

RESOLUTION NO. 2010-415

Adopted by the Sacramento City Council

July 20, 2010

APPROVING THE REIMBURSEMENT OF NORTH NATOMAS LAND-ACQUISITION-FEE CREDITS AND APPROPRIATING DEVELOPER-IMPACT-FEE REVENUE AND ASSOCIATED INTEREST

BACKGROUND

- A. The North Natomas Finance Plan, adopted by Resolution No. 95-495 and updated in 1999 by Resolution No. 99-471, in 2002 by Resolution No. 2002-374, in 2005 by Resolution No. 2005-584, and in 2009 by Resolution No. 2009-341 (the "NNFP"), authorizes the North Natomas Land Acquisition Program (the "NNLAP") to provide for the timely acquisition of designated NNLAP public lands for the development of the North Natomas Community Plan and to provide equity among landowners by providing development credits for dedicated lands and imposing fees on developers with no NNLAP dedications or development credits.
- B. Fees are collected for the sole purposes of acquiring designated lands through condemnation proceedings, where necessary, and for purchasing credits at face value when, in the City's sole judgment, the need for acquisitions is remote.
- C. Of the 415 acres to be acquired through the NNLAP, 359 have been already been acquired by easement, deed, or an irrevocable offer of dedication. Of the remaining 56 acres, 45 are secured by development agreements and 11 will be acquired through conditions of approval. All of those 11 acres are associated with one parcel that will be conditioned to dedicate the lands and cannot otherwise develop without dedicating the lands.
- D. To date, \$31,010,907 in development credits (net of credits used for building permit purposes) have been issued. Reimbursement of these credits will be at the face value of the credits when issued. These credits do not earn interest and are not otherwise adjusted. Thirty-two developers hold credit balances dating back to the beginning of the program in 1998.
- E. Fees collected through June 30, 2009, total \$24,263,740, including interest earnings on the fees. Priority for reimbursement will generally reflect the date of the agreement under which the credits were issued—that is, the "Reimbursement and Credit Agreement for the North Natomas Land Acquisition Program" ("Credit Agreement"), which all developers must enter to participate in the program. The earlier the date of the Credit Agreement, the higher the priority for reimbursement.
- F. The only exception to basing priority on the date of the Credit Agreement is for the Credit Agreements with Natomas Creek, LLC and Alleghany Properties, Inc. These

two developers have resolved a dispute over priority by entering into a private agreement that provides for a proportional allocation between them of the allocation covered by this resolution. The agreement does not affect the priority position of any other party. Exhibit C is a copy of this agreement.

G. Future allocations will be made from future NNLAP fee revenue and associated interest. The City is not obligated to provide funding from any other source.

H. Exhibit A sets forth the allocation of available funds to the holders of fee credits. To receive its allocation, a developer must sign a Waiver and Release in the form attached as Exhibit B, which will include, where applicable, deductions for other fee or permit obligations to the City.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1: The City Council hereby finds that the recitals set forth above are correct.

Section 2: The North Natomas Land Acquisition Fee Credit reimbursements are approved.

Section 3: The City Manager is hereby authorized to appropriate \$24,263,740 in NNLAP fee revenue and associated interest for the purposes set forth in this resolution.

Section 4: The City Manager is hereby authorized to distribute the appropriated funds in accordance with Exhibit A on the condition that each recipient of funds sign a waiver-and-release form substantially the same as the form attached as Exhibit B and that includes, where applicable, deductions for other fee or permit obligations to the City.

Section 5: Exhibits A, B, and C are part of this resolution.

