAIR

ATTEST:

ASSISTANT SECRETARY

1100WPP2(367)

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

RESOLUTION NO. 89-515

ADOPTED BY THE SACRAMENTO CITY COUNCIL

APPROVED
BY THE CITY COUNCIL

ON DATE OF _____

JUN 27 1989

**OFFICE OF THE
CITY CLERK**

RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT FOR PARKING IN CONJUNCTION
WITH THE REDEVELOPMENT OF THE CITY
MARKET BUILDING SITE IN OLD SACRAMENTO

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF SACRAMENTO:

Section 1: The City Manager is hereby authorized and directed to enter into an agreement with the Redevelopment Agency and Kenneth L. Kirby, regarding parking in conjunction with the redevelopment of the City Market Building site in Old Sacramento, Parcel No. 54.

Section 2: The amendments to the agreements for operation and maintenance of the five Agency-owned parking facilities, Lots G, K, P, R, and U, adopted March 29, 1988, by City Resolution Nos. 88-251 and 88-252 and Agency Resolution No. 88-026 are applicable to the parking agreement between the Redevelopment Agency, Kenneth L. Kirby, and the City of Sacramento.

Section 3: This Resolution shall be effective upon adoption.

MAYOR

ATTEST:

CITY CLERK

1100WPP2(307)

FOR CITY CLERK USE ONLY

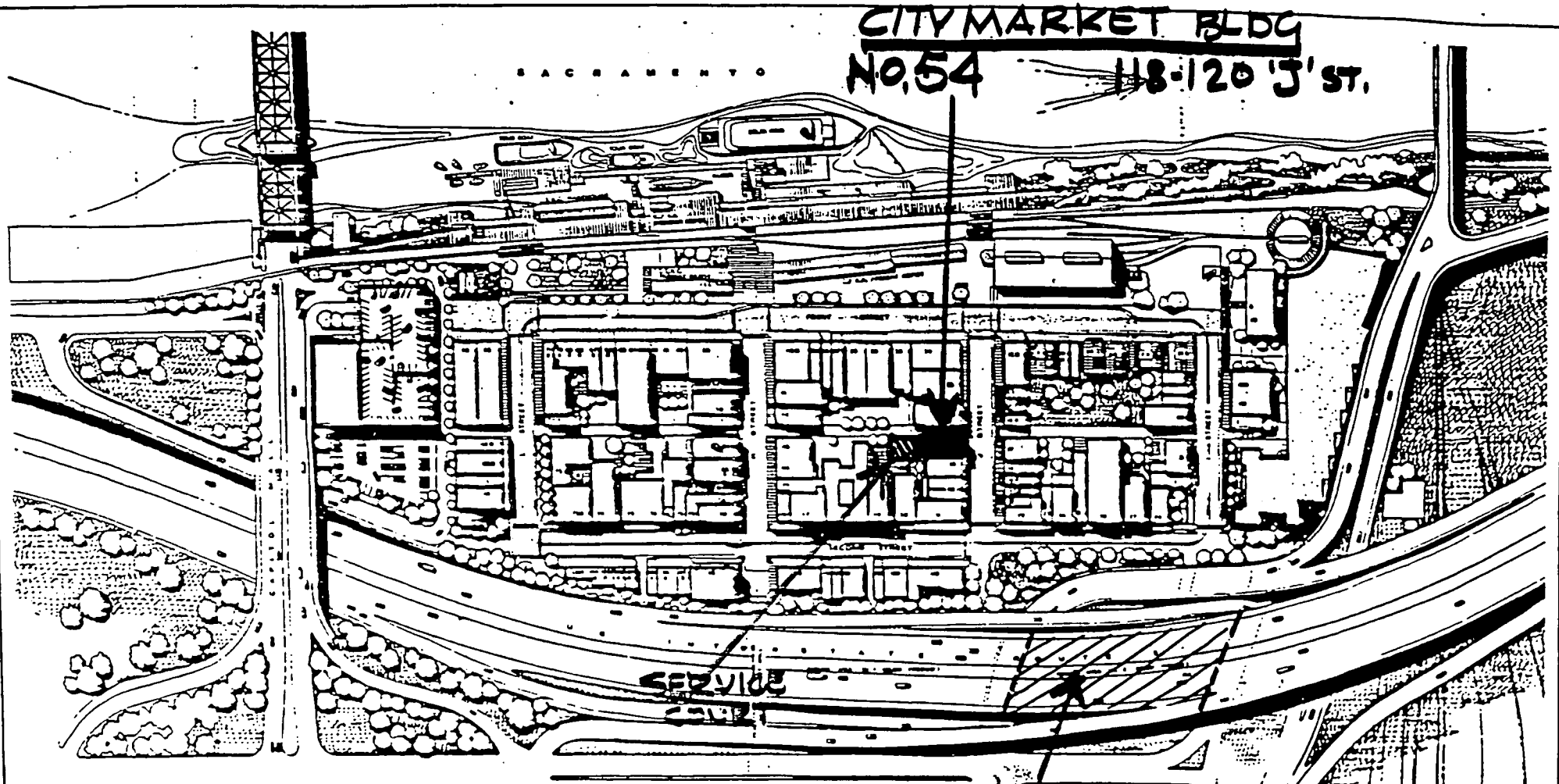
RESOLUTION NO.: _____

DATE ADOPTED: _____

1991
1992
1993

CITY MARKET BLDG
No. 54 **118-120 'J' ST.**

SACRAMENTO



Key to Building Numbers

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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APPROVED
 BY THE CITY COUNCIL
 JUN 14 1989
 OFFICE CLERK

OLD SACRAMENTO

A REGISTERED NATIONAL
 HISTORIC LANDMARK

PICTORIAL PLAN



1970
1971
1972
1973

DRAFT

**OWNER PARTICIPATION AGREEMENT
CITY MARKET BUILDING (OLD SACRAMENTO PARCEL 54)**

AG 88279

**APPROVED
BY THE CITY COUNCIL**

JUN 27 1989

**OFFICE OF THE
CITY CLERK**

**SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY
AND
KENNETH KIRBY**

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OWNER PARTICIPATION AGREEMENT
CITY MARKET BUILDING (OLD SACRAMENTO PARCEL 54)

This Agreement is entered as of this ____ day of _____, 1989, by and between the Redevelopment Agency of the City of Sacramento (the "Agency") and Kenneth L. Kirby (the "Owner"). The Agency and Owner agree as follows:

1. Purpose of Agreement

The purpose of this Agreement is to effectuate the Merged Downtown Redevelopment Plan (the "Redevelopment Plan") for the Merged Downtown Redevelopment Project Area (the "Project Area"), and the historic district within the Project Area (formerly Capitol Mall Riverfront Project, Project No. 4) known as "Old Sacramento" ("Old Sacramento") by providing for the development and use (the "Project") of certain real property (the "Site") in the Project Area. This Agreement is entered into for the purpose of development and not for speculation in landholding. The Agency represents that the development of the property pursuant to this Agreement, and the fulfillment generally of the Agreement, are in the vital and best interests of the City of Sacramento and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements under which the Project is to be undertaken and is being assisted.

1.1. The Redevelopment Plan.

The Redevelopment Plan was 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. This Agreement is subject to the provisions of the Redevelopment Plan (as it may be from time to time amended) which is incorporated in this Agreement by this reference.

1.2. Project Area.

The Project Area is located in the City of Sacramento, California (the "City"), and is described in detail in the Redevelopment Plan.

1.3. Old Sacramento

Old Sacramento is that portion of the City which has been referred to as Project No. 4, being a portion of Redevelopment Area No. 1, as set forth in City Ordinance No. 2681, adopted August 25, 1966. Project No. 4 was merged into the Project Area. Old Sacramento is a historic district subject to various development constraints regarding design and historic authenticity.

1.4. The Site.

The Site is located on the southwest corner of J Street and Firehouse Allee in Old Sacramento and is that portion of the Project Area described more particularly in Exhibit 1 Site Description ("Site Description") attached. The Site is shown on the "Parcel Map" attached as Exhibit 2 Parcel Map.

1.5. The Agency.

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 Agreement, includes the Redevelopment Agency of the City of Sacramento, California, and any assignee of or successor to its rights, powers and responsibilities.

1.6. The Owner

Kenneth L. Kirby is the Owner. The principal office of Owner is located at 3420 Coach Lane, Suite 10, Cameron Park, California 95682.

1.7. Project History

Owner's present interest in the Site was transferred to Owner under an Assignment Agreement and Amendment to Contract for Sale of Land for Private Redevelopment ("Assignment"), dated July 1, 1981, among the Agency, the partnership of Owner and Charles L. O'Neal and the partnership of Chuck O'Neal and Howard Tarter. The Assignment assigned to Owner and O'Neal the interests of O'Neal and Tarter in the Site which O'Neal and Tarter had acquired from the Agency under a Contract for Sale of Land for Private Redevelopment ("Redevelopment Contract"). The Agency, because of its desire and responsibility to redevelop the Site, transferred the Site under the Redevelopment Contract and the Assignment for less than full value of the Site in consideration of the obligations of the respective redevelopers to redevelop the Site. In both the Redevelopment Contract and the Assignment, the Agency retained an interest in the Site in that Agency reserved the right to revest the Site in the Agency should the respective redevelopers fail to perform. Furthermore, prior to and in contemplation of the Redevelopment Contract, Agency recorded a Declaration of Restrictions ("Declaration of Restrictions") against the Site restricting its use in conformance with the Redevelopment Contract.

Owner and O'Neal are now in default of the Assignment, and Agency has commenced legal proceedings to revest the Site in Agency. Agency and Owner have entered this Agreement in consideration of a settlement of their respective claims in said proceedings.

2. The Development of the Site

Owner shall construct on the Site a prototype two-story structure as depicted in the Schematic Reconstruction Study completed by the Agency, continuing the general characteristics of the adjacent Pioneer Hall and Bakery Building on Old Sacramento Parcel No. 53. Owner shall construct and manage all improvements on or to be constructed on or adjacent to the Site ("Improvements") within the limitations established in this Agreement and the Plans.

2.1. Schedule of Performances

The construction time schedule shall be as set out in the "Schedule of Performances", attached as Exhibit 3 Schedule of Performances and incorporated in this Agreement by this reference.