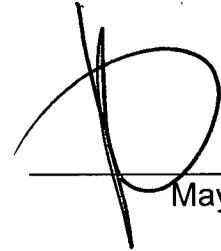
Adopted by the City of Sacramento City Council on July 20, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Exhibit A

Reimbursement and Reimbursement Priority

Reimbursement <u>Priority</u>	<u>Owner</u>	Fee Credit <u>Balance</u>	<u>Cumulative</u>	\$24,263,740 Distribution <u>Balance</u>
1	ALLEGHANY PROPERTIES	1,357	1,357	24,262,383
1	B & B & SONS ENTERPRISES INC.	167,892	169,249	24,094,491
1	Beck Properties, Inc.	2	169,251	24,094,489
1	C/O SECURITY TRUST CO.	319,786	489,037	23,774,703
1	COCA COLA BOTTLING	18,262	507,299	23,756,441
1	East Commerce Inv. LLC.	3,643	510,942	23,752,798
1	KINGS ARCO ARENA	179,822	690,764	23,572,976
1	PACIFIC BELL	2,209	692,973	23,570,767
1	RALEY'S	9,804	702,777	23,560,963
1	SACRAMENTO SPORTS ASSOC.	8,279	711,056	23,552,684
1	STATE VENTURES INC.	51,468	762,524	23,501,216
2 and 3	Alleghany Properties	247,585	1,010,109	23,253,631
2 and 3	Beazer Homes Holding Corp.	3,896	1,014,005	23,249,735
2 and 3	BL ROAD, LLC	517,706	1,531,711	22,732,029
2 and 3	BMW Management, Inc.	1	1,531,712	22,732,028
2 and 3	Cambridge (Natomas), LLC	201,198	1,732,910	22,530,830
2 and 3	DR Horton Homes	6,768	1,739,678	22,524,062
2 and 3	Fairfield Properties, Inc	35,965	1,775,643	22,488,097
2 and 3	Gateway West L.L.C.	84,645	1,860,288	22,403,452
2 and 3	Haz Developments LLC	499	1,860,787	22,402,953
2 and 3	Jack & Mary Meissner Trust	56,759	1,917,546	22,346,194
2 and 3	Kolenic Enterprises LLC	506	1,918,052	22,345,688
2 and 3	Lennar Homes of California	517,706	2,435,758	21,827,982
2 and 3	Lennar Renaissance	83,543	2,519,301	21,744,439
2 and 3	Northpointe North LLC	5,887	2,525,188	21,738,552
2 and 3	The Cambay Group, Inc.	359	2,525,547	21,738,193
2 and 3	U.S. Home	126,686	2,652,233	21,611,507
2 and 3	U.S. Home Corporation	57,446	2,709,679	21,554,061
4	Kimball Hill Homes	496,717	3,206,396	21,057,344
4	Reynen Bardis & Winn	948,210	4,154,606	20,109,134
5	Kaufman & Broad	377,318	4,531,924	19,731,816
6	K. Hovnanian Forecast Homes,	2,428,859	6,960,783	17,302,957
6	K. Hovnanian Forecast Homes,	6,590,504	13,551,287	10,712,453
7*	Natomas Creek LLC	2,778,438	16,329,725	7,934,015
7*	Alleghany Properties 2008-152	7,286,831	23,616,556	647,184
7*	Natomas Creek LLC 2009-0239	3,149,271	26,765,827	(2,502,087)
7*	Natomas Creek LLC 2009-0360	1,975,478	28,741,305	(4,477,565)
8	Lennar 2009-0637	427,371	29,168,676	(4,904,936)
9	Gateway West L.L.C. 2009-0939	1,842,229	31,010,905	(6,747,165)
		31,010,907		

*Per Exhibit C

Exhibit B

Waiver and Release

**Reimbursement for Credits Issued Under the
North Natomas Land Acquisition Program
Sacramento, California**

This agreement is between the **City of Sacramento** (the "City"), a California municipal corporation; and **<Full Name>** ("Credit Holder"), a *<type of entity>*.