2.2. Obligation to Complete

In the event that the cost of construction exceeds the costs projected by Owner, Owner shall, nevertheless, bear the responsibility to complete the construction of the Improvements.

2.3. Historic Authenticity

In order to insure accurate and authentic historic atmosphere in Old Sacramento, Owner agrees to faithfully reconstruct the historic building on the Site, as described in this Agreement, by using historical and architectural plans, data, schematic drawings and sketches and other information and material which the Agency may provide. More specifically, Owner shall reconstruct the Improvements, with as much accurate detail as possible, to conform to the facade depicted for the City Market Building (Old Sacramento Parcel No. 54) pursuant to the Schematic Reconstruction Study completed by the Agency, to photographs and their interpretation provided by the Agency and to other relevant evidence possessed by Agency.

3. Predevelopment Obligations

3.1. Termination of O'Neal Interest

Owner shall, prior to commencement of construction and as a condition precedent to Agency's obligations under this Agreement obtain, from Charles L. O'Neal, an assignment and release of all rights, title and interest in the Site and a release of all claims against the Owner or the Agency. Owner shall further obtain and duly record a valid transfer of all title and other interests in the Site from Charles L. O'Neal to Owner.

3.2. Preparation of Construction Plans

As soon as possible and, in any event, no later than the date specified in the Schedule of Performances, Owner shall have the Plans prepared for the development of the Site (including all necessary on-site and off-site improvements, landscaping and signs) subject to Agency approval. The Plans shall include a supplemental lighting scheme, as required by the Agency. The Plans shall be prepared by an architect licensed in the State of California and shall conform to any preliminary plans previously approved by Agency; to Agency plans and consultant studies for the development Old Sacramento; to the Redevelopment Plan; to all applicable statutes, laws, codes, regulations, ordinances and rules; and to the provisions of this Agreement. Owner shall submit the Plans to the Agency and the Agency shall approve or disapprove the Plans in writing. The Plans shall be submitted when required by the Schedule of Performances. The Plans shall be in sufficient detail to obtain a building permit.

3.3. Meet and Consult

The Agency and the Owner shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of the Plans and related documents to the Agency receive prompt and speedy consideration. Any items so submitted and approved in writing by the Agency shall not be subject to subsequent disapproval except as a result of the discovery of material information not previously available to Agency.

3.4. Agency Approval of Plans

The Agency shall have the right of review of the Plans; including all specifications, drawings, construction schedule and other related submissions and any material changes thereto, including the right of architectural and landscaping review.

3.4.1. Time for Approval

Agency shall approve the submitted plans and submissions within forty-five (45) days after receipt thereof.

3.4.2. Approval of Material Changes

If the Owner desires to make any material changes in the Plans as approved by the Agency, the Owner shall submit any such proposed changes to the Agency for its approval. The Agency shall approve or disapprove the proposed change as soon as practicable but in any event within thirty (30) days after submission to the Agency. Such change in construction plans shall be deemed approved by the Agency unless rejected, in whole or in part, by Agency's written notice to the Owner made within said thirty (30) day period and stating fully the reasons for rejection. Agency may reject without review any request for change made after the date for approval of Plans as specified in the Schedule of Performances.

3.4.3. Purpose of Approval

Agency's approval of Plans is not an assurance of the adequacy or correctness of the Plans, but merely an acknowledgement that the Plans conform to the uses and designs contemplated by this Agreement and to assure that Agency funds provided under this Agreement are properly utilized.

3.5. Payment and Performance Bonds

Prior to commencement of construction of the Improvements, the Owner shall obtain a performance bond and a labor and materials payment bond in favor of the Agency as a named obligee, in American Institute of Architects Form A311, or equivalent approved by Agency, securing faithful performance of the terms of the Contract in a penal sum equivalent to the cost of construction as approved by Agency and securing payment of all labor and material suppliers and subcontractors for the work of this Agreement. The bonds shall be written with a surety listed as acceptable to the federal government on its most recent list of sureties. In lieu of said bonds, Owner may provide letter of credit, cash equivalent or real property security in a form and amount acceptable to and verified and approved by the Agency legal staff, subject to such assurances (including title insurance) as they may require.

3.6. Compliance with Surety Requirements

Owner shall comply with all requirements of the surety. Owner shall make no changes in the work to be performed by Owner and shall make no advance payments to such contractor without prior written notice to each surety and the Agency.

3.7. Permits

Before commencement of construction or development of any buildings, structures or other work of improvements upon the Site, the Owner shall at its own expense secure any and all certifications and permits which may be required by any governmental agency affected by such construction, development or work. The Agency shall provide at no cost to Owner reasonable assistance in securing these certifications and permits.

3.8. Development Costs

Owner shall be responsible for, obtain and pay all costs of developing the Site and constructing all Improvements. Owner shall provide a firm cost estimate for the construction of the Improvements in a form and with specificity satisfactory to Agency.

3.9. Evidence of Financing

The Agency shall receive evidence satisfactory to Agency that Owner has expended or has been obligated to expend not less than twenty-five percent (25%) of the total Project costs, including furnishings, and has obtained commitment for construction financing in sufficient amounts to enable Owner to develop the Site as required by this Agreement. Such evidence of financing shall include the written acceptance by Owner of each financing commitment, evidence that Owner has paid any required commitment fee and has otherwise satisfied or is capable of satisfying all conditions of each commitment which shall include any requirements of this Agreement. Owner shall fully comply with all requirements of any lender with regard to such financing.

3.9.1. Construction Contracts

The Agency shall receive a copy of executed construction contracts in a form consistent with the requirements of this Agreement and showing that Owner has obtained a valid and binding obligation of a licensed contractor to construct the Improvements. The construction

contracts shall be in an amount consistent with the financing commitments, require satisfactory labor and material and faithful performance bonds in the full amount of the contract require ten (10%) percent retention of all labor costs and require such other assurances as the Agency shall deem necessary.

3.9.2. Commencement of Construction

Owner shall have diligently commenced and proceeded with construction within thirty (30) days following Agency issuance of Notice to Proceed.

3.9.3. Disbursements of Owner's Equity

Owner shall expend its equity for construction on the Site prior to disbursement of construction loan funds.

4. Construction Covenants

The Owner shall promptly begin and thereafter diligently prosecute to completion the construction of the Improvements and the development of the Site in accordance with the provisions of this Agreement and at the times specified in the Schedule of Performances. In consideration of Owner's performance in constructing the Improvements and developing the Site, Agency has made significant material concessions for loan of funds for the Project to Owner. Therefore, the parties agree that such obligations of Owner shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, be to the fullest extent permitted by law and equity, binding for the benefit of the Agency and enforceable by the Agency against the Owner and its successors and assigns to or of the Site all or any interest in the Site.

4.1. No Construction Prior to Required Approvals

No construction of the Improvements shall be undertaken by the Owner until Owner has obtained and the Agency has approved the evidence of equity and financing commitments, the Plans, and all construction-related contracts and sub-contracts, the policies of insurance, and the bonds or other security submitted by the Owner pursuant to this Agreement. To the extent approved by Agency, contracts may be submitted subsequent to commencement of construction. Owner shall not commence any work which might be construed as commencement of the Project for establishment of mechanic's lien rights, and in any event, Owner shall not commence any work on the Site without Agency's written approval of the work to be done.

4.2. Substantial Changes

Owner covenants and agrees that Owner shall not make or permit to be made any construction of the Improvements which substantially deviate from the Plans without approval by the Agency of such changes. For purposes of this paragraph, substantial deviation from the Plans shall include, without limitation the following:

4.2.1. Building Coverage

Change in size or design materially affecting bulk, square footage, building coverage or floor area ratio, number of floors or residential units or size of residential units.

4.2.2. Exterior

Material changes affecting the size or design or use of exterior finishing materials noticeably affecting architectural appearance or functional use and operation of the Improvements.

4.2.3. Facilities

Material changes in size or placement of service or handicapped facilities; or in the number of elevators, stairs and ramps; and changes in general pedestrian or vehicular circulation in, around or through the Improvements.

4.2.4. Requiring Approvals

Any changes requiring approval of any city or state board, body, commission or officer, or any change required by any city or state board, body, commission or officer.

4.2.5. Signs

Material changes in number, size, placement, graphics, design or materials of all exterior signs differing from those shown and specified in the Plans;

4.2.6. Landscaping

Material changes in landscape planting and site improvements for the Site.

4.2.7. Site Improvements

Material changes in size or quality of exterior pavement, pedestrian malls, plazas, retaining walls, pools and fountains, exterior lighting and other site development of the Site other than that shown and specified in the Plans.

4.2.8. Required Changes

If any material change or corrections of the Plans shall be required by any governmental official, Agency, department or bureau having jurisdiction or any lending institution involved in financing, the Owner and the Agency shall cooperate in efforts to obtain waiver of such requirements or to develop a mutually acceptable alternative.

4.2.9. Other Changes

All change orders that result in a net increase in the construction cost, alter the scope of work or extend the period for performance shall require the prior written approval of Agency.

4.3. No Construction Over Utility Easements

Owner shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities on the Site, unless such construction is provided for in such easement or has been approved by the beneficiary of the easement. If approval for such construction is requested by Owner, Agency shall use its best efforts to assure that such approval shall not be withheld unreasonably.

4.4. Reports

During the period of construction, the Owner shall submit to the Agency a written report of the progress of the work when reasonably requested by the Agency, but not more often than once each month. The report shall be in such form and detail as may reasonably be required by the Agency and shall include a reasonable number of construction photographs taken since the last report if requested by the Agency.

4.5. Local, State and Federal Laws

The Owner shall carry out the construction of all improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

4.6. Antidiscrimination During Construction

The Owner for itself and its 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 Improvements provided for in this Agreement.

4.6.1. Employment

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

4.6.2. Advertising

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

4.6.3. GSAP

For the purpose of monitoring the antidiscrimination provisions, Owner and Owner's contractor and subcontractors shall become a signatories to the Greater Sacramento Area Plan (GSAP), and shall require all contractors performing work on the Site under this Agreement to become a signatory to GSAP.

4.7. Minority/Women's Business Enterprises Requirements

The provisions of Agreement related to the Residential Site are subject to Agency's minority and women's business enterprises ("MBE/WBE") requirements.

4.7.1. In Solicitations

In all services solicitation (whether by bid, Request for Proposal or Request for Qualification), Owner shall take all reasonable steps necessary to encourage the participation of minority-owned and female-owned businesses. Such steps may include, but are not limited to:

4.7.1.1. Registry

Obtaining the Minority and Women's Business Enterprises Registry from the Agency MBE/WBE Coordinator to ensure such contractors receive an invitation to bid.

4.7.1.2. Advertising

Advertising the invitation to bid or to submit proposals in the "El Hispano" and the "Sacramento Observer" as well as a newspaper of general circulation.

4.7.1.3. Direct Contacts

Reviewing the telephone directory or professional organization membership lists, or making direct contact with minority-owned or female-owned businesses for specialized trades and services and inviting such firms to bid.

4.7.2. Documentation

Owner shall maintain such documentation of efforts of outreach to minority or female owned businesses as may be required by Agency. Additionally, Owner shall maintain any documentation of contract awards for the Quarterly Minority Business Enterprise Report which may be required by the United States Department of Housing and Urban Development ("HUD").

4.7.3. Goal

The MBE/WBE utilization goal for this Project is 20% of contract dollars for Minority Business Enterprise and 5% of contract dollars for Women's Business Enterprise.

4.7.4. Inclusion in Contracts

The requirements and contract provisions for the Minority and Women's Business Enterprises must be included in all contracts. Contracts for purchases of goods and services over \$10,000 must be coordinated with the Agency's MBE/WBE Coordinator.

4.8. Local Hire

Owner shall use its best efforts to hire, or cause to be hired, for no less than sixty percent (60%) of the cost of the work relating to direct labor of the Project, local contractors and subcontractors with permanent places of business within the County of Sacramento. To the extent that labor for any portion of the Project is not available within the county, such portion shall not be included in determining the said percentage. Agency shall have the right to approve the computations as described in the foregoing sentence. If Agency determines that Owner has failed to comply with the aforesaid, Owner shall give written justification for such failure including a detailed listing of all efforts made to effect such compliance.

4.9. Agency Access

Owner shall permit the representatives of Agency access to the Site at all reasonable times which any of them deems necessary for the purposes of the Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

4.10. Public Improvements

The Owner shall at Owner's expense, undertake and complete any modification, construction, relocation or improvement of public facilities, improvements and utilities on or for the development of the Site.

4.11. Agency Sign

Owner shall place a sign on the Site during construction which states "A Project of Sacramento Housing and Redevelopment Agency". The sign shall be of commercial quality. The sign colors shall be blue or black on a light grey, light blue or white background or such other colors as the Agency may approve. The Agency name on the sign shall be in letters not less than four inches in height. The sign shall be displayed in a location easily legible from the nearest major thoroughfare.

4.12. Agency's Completion of Construction

Notwithstanding any other provision of this Agreement, if the Owner fails to commence construction of the Improvements on the date stated in the Schedule of Performances, or fails to diligently prosecute and substantially complete such construction within thirty (30) days following the date for substantial completion, the Agency may, upon fifteen (15) days written notice to the Owner and construction lender, and with or without legal process, take possession of the Site, remove the Owner and all agents, employees and contractors of the Owner from the Site, complete the work of construction and market and sell or lease the Site with all improvements. All contracts with contractors, subcontractors, suppliers and other entities related to the construction of the Improvements and all sources of funds for construction of the Improvements are irrevocably assigned by Owner to the Agency upon Agency demand after such failure by Owner. Upon the Agency taking possession of the Site, the Owner irrevocably appoints the Agency as its attorney-in-fact with regard to the Site and Improvements, and construction and financing agreements related thereto, until issuance of a Certificate of Occupancy for the said improvements, which Agency is coupled with an interest. Nevertheless, Agency has no obligation to take possession of the Site or to complete the construction of the improvements on the Site.

4.13. Certificate of Completion Issuance

After the Agency has determined that Owner has completed the Improvements in accordance with Owner's obligations under this Agreement, the Agency will furnish the Owner 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 Agreement and in the Deed with respect to the obligations of the Owner to construct the Improvements and of the dates for the commencement and completion of construction, subject to any qualifications or limitations stated in such certification. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any governmental requirements other than Agency or any obligation of the Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance all or any part of the Improvements.

If the Agency shall refuse or fail to provide a Certificate of Completion, the Agency shall, within thirty (30) days after written request by the Owner, provide the Owner with a written statement, indicating in adequate detail in what respects the Owner has failed to complete the Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measure or acts it will be necessary, in the opinion of the Agency, for the Owner to take or perform in order to obtain such certification.

4.14. Construction Parking

During the period of construction under this Agreement, Owner shall require its contractors, subcontractors, agents and employees, and the agents and employees of such contractors and subcontractors, to park their personal vehicles in parking areas other than on-street parking spaces in Old Sacramento.

5. Special Considerations

5.1. Agreement Amending the Declaration of Restrictions

Owner and Agency shall enter into an Agreement Amending the Declaration of Restrictions ("Amendment Agreement") as necessary to conform to the provisions of this Agreement. A copy of the Amendment Agreement is attached as Exhibit 4 Amendment Agreement

5.2. Service Court Agreement

Owner shall enter into the "Service Court Agreement" with the Agency, a copy of which is attached as Exhibit 5 Service Court Agreement, for the construction and operation of the portion of the Site designated the "Service Court" as described in the Site Description and shown on the Parcel Map. Owner has an undivided eleven percent (11%) interest in the area show on the Parcel Map as the Service Court.

5.3. Parking Agreement

Owner shall enter into the "Parking Agreement" attached as Exhibit 6 Parking Agreement for the off-street parking of vehicles for the Site.

6. Agency Approval of Final Documents

The following documents shall be subject to prior Agency review and approval, as specified:

6.1. Approval of Final Plans

Unless the Agency specifically reserves the right to review all or any portion of the final revision of the Plans, such plans shall be deemed approved, if they conform to the preliminary version of the Plans, previously approved by Agency if no changes requiring Agency approval have been made, and if City Design Review/Preservation Board and City Planning have approved such plans and the City is prepared to issue a building permit based upon such plans.

6.2. Bid Documents

Owner shall provide bid documents relating to the construction of the Improvements to Agency for review and approval by the Agency's staff prior to requesting bid proposals for construction.

6.3. Contracts

Owner shall submit to authority for review and approval all contracts related to construction of the Improvements and the development of the Site.

7. Termination of Redevelopment Contract and Assignment

Upon execution of this Agreement and all documents related to this Agreement, Agency and Owner shall take all necessary steps to terminate the Redevelopment Contract and the Assignment and to record such termination in the Official Records of Sacramento County. Termination of the Redevelopment Contract and the Assignment shall not mean a termination of the Declaration of Restrictions.

Agency shall record a termination and cancellation of the Redevelopment Contract and Assignment upon issuance of a Certificate of Completion for the Project, or earlier, provided that Owner is not then in default of this Agreement and that all of the following conditions have been met:

7.1. O'Neal's Release

Owner shall obtain the releases and record the transfers of interests to the Site from Charles L. O'Neal as provided in Section 3.1, 7.3 of this Agreement.

7.2. Recordation of Documents

This Agreement, the Amendment to the Special Warranty Deed and the Amendment to the Declaration of Restrictions shall have been duly executed and recorded and upon recording shall be subject only to the easements for utilities, lien of general and special taxes not yet due, the Redevelopment Plan, the Declaration of Restrictions and the Special Warranty Deed.

7.3. Deeds in Escrow

Owner shall place in escrow with the Law Offices of Brenton Bleier, a professional corporation, which firm represents the Agency in litigation, a deed

8. Insurance and Indemnification

8.1. Indemnification

Owner shall indemnify the Agency, its officers, directors, employees and agents, and hold them harmless from any and all liability from bodily injury, death and property damage caused by or resulting from the negligent or tortious acts or omissions of Owner, its officers, employees, agents or independent contractors and for any and all costs incurred by the Agency in defending against such liability claims, including attorney's fees, investigation costs, expert fees, court costs and other related costs and fees.

8.2. Public Safety Protections

Owner shall immediately take all necessary steps 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 or in any way connection with the Site, including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings. Prior to transfer of title to the Site to Owner, the Agency agrees to permit Owner, upon request and subject to reasonable restrictions imposed by Agency, to enter upon the Site for purposes of performing his obligations under this paragraph.

8.3. Liability Insurance

The Owner shall obtain and maintain, and require the contractor and subcontractors for the Project to purchase and maintain such insurance as will protect him from the following claims which may result from the operations under the Agreement of the Owner, any contractor, subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

8.3.1. Worker's Compensation

Claims under workers' compensation benefit acts;

8.3.2. Bodily Injury - Employees

Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

8.3.3. Bodily Injury - Others

Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

8.3.4. Employee Offenses

Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Owner, or (2) by any other person;

8.3.5. Injury to Property

Claims for damages, other than to the construction itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

8.3.6. Motor Vehicle

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

8.3.7. Contractual Liability

Claims for contractual liability arising from the Owner's obligations under this Agreement.

8.4. Liability Insurance Policy Limits

The insurance required by this Section shall be written for with a deductible of not more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000) and not less than the following limits of liability:

8.4.1. Worker's Compensation

Worker's Compensation Statutory Limits as set forth in Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code and having an employer's Liability of not less than \$2,000,000.

8.4.2. Comprehensive General Liability

Commercial General Liability coverage to include Premises-Operations, Independent Contractor's Protective, Products and Completed Operation (for two years), Broad Form Property Damage, or as otherwise approved by Agency Counsel:

8.4.2.1. Bodily Injury:

Bodily injury liability of \$1,000,000 each occurrence and \$1,000,000 Aggregate, Products and Completed Operations

8.4.2.2. Property Damage:

Property damage liability of \$1,000,000 each occurrence; \$1,000,000 Single limit and \$1,000,000 aggregate.

8.4.2.3. Contractual Liability:

Contractual liability for Bodily Injury of \$1,000,000 each occurrence; for Property Damage of \$1,000,00 each occurrence and \$1,000,000 aggregate; and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate.