Background

- A. Credit Holder is the owner and developer of land subject to the Land Acquisition Program ("LAP") of the North Natomas Finance Plan ("NNFP"). The City established the NNFP in 1995 by adopting Resolution No. 95-495, and the City updated the NNFP in 1999 (Resolution No. 99-471), 2002 (Resolution No. 2002-374), 2005 (Resolution No. 2005-584), and in 2009 (Resolution No. 2009-341). Article III in chapter 18.24 of the Sacramento City Code establishes land-acquisition fees ("Fees") that are an integral part of the LAP; it also authorizes the City to issue credits against Fees ("Credits") to those owners of land who have transferred land to the City or to other public agencies in accordance with the LAP. Credits may be used to offset Fees owed. Alternatively, the City, in its discretion, may redeem the Credits for cash using revenues generated by the Fees.
- B. Owners who transfer lands enter into reimbursement-and-credit agreements that identify the lands and specify the amount of Credits issued to that owner. Credit Holder is the lawful owner of Credits issued under a reimbursement-and-credit agreement dated _____, _____, and designated as City Agreement No. _____-_____ (the "Reimbursement Agreement"). The value of these Credits is \$_____.
- C. Most of the lands designated for acquisition in the LAP have now been acquired. The remaining lands are either subject to development agreements that require dedication or will be acquired as a condition of development. The City thus has decided, in its discretion, to use the revenues generated by the Fees to redeem Credits, including those owned by Credit Holder.
- D. [Optional: Describe here any amounts Credit Holder still owes the City in connection with other obligations, such as unpaid building-permit fees or amounts owed under agreements to pay fee increases, e.g., "Credit Holder and the City are parties to an agreement, designated as City Agreement No. _____ - _____, that obligates Credit Holder to pay fee increases under the NNFP (the "Catch-up Agreement"). The amount Credit Holder owes the City under the Catch-up Agreement is \$_____."]

With these background facts in mind, the City and Credit Holder agree as follows:

- 1. **Credit Holder's obligations.** The City shall pay \$_____ to Credit Holder, by check, within 30 days after the effective date of this agreement (see section 7 below). This amount represents

total reimbursement the City owes Credit Holder for Credits issued under the Reimbursement Agreement [**Optional:** Reference here the amounts described in ¶¶D, e.g., “less the amount Credit Holder owes the City under the Catch-up Agreement”].

2. Credit Holder’s Release of Liability. The following provisions are effective when the City has fully performed its obligation under section 1:

(a) **Release.** Credit Holder unconditionally and forever releases and discharges the City and the City’s elected officials, officers, employees, and agents from all debts, claims, damages, and causes of action of any kind that pertain to, arise out of, or are in any way connected with, the City’s obligations under the Reimbursement Agreement. This release and discharge is to be broadly interpreted. It covers all acts, omissions, transactions, and events that relate to the City’s obligations under the Reimbursement Agreement to reimburse Credit Holder for the lands transferred under that agreement. It also includes any claim by Credit Holder for attorneys’ fees, penalties, interest, and costs in any way connected with reimbursement for the lands transferred under the Reimbursement Agreement. This release and discharge—

- (1) applies not just to Credit Holder but also to all persons and entities claiming by, through, under, or in concert with Credit Holder; and
- (2) covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind—past, present, and future—whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or un-matured.

(b) **Waiver of Civil Code section 1542.** Credit Holder waives all rights and benefits that it has, and all rights and benefits that any person or entity claiming by, through, under, or in concert with it may have, under Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.

This release under Civil Code section 1542 applies only to the claims Credit Holder may have concerning reimbursement for the lands transferred under the Reimbursement Agreement.

(c) **Future claims.** Credit Holder acknowledges that after it enters into this agreement it may discover unknown or unsuspected claims or facts that are in addition to, or different from, the facts and claims it intends hereby to release fully, finally, and forever. Credit Holder further acknowledges that those unknown or unsuspected facts and claims are covered by the release in subsection 2(a) and the waiver in subsection 2(b) to the extent they pertain to, or arise out of, any acts, omissions, transactions, or events that relate to any agreement or understanding the City and Credit Holder may have concerning reimbursement for the lands transferred under the Reimbursement Agreement.

3. **Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.
4. **Severability.** If a court of competent jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.
5. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.
6. **Litigation costs and attorneys' fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.
7. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below. The parties shall sign any additional documents that are reasonably necessary to carry out the intent and purposes of this agreement.
8. **Counterparts.** The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
9. **Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. No waiver is binding unless set forth in a writing signed by the waiving party.
10. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

City of Sacramento

<Name >

By: _____
John Dangberg, Assistant City Manager,
for Gus Vina, Interim City Manager
Date: _____, 2010

By: _____
<Name>
Title
Date: _____, 2010

Approved as to Legal Form
Sacramento City Attorney

Approved as to Legal Form
<Name>

By: _____
Joseph P. Cerullo
Senior Deputy City Attorney

By: _____
<Name>
Attorneys for <Name>

Exhibit C

Alleghany/Natomas Creek Settlement Agreement

SETTLEMENT AGREEMENT

(Past Dedications)

This SETTLEMENT AGREEMENT (Past Dedications) (this "Agreement") is made as of July 9, 2010 ("Agreement Date") between Alleghany Properties LLC, a Delaware limited liability company ("Alleghany") and Natomas Creek, LLC, a California limited liability company ("Natomas Creek"). Alleghany and Natomas Creek are sometimes referred to hereinafter individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City of Sacramento (the "City") has adopted the North Natomas Finance Plan ("NNFP") to provide a mechanism for financing infrastructure necessary for development of the lands that are encompassed by the North Natomas Community Plan ("NNCP"). As part of the NNFP, the City adopted the North Natomas Land Acquisition Program ("NNLAP"), which lists and depicts certain public lands ("Public Lands") which must be Transferred to the City or other public agencies, as part of the public infrastructure required pursuant to the NNFP and the NNCP.

B. Because certain landowners within the NNCP area are required under the NNLAP to transfer Public Lands to the City or another public agency in excess of those landowners' allocable share of the Public Lands, and certain other landowners will be required to transfer either none or a lesser amount of land than their allocable share of the Public Lands, the NNLAP provides a procedure for ascertaining the excess or deficit in the Public Lands so transferred, and for provision of compensation where appropriate. The compensation payable for dedication of the Public Lands is provided from land acquisition fees collected by the City from every landowner covered by the NNCP.

C. The City Council, by resolution, adopted the "North Natomas Land Acquisition Program Reimbursement and Credit Policy" ("City Policy"), which sets forth in more detail the City's policy related to the credits issued to landowners in return for the Public Lands dedicated to the City and the payment of compensation for such credits.

D. Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings specified in Section 1 of this Agreement.

E. The City currently has an aggregate of at least Twenty Four Million Dollars (\$24,263,740.00) ("Current Distribution Amount") in collected land acquisition fees which it intends to distribute to the those landowners who have Transferred Public Lands pursuant to the NNLAP on or before the Credit Issuance Date, and who have the requisite land acquisition fee credits either issued or pending as of the Credit Issuance Date, all as compensation for such Transfers of Public Lands under NNLAP. If the Current Distribution Amount is as stated above the Parties anticipate that an aggregate of \$10,712,453.00 ("Estimated First Available LAF Funds") will be available for distribution to Natomas Creek and Alleghany, although such amount would not pay Natomas Creek and Alleghany in full with respect to all of the Public Lands Transferred by them to the City on or before the Credit Issuance Date.

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F. A dispute exists between Alleghany and Natomas Creek as to the priority between them with respect to their share of the Current Distribution Amount and their share of LAF Funds to be distributed by the City thereafter.