8.4.3. Comprehensive Automobile Liability

Comprehensive Automobile Liability for any vehicle used for or in connection with the Work (Owned, Nonowned, hired, leased): \$1,000,000.

8.5. Builder's "All Risk" Insurance

Owner shall obtain and maintain, or require his contractor to obtain and maintain at all times during the course of construction of the Improvements on the Site, Builder's Risk Insurance for protection against all loss of, or damage to the Improvements or materials, on-site and off-site, to be used in the construction of the Improvements to their full insurable value. Said Builder's Risk Insurance shall name the Agency as a loss-payee as its interests may appear, and all subcontractors and sub-subcontractors as their interests may appear. Said insurance shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief. The Owner shall be responsible for materials stored on-site, off-site or in transit unless supplied by Agency and shall obtain and maintain similar insurance for any of the materials not otherwise covered by said "all risk" insurance.

Owner shall obtain and maintain such equipment insurance as required by the contractor or by law which insurance shall insure the interests of the Agency, the Contractor and all subcontractors in said work as their interests may appear.

8.6. Errors and Omissions Insurance

Architects, engineers and others for whom errors and omissions insurance coverage is available shall obtain and maintain such insurance, acceptable to Agency, in the policy amount of \$1,000,000 each occurrence and \$1,000,000 aggregate.

8.7. Fire and Extended Coverage

Upon completion of the Project and until the Note shall be repaid in full and the Trust deed reconveyed, Owner shall obtain and maintain fire and extended coverage insurance to the full insurable value of the Site including all improvements. Said insurance shall include protection for inflation in the replacement costs of the improvements on the Site. The proceeds of any claim by Owner against such insurance shall be used solely for the reconstruction or replacement of the damaged or destroyed improvements for which the claim was made.

8.8. Insurance Provisions

8.8.1. Provider

Each policy of insurance required under this Agreement shall be obtained from a provider licensed to do business in California and having the highest current Best's Insurance Guide rating, or such other rating as may be approved in writing by Agency's legal counsel.

8.8.2. Additional Insured

Unless otherwise approved by Agency's legal counsel in writing, the Agency shall be additional insured on all insurance policies, except the worker's compensation policy. Agency shall have the right to arbitrarily withhold such approval.

8.8.3. Single Project Insurance

The specified insurance amount shall be provided solely for this Project. Insurance amounts shall not be provided which are considered in aggregate with other Projects which Owner or the respective contractor might have concurrently under construction. The Agency may at its discretion permit an aggregate policy if and only if Owner or the respective contractor has fully disclosed to Agency other projects which will or may be considered in aggregate with the Project, and thereafter, Owner shall immediately inform Agency of the change in or addition to any such projects. Nevertheless, Agency may, at any time require that the insurance coverage be provided solely for the Project.

8.8.4. 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.

8.8.5. Certificates and Policies

Owner shall provide to Agency certificates of said insurance prior to commencing the work of this Agreement and shall provide to Agency true copies of the policies of said insurance as soon as available.

8.8.6. Failure to Maintain

If Owner fails to obtain or maintain, or cause to be obtained and maintained, any insurance required by this Agreement, the Agency shall have the right to purchase the insurance and Owner shall promptly reimburse the full cost of such insurance to the Agency. If Owner fails to reimburse the Agency for insurance, the amount of unpaid reimbursement shall bear interest until paid at the maximum rate permissible under the law. Owner shall be deemed in default of the Note or Conditional Grant, as the case may be, and this Agreement unless Owner has fully reimbursed Agency and provided the required insurance.

9. Land Uses

The general intent of this Agreement is to secure development which will strengthen the economic base and enhance the attractiveness of the City in general and the Project Area in particular and to reconstruct structure with historic significance within the Old Sacramento historic district. Owner shall develop and devote the Site to the uses specified in this Agreement, the plans, specifications and drawings approved by the Agency under this Agreement ("Plans") and the "Agreement Containing Covenants Affecting Real Property" attached as Exhibit 7 Agreement Containing Covenants Affecting Real Property and incorporated in this Agreement by this reference, and continue to maintain and use the Site in accordance with said uses and plans.

Owner covenants and agrees for itself, its successors, its assigns and every successor-in-interest to all or any part of the Site, that the Owner, such successors and such assignees shall act as follows:

9.1. Covenants for Use of the Site

Owner shall, after completion of construction, to strictly maintain, and assure the future maintenance of, the Site as a bed and breakfast inn containing approximately ten units and having a lobby and retail space on the street level. Owner shall also assure that the Site shall not be used for any

purpose for which a dance permit is required or for which a liquor license is required unless Owner has first obtained the written consent of the Agency to such use.

9.2. Nondiscrimination

Owner, its successors and assigns, shall not discriminate, and shall not permit anyone to discriminate, upon 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 Site, or any improvements on the Site. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

9.2.1. In Deeds

The following shall be included in deeds:

"The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that there shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, religion, race, color, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

9.2.2. In Leases

The following shall be included in leases:

"The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be discrimination against or segregation of any person or group of persons on account of sex, marital status, religion, race, color, creed, national origin or ancestry in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

9.2.3. In Contracts

The following shall be included in contracts:

"There shall be no discrimination against or segregation of any persons, or group of persons on account on account of sex, marital status, religion, race, color, creed, national origin or ancestry in the sale, lease, sublease, transfer, use or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees of the land."

9.3. Effect and Duration of Covenants

The Agreement Containing Covenants subjects and burdens the Site with the covenants regarding use of the Site and regarding nondiscrimination, as covenants running with the land. The Agreement

Containing Covenants shall be recorded prior to the commencement of construction by Owner. It is intended and agreed that the agreements and covenants provided in this Agreement and in the Agreement Containing Covenants shall be covenants running with the land and equitable servitudes thereon and that they shall, in any event, and without regard to technical classifications or designation, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, the Agency's successors and assigns, any other governmental entity acting within its authority and any successor in interest to all or any part of the Site against the Owner, its successors and assigns and every successor in interest to all or any part of the Site, and any party in possession or occupancy of the Site and any subcontracting party or parties or other transferees under this Agreement.

The covenant regarding residential use of the Site shall continue in effect for a minimum period of fifteen (15) years from the date stated in this Agreement for completion of construction. All other covenants contained in this Agreement and in the Agreement Containing Covenants shall remain in effect until July 17, 2014, except the covenants against discrimination which shall remain in perpetuity.

9.4. Documentation

Owner agrees to execute, as necessary, any and all recordable documents necessary to subject the Site to the covenants and restrictions contained in this Agreement, including the Agreement Containing Covenants.

9.5. Effect of Violation

The Agency is deemed the beneficiary of the terms and provisions of this Agreement and the covenants running with the land, both for its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Agency without regard to whether the Agency has had or does have any interest in the Site. If the covenants against racial discrimination are breached, the Agency shall have the right to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants are entitled.

10. Defaults and Remedies

10.1. In General

Subject to any extension of time permitted by this Agreement, failure or delay by a party to perform any term or provision of this Agreement constitutes a default of this Agreement.

Except as otherwise provided in the Agreement, in the event of any default in or breach of the Agreement, or any of its terms or conditions, by either party, such party shall, upon written notice from the other, immediately commence and diligently proceed to cure such default or breach within thirty (30) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach is not cured within a reasonable time, the aggrieved party may institute proceedings to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

10.2. Revesting Title in Agency

If prior to issuance of Certificate of Completion, Owner defaults in its obligations related to the construction of the Improvements, abandons or unreasonably suspends such construction work, permits any unauthorized encumbrance or lien (including tax liens), any transfer of all or any part of the Site or any change in the ownership or control of Owner, then the Agency shall have the right to re-enter and take possession of the Site, or any part of the Site conveyed to Owner, and to

terminate and revest in the Agency the estate so conveyed. It is the intent of the Redevelopment Contract, the Assignment and this Agreement, that the conveyance of the Site to the Owner has been made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Owner specified in this Agreement, failure on the part of the Owner to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in the Agreement, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the rights and interest in the Site conveyed by the Deed to the Owner, and that such title and all rights and interests of the Owner, and any assigns or successors in interest to and in the Site, shall revert to the Agency. Such condition subsequent and any such revesting of title in the Agency shall always be subject to and limited by the lien or security interest authorized by the Agreement, and any rights or interests provided in the Agreement for the protection of the Lenders; and shall not apply to individual parts or parcels of the Site on which the Improvements have been completed in accordance with the Agreement and for which a Certificate of Completion issued as provided in the Agreement.

The Warranty Deed transferring the Site to Owner pursuant to the Redevelopment Contract shall be amended to provide that the revestment provisions relating to default under the Redevelopment Agreement shall relate to default under this Agreement. Said amendments shall be as set out in the "Amendment to Warranty Deed", a copy of which is attached as Exhibit 8 Attachment to Warranty Deed. The parties shall execute the Amendment to Warranty Deed and shall record said Amendment in the Official Records of Sacramento County.

10.3. Resale of Reacquired Site and Disposition of Proceeds

Upon the revesting in the Agency of title to the Site, Agency shall use its best efforts to resell the Site, as soon and in such manner as the Agency shall find feasible and consistent with the objectives of the law, to a qualified and responsible party, as determined by the Agency, who will assume the obligation of completing the Improvements or such other improvements in their stead as shall be satisfactory to the Agency. Upon such resale of the Site, the resale proceeds shall be applied as follows:

10.3.1. Agency Reimbursement

Said proceeds shall be paid first to Agency to reimburse Agency for all costs and expenses incurred by the Agency, including legal costs, attorney's fees and salaries of personnel, in connection with the recapture, management, and resale of the Site (but less any net income derived by Agency from the Site after such revesting); all taxes, assessments, and water and sewer charges with respect to the Site (or, in the event the Site is exempt from such taxation or assessment during Agency's ownership, an amount equal to such taxes, assessment, or charges (as determined by local assessing authorities) as would have been payable if the Site were not so exempt); any payments necessary to discharge any encumbrances or liens existing on the Site at the time of such revesting or to discharge or prevent any subsequent encumbrances or liens due to obligations, defaults, or acts of the Owner; any expenditures made or obligations incurred with respect to completion of the Improvements; and any amounts otherwise owing the Agency by the Owner.