G. Alleghany and Natomas Creek have reached an agreement to settle the foregoing dispute and the purpose of this Agreement is to set forth the terms and conditions of such settlement. In general, to settle the foregoing dispute, the Parties have in substance and effect agreed that with respect to LAF Funds to be distributed by the City to Alleghany and Natomas Creek on account of Public Lands covered by the Reimbursement/Credit Agreements and Transferred to the City on or before the Credit Issuance Date, all such Funds will be shared equally by Alleghany and Natomas Creek.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings indicated:

(a) The term "Affiliate" of a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. The term "control" (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(b) The term "Alleghany LAF Entitlement" means, assuming sufficient LAF Funds are available, the aggregate amount of LAF Funds which Alleghany would be entitled to receive from time to time in respect of Public Lands covered by the Alleghany Agreement and Transferred to the City on or before the Credit Issuance Date. As of the Agreement Date, the aggregate amount of the Alleghany LAF Entitlement is \$7,286,831.00. Alleghany acknowledges that if from time to time Alleghany uses some of these LAF credits for development purposes, its Alleghany LAF Entitlement with respect to the distribution of LAF Funds will decrease accordingly.

(c) The term "Available LAF Funds" means, with respect to each distribution of LAF Funds made by the City from time to time after the Agreement Date, the aggregate amount of LAF Funds that the City determines in its sole discretion is available for distribution to Natomas Creek and/or Alleghany in such distribution with respect to Public Lands covered by the Reimbursement/Credit Agreements and Transferred to the City on or before the Credit Issuance Date.

(d) The term "Credit Issuance Date" means October 29, 2009.

(e) The term "LAF Funds" means the amount of collected land acquisition fees which the City actually distributes, from time to time, in one or more distribution events, after the Agreement Date with respect to Public Lands which were Transferred to the City pursuant to the NNLAP on or before the Credit Issuance Date.

(f) The term "Natomas Creek Agreements" means collectively the Natomas Creek 2004 Agreement, the Natomas Creek 2008 Agreements, the Natomas Creek March 2009 Agreement and the Natomas Creek April 2009 Agreement.

(g) The term "Natomas Creek LAF Entitlement" means, assuming sufficient LAF Funds are available, the aggregate amount of LAF Funds which Natomas Creek would be entitled to receive from time to time in respect of Public Lands covered by the Natomas Creek Agreements and Transferred to the City on or before the Credit Issuance Date. As of the Agreement Date, the aggregate amount of the Natomas Creek LAF Entitlement is \$7,903,187.00. Natomas Creek acknowledges that if from time to time Natomas Creek uses some of these LAF credits for development purposes, its Natomas Creek LAF Entitlement with respect to the distribution of LAF Funds will decrease accordingly.

(h) The term "Person" or "person" means any individual, sole proprietorship, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, trust, association, fund, firm or other entity.

(i) The term "Reimbursement/Credit Agreements" shall mean collectively all of the following:

(i) Reimbursement and Credit Agreement entered into on June 24, 2004 between the City and Natomas Creek, which the City has designated as City Agreement No. 2004-0467 ("Natomas Creek 2004 Agreement").

(ii) Reimbursement and Credit Agreement entered into on February 12, 2008 between the City and Alleghany, which the City has designated as City Agreement No. 2008-0152, as amended by that certain First Amendment dated November 20, 2008, which the City has designated as City Agreement No. 2008-0152-1 (collectively, "Alleghany Agreement").

(iii) Two Reimbursement and Credit Agreements entered into on June 30, 2008 between the City and Natomas Creek, which the City has designated as City Agreement Nos. 2008-0668 and 2008-0669 ("Natomas Creek 2008 Agreements").

(iv) Reimbursement and Credit Agreement entered into on March 10, 2009 between the City and Natomas Creek, which the City has designated as City Agreement No. 2009-0239 ("Natomas Creek March 2009 Agreement").

(v) Reimbursement and Credit Agreement entered into on April 14, 2009 between the City and Natomas Creek, which the City has designated as City Agreement No. 2009-0360 ("Natomas Creek April 2009 Agreement").