10.3.2. Owner Reimbursement

After said payment to Agency, said proceeds shall be paid to Owner to reimburse Owner in an amount not to exceed (1) the sum of the purchase price paid by Owner for the Site and the cash actually expended by it in actual construction of any of the Improvements, less (2) any gains or income withdrawn or made by it from the Agreement or the Site and any amounts, including interest on loans, then due from Owner to Agency.

10.3.3. Balance to Agency

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

10.4. Other Rights and Remedies of Agency

Agency shall have the right to institute such actions or proceedings as it may deem desirable to carry out the purposes of this Section, including the right to record in the public land records a written declaration of the termination of all the rights, title, and interest of the Owner in the Site and the revesting of title to the Site in the Agency.

10.5. No Waiving by Delay

Any delay by the 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 the Agency with respect to any specific default by Owner under this Section shall not be considered as a waiver of the rights of the Agency with respect to any other defaults by Owner under this Section or with respect to the particular default except to the extent specifically waived in writing.

10.6. Delay for Causes Beyond Control of Party

For the purposes of any of the provisions of the Agreement, neither Agency nor Owner shall be considered in breach of, or default in, its obligations with respect to the preparation of the Site for development, or the beginning, prosecution and completion of construction of the Improvements, if delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes 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, and unusually severe weather 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 the Agency and Owner shall be extended for the period of the enforced delay, as determined by the Agency, provided that the party seeking the benefit of the provisions of this Section shall, within ten (10) days after the beginning 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.

10.7. Rights and Remedies Cumulative

The rights and remedies of the parties to the Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance of any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights beyond those expressly waived in writing.

10.8. Waiver of Defenses of Surety

Owner, for itself and its successors and assigns, and for all other persons who shall become subject to any obligation under the Agreement, hereby waives, to the fullest extent permitted by law and equity, and all claims and defenses otherwise available to a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

11. General Provisions

11.1. Prohibition Against Transfer or Assignment

Except as required to obtain the financing approved by Agency and necessary for Owner to perform its obligations under the Agreement, Owner shall not, prior to the completion of the Improvements as finally certified by the Agency, make any total or partial sale, assignment or transfer of any interest in the Agreement or the Site without the prior written approval of the Agency.

11.2. Notification of Contractors, Architects and Engineers

Owner shall have the responsibility of notifying his contractors, architects and engineers of the requirements of this Agreement, and Owner shall be responsible for their compliance with said requirements.

11.3. Approvals

Unless otherwise provided, Agency shall give required approvals or disapprovals within forty-five (45) days after submission. If the Agency disapproves the Plans the Owner shall submit corrected Plans within thirty (30) days from the date on which the Owner receives written notice from the Agency of such disapproval. Agency shall review all such corrections to disapproved Plans submitted within thirty (30) days after the date for approval of Plans specified in the Schedule of Performances.

11.4. Entire Agreement, Waivers and Amendment

This Agreement, including all documents incorporated in this Agreement, integrates all the terms and conditions mentioned herein or incidental hereto and supercedes all negotiations or previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency or the Owner, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Owner.

11.5. Attorneys' Fees

In the event that Owner breaches the terms of this Agreement, Owner shall pay Agency Agency's reasonable attorneys' fees and court costs incurred by Agency in connection with enforcement of the terms of this Agreement.

11.6. Escrow Instructions

The transfer and recordation of documents under this Agreement shall be made in accordance with the "Escrow Instructions" attached as Exhibit 9 Escrow Instructions.

11.7. Definitions

The following terms are defined, respectively, on the page listed after each term:

- Agency (1)
- Agreement Containing Covenants Affecting Real Property (14)
- Amendment to Warranty Deed (17)
- Assignment (2)
- Certificate of Completion (9)
- City (1)
- Escrow Instructions (19)
- HUD (8)
- Improvements (2)

- MBE/WBE (7)
- Old Sacramento (1)
- Owner (1)
- Parcel Map (1)
- Plans (14)
- Project (1)
- Project Area (1)
- Redevelopment Plan (1)
- Redevelopment Contract (2)
- Schedule of Performances (2)
- Service Court Agreement (10)
- Service Court (10)
- Site (1)
- Site Description (1)

11.8. Contents of Agreement

This Agreement shall consist of this document and the following Exhibits which are attached to, and incorporated in, this document by this reference:

- Exhibit 1 Site Description
- Exhibit 2 Parcel Map
- Exhibit 3 Schedule of Performances
- Exhibit 4 Amendment Agreement
- Exhibit 5 Service Court Agreement
- Exhibit 6 Parking Agreement
- Exhibit 7 Agreement Containing Covenants Affecting Real Property
- Exhibit 8 Attachment to Warranty Deed
- Exhibit 9 Escrow Instructions

11.9. No Waiving by Delay

Any delay by the 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 the Agency with respect to any specific default by Owner under this Section shall not be considered as a waiver of the rights of the Agency with respect to any other defaults by Owner under this Section or with respect to the particular default except to the extent specifically waived in writing.

11.10. Delay for Causes Beyond Control of Party

For the purposes of any of the provisions of the Agreement, neither Agency nor Owner shall be considered in breach of, or default in, its obligations with respect to the preparation of the Site for development, or the beginning, prosecution and completion of construction of the Improvements, if delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes 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, and unusually severe weather 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 the Agency and Owner shall be extended for the period of the enforced delay, as determined by the Agency, provided that the party seeking the benefit of the provisions of this Section shall, within ten (10) days after the beginning 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.

11.11. Rights and Remedies Cumulative

The rights and remedies of the parties to the Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance of any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights beyond those expressly waived in writing.

11.12. Waiver of Defenses of Surety

Owner, for itself and its successors and assigns, and for all other persons who shall become subject to any obligation under the Agreement, hereby waives, to the fullest extent permitted by law and equity, and all claims and defenses otherwise available to a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

11.13. Counterparts

This Agreement may be executed in not more than five (5) counterpart originals, each of which shall constitute one and the same instrument.

11.14. Nonliability of Agency Officials and Employees

No member, official or employee of the Agency shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

11.15. Notices And Demands

A notice, demand or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address set out above, or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided for a Notice in this Section.

11.16. Time For Acceptance of Agreement By Agency

Participant shall execute this Agreement prior to the public meeting of the Agency approved of this Agreement.

This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency within sixty (60) days after date of signature by the Participant, or this Agreement shall be void, except to the extent that the Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date

LIST OF EXHIBITS

Exhibit 1 Site Description

Exhibit 2 Parcel Map

Exhibit 3 Schedule of Performances

Exhibit 4 Amendment Agreement

Exhibit 5 Service Court Agreement

Exhibit 6 Parking Agreement

Exhibit 7 Agreement Containing Covenants Affecting Real Property

Exhibit 8 Attachment to Warranty Deed

Exhibit 9 Escrow Instructions

of this Agreement shall be the following date, when the Agreement shall have been signed by the Agency.

EXECUTED as of the date first written above in the County of Sacramento, California.

AGENCY:
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

BY _____
Andrew J. Plescia, Acting Executive Director

OWNER:

KENNETH L. KIRBY

State of California |
County of Sacramento | ss.

On this _____ day of _____, 1989, before me _____, a Notary Public in and for said County and State, personally appeared KENNETH L. KIRBY proved to me on the basis of satisfactory evidence to be the persons whose name are subscribed to this instrument, and acknowledged the they executed it.

NOTARY PUBLIC

State of California |
County of Sacramento | ss.

On this _____ day of _____, 1989, before me, _____, A Notary Public in and for said County and State, personally appeared ANDREW J. PLESCIA, personally know to me to be the person who executed this instrument as Acting Executive Director of the Redevelopment Agency of the City of Sacramento and acknowledged to me that the Agency executed it.

NOTARY PUBLIC

APPROVED AS TO FORM: _____
Agency Counsel

APPROVED: _____
Finance Department

Fund:
Object Code:
Organization:
Cost Center:

APPROVED: _____
Organization

DRAFT

SERVICE COURT AGREEMENT

THIS AGREEMENT made on _____ 1989 by and between the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic ("Agency"), established pursuant to Part I (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California ("Community Redevelopment Law"), and having its office at 630 I Street, Sacramento, California 95814, and Kenneth L. Kirby having an office at 3420 Coach Lane, Suite 10, Cameron Park, California 95682 ("Redeveloper").

WHEREAS, the Agency and the Redeveloper have contemporaneously with this Agreement entered into a Disposition and Development Agreement relating to the development of a hotel (the "Hotel") on the Property ("Hotel Property") described on Exhibit "A" attached hereto; and

WHEREAS, the Agency and Redeveloper desire to enter into this Agreement for the purpose of having the Redeveloper develop plans for a service court on the Property ("Service Court

Property") described on Exhibit "B" attached hereto and thereafter construct such service court improvements ("Service Court Improvements") in accordance with final plans and specifications approved by the Agency.

NOW, THEREFORE, the Agency and Redeveloper agree to the following terms:

1. Within the time set forth in the Schedule of Performance attached hereto as Exhibit "C", the Redeveloper shall enter into an Agency-approved agreement for architectural and engineering services, whereby the Redeveloper will undertake the preparation of schematics, preliminary and construction plans and documents for the Service Court Improvements.

2. Within the times set forth in the Schedule of Performance, the Redeveloper shall submit for approval of the Agency, schematic, preliminary and final construction plans and documents for the Service Court Improvements.

3. Not later than fifteen (15) days following Agency approval of final construction plans and documents for the Service Court Improvements, the Redeveloper shall submit final detailed cost estimates for the design and construction of the Service Court Improvements, including the items set forth in this Section 3.

As to the Service Court Improvements, such estimates shall be in a form approved by the Agency and include costs for the entire work of development and construction, including without limitation site preparation, soils testing, foundations, excavation costs, landscaping, utilities, paving and surfaces, compliance with special conditions, construction supervision, and that portion of payments reasonably attributed to the Service Court Improvements.

The Redeveloper and Agency shall each act diligently to determine the development and construction costs for the Service Court Improvements pursuant to this Section 3 at the earliest possible time and, in any event, within thirty (30) days following the Redeveloper's submission of final costs estimates to the Agency.

4. Redeveloper shall construct or have constructed by an Agency-approved contractor the agency-approved Service Court Improvements within the time limits of the Schedule of Performance and for no more than _____ in total construction costs. If the construction costs of the Service Court Improvements exceed such amount, the Agency shall not be required to contribute more than _____ as its share of the costs.

(a) Agency and Redeveloper shall share the costs for the Service Court Improvements as follows:

Agency: Compactor Building \$

Concrete Access Area

TOTAL \$

Redeveloper: Site Improvements \$

Development Cost

TOTAL \$

(b) After Redeveloper's payment to the contractor of the Redeveloper's portion of the costs for the construction of the Service Court Improvements, the Agency shall commence monthly disbursement of its portion of such cost to the contractor for all defect-free work completed in accordance with the Agency-approved construction plans and documents during the preceding month. However, no more than ninety percent (90%) of the cost shall be paid to the Service Court Improvements contractor until the Agency accepts the completed Service Court Improvements. Agency shall withhold any stop notice claim amounts from such payment. This subparagraph (b) notwithstanding, in the event that the Service Court Improvements are completed in accordance with this Agreement and accepted by the Agency, the Redeveloper shall retain any portion of the Agency's contribution to construction which is in excess of actual construction disbursements.

5. For the Agency's approval, Redeveloper or its contractor shall provide to the Agency performance bond and labor and material bonds for 100 percent of the construction costs prior to the commencement of the work on the Service Court Improvements.

Redeveloper shall keep the Property and Service Court Improvements free of liens and encumbrances at all times.

6. If the Redeveloper should default upon its obligations under this Agreement, making it necessary for the Agency to terminate this Agreement to procure another party or parties to redevelop the Service Court Property in substantially the manner and within the period that such Service Court Property would be redeveloped under the terms of this Agreement, then the resulting damages suffered by the Agency would be uncertain. Such damages would involve variable factors including the costs of identifying, obtaining such other party; the consideration which such other party would be paid for the Service Court Improvements. The Redeveloper and Agency agree in advance that the Redeveloper shall pay to the Agency upon the occurrence of any default the total cost incurred by the Agency as the total of all liquidated damages for any and all defaults and not as a penalty.

In the event that this Section 6 should be void for any reason, the Agency shall be entitled to the full extent of damages otherwise provided by law.

The parties hereby acknowledge the liquidated damages provisions of this Agreement.

REDEVELOPER

AGENCY

KENNETH L. KIRBY

REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO

BY _____

BY _____

KENNETH L. KIRBY

ANDREW J. PLESCIA
Acting Executive Director

7. Redeveloper shall indemnify Agency and hold it harmless from any and all liability or costs resulting from the Redeveloper's performance under this Agreement including any bodily injury, death and property damage caused by or resulting from the acts or omissions of Redeveloper, its officers, employees or agents and for any costs incurred by Agency in defending against such liability claims.

8. Redeveloper shall take all necessary steps 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 or in any way connected with the construction of the Service Court Improvements including without limitation, fire, or the failure, collapse or deterioration of any improvements or buildings.

9. (a) The Redeveloper shall require the contractor and subcontractors for the Service Court Improvements to purchase and maintain such insurance as will protect the parties from the following claims which may result from the operations under the Agreement of the Redeveloper, 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:

(i) Claims under workers' compensation benefit acts;

(ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

(iii) Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than his employees;

(iv) 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 Redeveloper, or (2) by any other person;

(v) Claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

(vi) 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.

(vii) Claims for contractual liability arising from the Redeveloper's obligations under this Agreement.

The Redeveloper shall assure the Agency is a named insured on all insurance policies, except the workers' compensation policy. If the Agency gives prior written consent, such insurance

may name the Agency as additional insureds on said insurance policies. Agency shall have the right to arbitrarily withhold such consent.

The Redeveloper shall not provide insurance amounts which are considered in aggregate with other projects which the Redeveloper might have concurrently under construction with the exception of the Hotel Project. The Agency may at its discretion permit an aggregate policy if and only if Redeveloper has fully disclosed to Agency all of Redeveloper's other projects which will or may be considered in aggregate with the Service Court Improvements and thereafter, Redeveloper 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.

(b) The insurance required by Subsection 9 (a) shall be written for not less than the following limits of liability:

(i) Workers' Compensation:

State: Statutory Limits as set forth in Article 1 (commencing with Section 3700) of Chapter 4 of Part 1 of Division 4 of the California Labor Code.

Employer's Liability: Not less than \$2,000,000.

(ii) Comprehensive General Liability: (Including Premises-Operations, Independent Contractor's Protective Products and Completed Operation (for two years), Broad Form Property Damage):

Bodily Injury:

- .1 \$1,000,000 each occurrence.
- .2 \$1,000,000 Aggregate, Products and Completed Operations

Property Damage:

- .1 \$1,000,000 each occurrence;
\$1,000,000 single limit
- .2 \$1,000,000 aggregate

Contractual Liability

- .1 Bodily Injury: \$1,000,000 each occurrence.
- .2 Property Damage: \$1,000,000 each occurrence;
\$1,000,000 aggregate

Personal Injury with Employment Exclusion Deleted:

\$1,000,000 aggregate.

(c) Redeveloper shall obtain and maintain, or require his contractor to obtain and maintain, during the course of construction of the Improvements on the Property, Builder's Risk Insurance for protection against all loss of or damage to the Improvements or materials, on-site or off-site, to be used in the construction of the Service Court Improvements to the full insurable value at all times. Said Builder's Risk Insurance shall name the Agency as a loss-payee as its interests may appear.

Said insurance shall insure all subcontractors and sub-subcontractors as their interests may appear, against the perils of fire, shall provide extended coverage and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief. The Redeveloper shall be responsible for materials stored on-site, off-site or in transit unless supplied by Agency and obtain and maintain similar insurance for any of the materials not otherwise covered by said "all risk" insurance.

The Redeveloper shall obtain and maintain such equipment insurance as required by the contractor or by law which insurance shall insure the interests of the Agency, the Contractor and all

subcontractors and sub-subcontractors in said work as they may appear.

(d) Each policy of insurance required under this Agreement shall be obtained from a provider licensed to do business in California and having not less than the highest Best's Insurance Guide rating and 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. The Redeveloper shall provide to Agency certificates of said insurance prior to commencing the work of this Agreement and shall provide to Agency the policies of said insurance as soon as available.

If Redeveloper fails to maintain any insurance required by this Agreement, the Agency shall have the right to purchase the insurance and Redeveloper shall promptly reimburse the Agency the full cost of such insurance to the Agency.

10. Agency shall at Agency's expense, have its representative ("Contract Agent") on the Service Court Improvements construction sites during all phases of construction. The Contract Agent shall review the work of construction and the materials used in the construction to determine quality and adequacy in accordance with the plans and specifications for the Service Court Improvements. Each request for progress payment and each change order request made by Redeveloper shall be subject to the written approval of

the Contract Agent. The Contract Agent shall review, for his approval and signature, each change order make by Redeveloper. Redeveloper shall, at all times, provide the Contract Agent with full access to the construction site, storage and testing sites related to the construction work and all books, records and documents related to the construction work,. Redeveloper's failure to provide such access or Redeveloper's interference with the Contract Agent's performance of his duties shall be a material breach of this Agreement.

11. Change orders for construction of the Service Court Improvements shall be subject to the following:

(a) Redeveloper and its representatives shall not authorize any change orders that would increase the cost of the project without the prior written consent of the Agency.

(b) The Agency shall grant or deny any written change order submitted to it by the Redeveloper within two (2) working days. If a change order causes the aggregate amount of the change orders for any construction budget line item to exceed the original budget amount for such line item by more than five percent (5%), the Agency shall have thirty (30) days in which to deny or grant such change order and any subsequent change order for such budget line item. If a change order causes the aggregate amount of change orders to exceed the total amount of the original budget by more

than five percent (5%), the Agency shall have thirty (30) days in which to deny or grant such change order.

12. The contract between Redeveloper and any contractor ("Contractor") for construction of the Service Court Improvements shall be subject to, and contain appropriate terms in accordance with the following provisions:

(a) Redeveloper shall pay and cause to be paid prevailing rates of wages, in accordance with Part 7 Article 2 of the California Labor Code (Commencing with Section 1770), for all work done in connection with the Service Court Improvements.

(b) Redeveloper shall comply with, and cause compliance with provisions regarding employment and compensation of apprentices in accordance with Part 7 Article 2 of the California Labor Code, Section 1777.5, for all work.

(c) Redeveloper shall comply with, and cause compliance with, work hour certification and stipulated damages requirements for Service Court works as set forth in Part 7 Article 3 of the California Labor Code (commencing with Section 1810) for all work.

(d) Redeveloper shall secure and cause to be secured Workers' Compensation insurance as set forth in Division 4, Part 1, Chapter 4 of the Labor Code (commencing with Section 3700) for

all employees on the work in accordance with Part 7 Article 5 of the California Labor Code (commencing with Section 1860).

(e) Agency and Redeveloper shall agree that Redeveloper's contractor for the Project may provide security deposits in lieu of retention in accordance with Chapter 13 of Division 5 of Title 1 of the Government Code (commencing with Section 4590).

(f) In order to provide proof of compliance with the above provisions, Redeveloper shall maintain, and cause all contractors and subcontractors, to maintain full and accurate payroll records during the course of the work and for a period of one (1) year after issuance of certificate of completion on the work.

(g) Redeveloper shall comply with, and cause compliance with Division 2 Part 1 Chapter 3 Article 5 of the Service Contract Code (commencing with Section 3400) regarding preference for materials for all of the work.

(h) Redeveloper shall comply with, and cause compliance with Division 2 Part 1 Chapter 4 of the Public Contracts Code (commencing with Section 4100) regarding the rights and remedies of subcontractors for all of the work.

(i) Redeveloper shall provide, and cause to be provided certification that Redeveloper and Redeveloper's contractor has read and acknowledges all of the statutes set forth in this Paragraph, and stipulates to comply therewith.

13. Agency Requirements

The contract between Redeveloper and Contractor for construction of the Service Court Improvements shall be subject to, and contain terms in accordance with the following provisions:

(a) The terms and provisions of the agreement between Redeveloper and Contractor to perform the work of the Service Court Improvements shall be subject to the prior written approval of the Agency. Such approval shall not be unreasonably withheld.