(j) The term "Transferred" or "Transfer" or "Transfers" with respect to Public Lands means the actual transfer of title and possession of the Public Lands to the City, with the transfer of such title being reflected through the recordation of a deed or other instrument in the Official Records of the Sacramento County Recorder. With respect to Public Lands which were the subject of an irrevocable offer to dedicate ("IOD"), such Public Lands will be considered to have been "Transferred" to the City if and when the City has accepted the IOD in writing and a deed or other instrument is recorded in the Official Records of the Sacramento County Recorder reflecting such acceptance or transfer of title to the City. With respect to IODs covering rights-of-way for the Sacramento Regional Transit District's light-rail line in North Natomas, the Parties hereby acknowledge that the City issued credits when the IODs were recorded, rather than wait until the IODs were accepted, because acceptance of those IODs depends on when the light-rail line is constructed. The parties hereby further acknowledge that any credits issued in connection with IODs for light-rail rights-of-way have equal standing with credits issued in connection with Transfers.

2. Distribution of LAF Funds for Public Lands Transferred on or before Credit Issuance Date. Alleghany and Natomas Creek hereby acknowledge and agree to, and authorize the City to act in accordance with, the following:

(a) For both Alleghany and Natomas Creek, the priority date for LAF Funds to be distributed with respect to Public Lands covered by the Reimbursement/Credit Agreements which were Transferred by them to the City pursuant to the NNLAP on or before the Credit Issuance Date shall be November 20, 2008.

(b) If and when the City distributes LAF Funds from time to time after the Agreement Date, all landowners who have priority dates prior to November 20, 2008 shall be paid in full before Natomas Creek or Alleghany receives any LAF Funds with respect to the Public Lands covered by the Reimbursement/Credit Agreements which were Transferred by them to the City on or before the Credit Issuance Date. (For avoidance of doubt, this means that Alleghany is entitled to receive from LAF Funds to be distributed on or after the Agreement Date an aggregate of \$248,942.00 on account of Public Lands it Transferred to the City prior to the Credit Issuance Date which are not covered by the Reimbursement/Credit Agreements before Alleghany or Natomas Creek receive any LAF Funds with respect to Public Lands covered by the Reimbursement/Credit Agreements).

(c) As of the Agreement Date, the aggregate amount of their respective shares of the LAF Funds to be distributed with respect to Public Lands covered by the Reimbursement/Credit Agreements which were Transferred by them to the City pursuant to the NNLAP on or before the Credit Issuance Date is as follows:

(i) Alleghany LAF Entitlement: \$7,286,831.00.

(ii) Natomas Creek LAF Entitlement: \$7,903,187.00.

(d) If and when the City distributes LAF Funds from time to time after the Agreement Date, and notwithstanding the differing amounts referred to in Section 2(c) above, the Available LAF Funds from each such distribution will be shared equally between Alleghany

and Natomas Creek, notwithstanding the dates of Transfers of such Public Lands on or before the Credit Issuance Date or the dates of execution of the Reimbursement/Credit Agreements applicable to such Public Lands; provided, however, that once the Natomas Creek LAF Entitlement or the Alleghany LAF Entitlement, as applicable, is paid in full, then Alleghany or Natomas Creek, as applicable, shall receive 100% of the remaining Available LAF Funds until the Alleghany LAF Entitlement or the Natomas Creek LAF Entitlement is paid in full. By way of example only, assuming the Current Distribution Amount (i.e., \$24,263,740.00) is the amount first being distributed after the Agreement Date, the Available LAF Funds would be an amount equal to the Estimated First Available LAF Funds (i.e., \$10,712,453.00), and Natomas Creek would receive one-half of this amount (i.e., \$5,356,226.50) and Alleghany would receive one-half of this amount (i.e., \$5,356,226.50). The remaining Alleghany LAF Entitlement would be \$1,930,604.50 and the remaining Natomas Creek LAF Entitlement would be \$2,546,960.50, assuming no credits have been used to offset fees owed. If the next distribution were \$4,200,000.00, then Alleghany would receive \$1,930,604.50 and Natomas Creek would receive \$ 2,269.395.50 ($\$4,200,000.00 - \$1,930,604.50 = \$2,269.395.50$), so that the remaining Alleghany LAF Entitlement would be \$0.00 and the remaining Natomas Creek LAF Entitlement would be \$277,565.00. Natomas Creek would be paid first from any subsequent distributions until the remaining Natomas Creek LAF Entitlement is \$0.00.