(b) On all construction pursuant to the Service Court Improvements, Redeveloper shall comply, or cause compliance with Agency's "Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Utilization Plan."

(c) Redeveloper shall use its best efforts to hire, or cause to be hired, for no less than fifty percent (50%) of the cost of the work relating to direct labor of the Service Court Improvements, local contractors and subcontractors with permanent places of business within the County of Sacramento. To the extent that labor for any portion of the Service Court Improvements is not

available within the County, such portion shall not be included in determining the said percentage. Agency shall have the right to approve the computations as described in the foregoing sentence. If Redeveloper fails to comply with the aforesaid, Redeveloper shall give written justification for such failure including a detailed listing of all efforts made to effect such compliance.

(d) If, within one year after the date of substantial completion of the construction of the Service Court Improvements, any of the work of such construction is found to be defective or not in accordance with this Agreement and approved Plans and Specifications, the Redeveloper and Contractor, at their expense, shall correct it promptly after receipt of a written notice from the Agency to do so unless the Agency has previously accepted the condition in writing. If Redeveloper and Contractor fail to promptly cure the defect, Agency shall have the right to effect such cure and to receive reimbursement from Redeveloper for the cost of such cure.

14. Notwithstanding any other provision of this Agreement, if the Redeveloper fails to commence construction of the Service Court Improvements on the date stated in the Schedule of Performance, or fails to diligently prosecute the construction of the Service Court Improvements and to substantially complete such construction within thirty (30) days following the date stated for substantial completion in the Schedule of Performance unless extended in accordance with this Agreement, the Agency may, upon

fifteen (15) days written notice to the Redeveloper, and with or without legal process, . take possession of the area of the Service Court Improvements, remove the Redeveloper and all agents, employees and contractors of the Redeveloper from the Service Court Improvements, complete the work of construction. All contracts with architects, engineers, contractors, subcontractors, suppliers and other entities related to the construction of the improvement shall be immediately assigned to the Agency upon Agency demand after such failure by Redeveloper.

15. Time is of the essence in respect to the Schedule of Performance. The Redeveloper shall complete the Service Court Improvements in accordance with the Schedule of Performance.

16. The Redeveloper shall observe and abide by and perform all of its obligations hereunder in accordance with all governmental requirements.

17. No provision, requirement, default or breach of this Agreement shall be deemed waived by either party except in writing.

(a) Whenever it is provided in this Agreement that a notice, demand, request, approval or other communication (each of which is herein referred to as a "Notice") shall or may be given to or served upon either of the parties by the other and whenever either of the parties shall desire to give or serve upon the other any Notice with respect thereto, each such Notice shall be in

writing and, any law or statute to the contrary notwithstanding, shall be effective for any purpose, if given or served by mailing the same to the Agency or Redeveloper by certified or registered mail, postage prepaid, return receipt requested addressed to the Agency or Redeveloper at the address set forth above, or to such other address(es) and attorneys as the Agency or Redeveloper may from time to time designate by Notice given to each other by certified mail, postage prepaid, return receipt requested.

(b) Every Notice shall be deemed to have been given or served on the date set forth in the return receipt. In the event a postal strike shall be in progress at the time a Notice is given or served, such Notice shall not be deemed given or served unless and until a copy thereof is personally delivered to the parties entitled thereto.

18. In performing its obligations under this Agreement, the Redeveloper shall be deemed an independent contractor and not an agent or employee of the Agency.

19. This Agreement shall be governed by the laws of the State of California.

20. The Redeveloper shall not assign this Agreement or delegate the performance of all or any of its obligations hereunder. In no event shall any assignment by the Redeveloper release the Redeveloper from its obligations under this Agreement

unless such assignment shall have been approved in writing by the Agency. This Section shall in no way prevent or limit the Redeveloper from entering into any contracts with general contractors, subcontractors or materialmen that may be necessary or desirable in the performance of the Redeveloper's responsibilities under this Agreement.

Notwithstanding the foregoing prohibition, the Redeveloper may assign its interest in this Agreement to the private Construction Lender as security for loans or other financing under the Loan Documents.

21. If this Agreement contains any unlawful provisions, the same shall be deemed of no effect and shall, upon the application of either party, be deemed stricken from this Agreement without affecting the binding force of the remainder of this Agreement.

22. Nothing in this Agreement shall create or shall give to third parties any claim or right of action against the Agency, the City, or the Redeveloper beyond such as may legally exist, irrespective of this Agreement.

23. No change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly authorized representative; provided, however, that any change in or modification, termination or

discharge of this Agreement expressly provided for in this Agreement shall be effective as so provided.

24. The Contract Documents constitute the entire agreement between the parties and incorporate all prior understandings in connection with the subject matter hereof.

25. The Agency hereby grants to the Redeveloper a right of entry to the real property owned by the Agency which will comprise the site of the Service Court Improvements as necessary for the Redeveloper's performance under this Agreement and subject to the terms and conditions of this Agreement.

The general contractor, subcontractors and materialmen, for purposes of performing their obligations hereunder, shall be entitled to access to the Service Court Property.

IN WITNESS WHEREOF, the parties hereto have executed this Service Court Agreement. This Agreement shall be effective as of the date first above written.

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APPROVED AS TO FORM:

REDEVELOPMENT AGENCY OF THE CITY
OF SACRAMENTO

Agency Counsel

By: _____
ANDREW J. PLESCIA
Acting Executive Director

APPROVED:

REDEVELOPER:

Finance Department

KENNETH L. KIRBY

Account Code _____

Organization _____

Cost Center _____

APPROVED:

Organization

SERVCORT

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PHASE I PROPERTY:

All that portion of Parcel 14 as shown on that parcel map entitled "Block Bounded by I, J, K, L and by The Embarcadero and 2nd Street" as recorded in the office of the County Recorder, County of Sacramento, Sacramento, California, the 1st day of April, 1970 in Book 3 of Parcel Maps at page 21, more particularly described as follows:

Beginning at a point on the Northernmost line of said Parcel 14 from which point the Northeast corner of said Parcel 14 bears South 71° 30' 42" East 36.04 feet; thence from the said point of beginning along the Western face of an existing masonry wall along a line parallel to the Southernmost line of said Parcel 14, North 71° 30' 42" West 33.80 feet to a point on the Westernmost line of Parcel 14; thence North 18° 25' 11" East 75.28 feet to the Northwest corner of Parcel 14; thence South 71° 30' 42" East 33.80 feet to the point of beginning, containing 2,544 square feet, more or less.

EXHIBIT "B" (~~Continued~~)

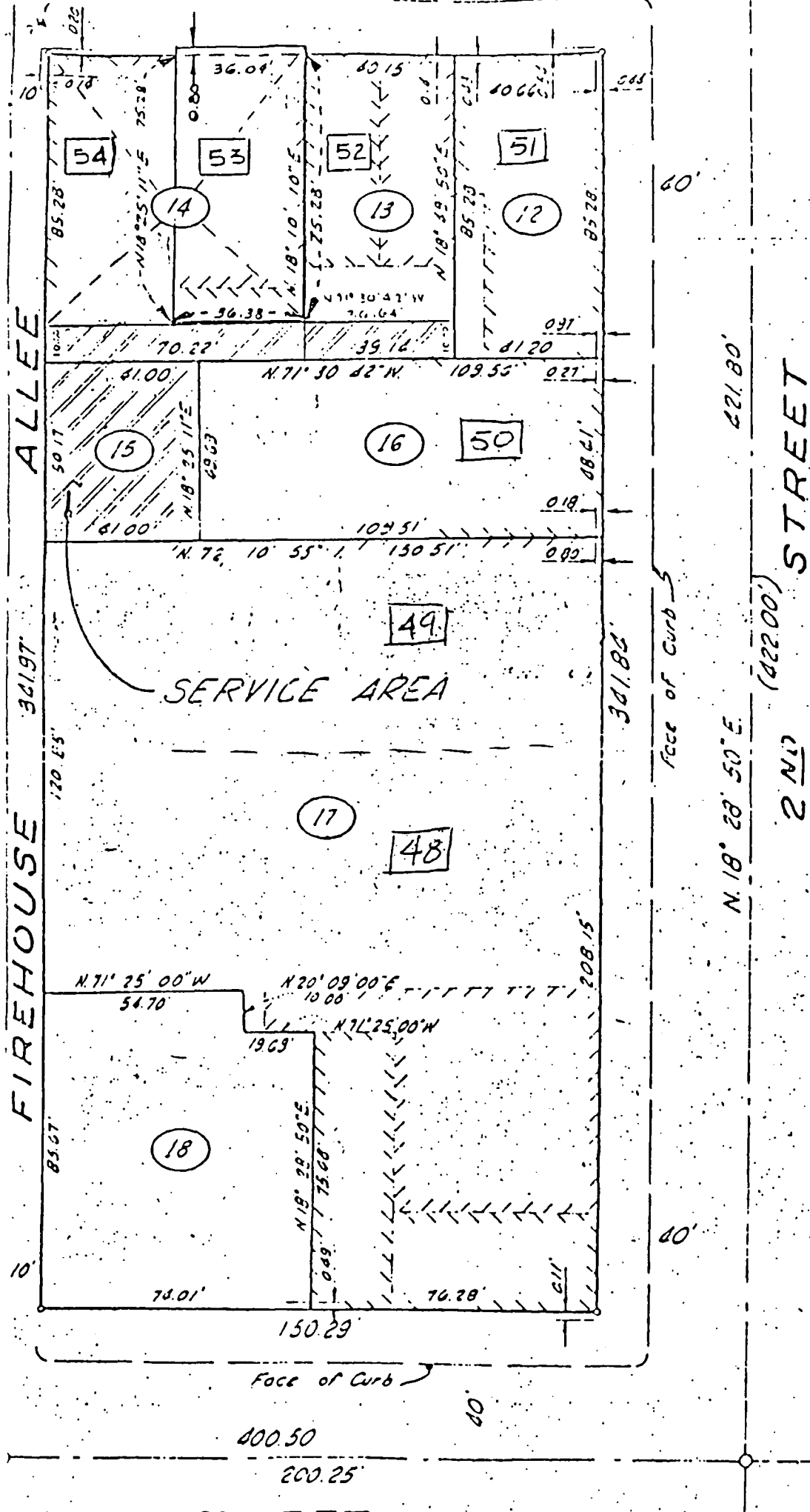
PHASE II PROPERTY:

An undivided 11.1 percent interest in and to the following described property:

All that property shown as Parcel 15 and that portion of Parcels 13 and 14 as shown on that certain parcel map entitled "Block Bounded by I, J, K, L and by The Embarcadero and 2nd Street", recorded in the office of the County Recorder, County of Sacramento, Sacramento, California, the 1st day of April 1970 in Book 3 of Parcel Maps at page 21, described as follows:

Beginning at the Southwest corner of said Parcel 15; thence from the said point of beginning along the Easterly right-of-way line of Firehouse Alley and the Westerly line of Parcel 15 North 18° 25' 11" East 50.17 feet; thence continuing along the Easterly right-of-way line of Firehouse Alley North 18° 25' 11" East 10.00 feet; thence along a line parallel to the Northernmost line of said Parcel 15 South 71° 30' 42" East 109.44 feet to a point on the Easternmost line of said Parcel 13; thence South 18° 49' 50" West 10.00 feet to the Southeast corner of said Parcel 13; thence North 71° 31' 42" West 68.36 feet to the Northeast corner of said Parcel 15; thence South 18° 25' 11" West 49.69 feet; thence North 72° 10' 55" West 41.00 feet to the point of beginning, containing 3,141 square feet, more or less.

Said Phase II Property is also known as the "Service Court and Access Parcel" according to this Agreement.



00 REDEVELOPMENT AGENCY ASSIGNED NUMBERS

00 SURVEY PARCEL NUMBERS

PARKING AGREEMENT

THIS AGREEMENT is entered into on _____, 1989, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO, a public body, corporate and politic ("Agency"), The City of Sacramento ("City") and Kenneth L. Kirby, Redeveloper.

Recitals

1. Agency and Redeveloper have executed a Disposition and Development Agreement ("DDA") dated the same date as this Agreement which provides for the construction of the City Market Building on Old Sacramento Parcel No. 54 in the Old Sacramento Historic Area (the "Property"). The Old Sacramento Historic Area is depicted on a map attached hereto and incorporated herein by reference marked as Exhibit "A".

2. Redeveloper intends to operate a hotel business ("Hotel") on the Property.

3. Redeveloper has asked Agency and City for assurance of the availability of parking and automobile access to the Hotel for Hotel's guests.

4. The City operates all City-owned parking structures, and under contract with the Agency operates all Agency-owned parking facilities. The Agency and City may in the future contract with a private or public entity to operate one or more City or Agency-owned parking facility. The term "City" as used in this Agreement shall refer to any entity responsible for operation of the parking facilities where the context so indicates.

Agreement

The parties to this Agreement agree as follows:

1. Term

The term of this Agreement shall consist of two (2) parts as follows:

1.1 Interim Term

The "Interim Term" shall commence upon issuance of a permit for construction of the Hotel and continue until issuance of a Certificate of Occupancy for the Hotel or until _____, 1990, whichever occurs first in time.

1.2 Regular Term

The "Regular Term" shall commence upon expiration of the Interim Term and continue until expiration of City's master lease, as it may be extended from time to time, with the State of California for the real property which includes the parking spaces to be made available to Redeveloper and/or Redeveloper's Hotel Operator ("Operator") under this Agreement. A copy of the Lease is attached as Exhibit "B".

2. Designated Parking Facilities

2.1 Agency shall make available, for parking of Hotel guest vehicles, ten (10) parking spaces in the City parking facility located between 2nd, 3rd, I and K Streets (Lot P) on the upper most level in an area designated by signs as posted by the City which shall say "Hotel Parking" and according to the terms and conditions of this Agreement. The designated spaces shall be the spaces indicated upon Exhibit "C" attached.

2.2 Hotel guest vehicles may be parked for an unlimited time at the parking facility designated by the City at the hourly rates established from time to time by Resolution of the Sacramento City Council in each designated parking facility. Rates now in effect are set forth in Exhibit "D" attached.

2.3 The hotel guest or any person parking the guest's vehicle shall upon entry into the parking facility obtain a parking ticket in the same manner that such tickets are obtained by members of the general public. Hotel management shall validate each such ticket by a unique ink stamp impression validation in a manner which indicates the guest's actual "check-in" and "check-out" times. Redeveloper agrees to pay all fees for all such parking validations according to the terms and conditions of this Agreement.

3. Parking Fees, Billing and Payment

3.1 City shall maintain records of Hotel guest's validated parking tickets and parking charges related thereto. City shall send monthly billing statements to Redeveloper and/or Hotel Operator indicating amounts due to City for Hotel guest parking during the previous month according to City established procedures.

3.2 Redeveloper and/or Operator shall make payment directly to City through the Regular Term.

3.3 Redeveloper and/or Operator shall pay for Hotel guest parking charges as follows:

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3.3.1 During the Interim Term the user shall pay the regular short term hourly parking fee; and

3.3.2 During the Regular Term the Redeveloper and/or Operator shall be billed by City and shall pay to City all charges for Hotel guest parking during times included in the validation period.

3.3.3 Agency considers hotel-type businesses to be beneficial to the economic growth and stability of Old Sacramento. If during the Regular Term for reasons of negative economic influences beyond the control of Redeveloper and/or Operator it is determined that the then in affect parking fees are contributing to Hotel's existing or pending negative economic condition, Agency and City will not unreasonably deny Redeveloper and/or Operator the opportunity to negotiate parking fees other than those then in affect for a period of sufficient duration to assist Redeveloper and/or Operator in sustaining Hotel's economic stability.

4. Valet Service Area

4.1 City and Redeveloper and/or Operator shall establish a valet parking service area (as the term is commonly used) within the designated parking facility for Hotel guests operated for and by the Hotel and from which Hotel guest vehicles will be shuttled to parking spaces in the designated City parking facility by Hotel employees or contractors.

4.2 Funding for the cost of signage necessary to designate the valet service area, signage posted at the loading zone, signage posted at other locations designated by City to indicate the location of the loading/unloading zone shall be provided by Redeveloper and/or Operator. Installation and maintenance of a courtesy phone or similar device at the valet service area to be used by Hotel guest or employees to call the Hotel, shall be paid by Redeveloper and/or Operator. Any other amenities or improvements desired by Hotel shall be subject to approval of City and shall be paid for by Redevelopment and/or Operator.

4.3 Use of the valet service area shall be in accordance with rules established by City as set forth in Exhibit "E" attached.

11. Construction of Parking Facilities

This Agreement in no way obligates the Agency to construct or acquire any parking facilities in order to accommodate Hotel guest vehicles.

12. Notices

12.1 Any notice, demand or communication under or in connection with this Lease may be served upon City by personal service, or by mailing the same by first-class mail in the United States Post Office, postage prepaid, and directed to Lessor as follows:

City Manager
City of Sacramento
City Hall
915 "I" Street
Sacramento, CA 95814

and may likewise be served on Agency by personal service or by so mailing the same addressed to Agency at:

Executive Director
Sacramento Housing and Redevelopment Agency
630 "I" Street
Sacramento, CA 95814-2490

and may likewise be served on Redeveloper by personal service or by so mailing the same addressed to Lessee at:

Kenneth L. Kirby
3420 Coach Lane, Suite 10
Cameron Park, CA 95682

City, Agency, or Redeveloper may change such address by notifying the other parties in writing as to such new address and which address shall continue as the address until further written notice.

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8.2 If during the term of this Agreement, the City, Agency, Redeveloper or Operator discover that persons other than Hotel guests, but under the control of the Redeveloper or Operator, have willfully used the Hotel validation, a written notice of violation of this Redeveloper or Operator Agreement's, terms and conditions shall be transmitted to the Redeveloper or Operator. Under the circumstances per 3.3.3 the Agency, in its own and exclusive discretion, may order Redeveloper or Operator to pay restitution in the amount of the then in affect fees to the City for the noticed unauthorized uses. In the event of significant and flagrant continual unauthorized uses (as determined by the Agency in its sole and exclusive discretion), the Agency may levy a "penalty add-on" fee for administrative cost of \$250.00 per occurrence discovered or actual labor cost whichever is less.

8.3 Commencing with the Interim Term continuing through the Regular Term of this Agreement, the City may impose reasonable and appropriate penalties in accordance with Chapter 25 of the Sacramento City Code and the California Vehicle Code (Exhibit "G") and Section 39 as applicable (Exhibit "H") for unauthorized uses as described.

8.4 Redeveloper and/or Operator shall cooperate with City and make an immediate good faith effort to diligently pursue correction of any violation of the terms and conditions of this Agreement governing the use of Hotel validation. Failure of Redeveloper and/or Operator to diligently pursue such correction shall be a material breach of this Agreement.

8.5 City or Agency shall serve prompt notice to Redeveloper and/or Operator of any discovered willful misuse of Hotel validation immediately upon discovery.

9. Use During Interim Term

From the date of issuance of a building permit for Hotel until issuance of a Certificate of Occupancy for Hotel, City shall make ten (10) spaces available in the same area designated herein for Hotel guest use. Said interim use shall be paid for by the user per the Terms and Conditions of this Agreement.

10. Maintenance of Parking Facility

City shall maintain parking facility including Hotel guest designated parking area. Redeveloper and/or Operator shall maintain all Hotel amenities and improvements installed by Redeveloper and/or Operator or City for Hotel use as requested by Redeveloper and/or Operator and approved per the terms and conditions of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Parking Agreement as of the date first above written.

REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

APPROVED AS TO FORM:

BY ANDREW J. PLESCIA
Acting Executive Director

Agency Counsel

CITY OF SACRAMENTO:

APPROVED:

BY WALTER J. SLIPE
City Manager

Finance Department

ACCOUNT CODE: 4588
Organization: 6300
Cost Center: A00497

REDEVELOPER:

APPROVED:

BY KENNETH C. KIRBY
3420 Coach Lane, Suite 10
Cameron Park, CA 95682

Organization

239WPP
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