(e) After the first distribution by the City of LAF Funds after the Agreement Date, all subsequent distributions of LAF Funds by the City shall be made to Alleghany and Natomas Creek in accordance with Section 2(d) above until the Alleghany LAF Entitlement and the Natomas Creek LAF Entitlement are paid in full.

(f) After the Alleghany LAF Entitlement and the Natomas Creek LAF Entitlement are paid in full, this Agreement shall have no further force or effect with respect to the subsequent distribution by the City of LAF Funds thereafter.

3. City.

(a) Alleghany and Natomas Creek hereby acknowledge and agree that the City is an express third party beneficiary of this Agreement and the City is authorized, entitled and instructed to rely upon the provisions of this Agreement in making distributions of Available LAF Funds from time to time after the Agreement Date.

(b) Alleghany and Natomas Creek hereby waive and release, and covenant not to sue with respect to, any and all claims of whatever sort or nature which either of them may now have or hereafter acquire against the City or its officers, employees and agents, in connection with the City's distribution of LAF Funds in accordance with the provisions of this Agreement. Such waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that: "A general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the Parties hereto expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all claims against the City as described in this

Section which the Parties do not know or suspect to exist. The provisions of this Section shall survive any termination of this Agreement.

4. Notice of Receipt of LAF Funds; Redelivery of Available LAF Funds. In order to assure proper performance of this Agreement:

(a) Alleghany and Natomas Creek each agree to give each other written notice of the receipt of LAF Funds with respect to Public Lands covered by the Reimbursement/Credit Agreements, which notice shall be given within ten (10) days after receipt of such LAF Funds and shall specify the amount of LAF Funds received.

(b) If, notwithstanding the provisions of this Agreement, either Alleghany or Natomas Creek (the "Receiving Party") receives a distribution of Available LAF Funds from the City which is in excess of the amount of the Available LAF Funds which should have been distributed to the Receiving Party in accordance with the provisions of this Agreement ("Excess Distribution"), the Receiving Party shall, within ten (10) days after the date of receipt of such Excess Distribution, pay and deliver to the other Party hereto the amount of such Excess Distribution. If the Receiving Party fails, refuses or neglects to pay and deliver such Excess Distribution to the other Party within such 10-day period, then the Receiving Party shall also be obligated to pay to the other Party interest on the amount of the Excess Distribution at the rate of ten percent (10%) per year from and including the eleventh (11th) day following the date of receipt by the Receiving Party of the Excess Distribution to and including the date of payment of the Excess Distribution to the other Party.

5. Other Public Lands. Except as otherwise set forth in Section 6 of this Agreement, nothing contained in this Agreement shall affect the priority or amount or claims of the Parties with respect to public land acquisition fee funds to be distributed by the City to which Alleghany or Natomas Creek may be entitled with respect to Public Lands Transferred to the City after the Credit Issuance Date.

6. Further Assurances; Future Dedications. Natomas Creek and Alleghany agree not to take any actions or enter into any agreements which would be inconsistent with the terms and conditions of this Agreement. Natomas Creek and Alleghany also agree to execute and deliver such documents, and take such other actions, as may be reasonably requested by the City or which may be reasonably requested by Natomas Creek or Alleghany in order to implement the terms and conditions of this Agreement and vest in Natomas Creek and Alleghany the benefits and rights set forth in this Agreement. In this regard, and without limiting the generality of the foregoing, Natomas Creek and Alleghany each agree that if it Transfers Public Lands covered by the Reimbursement/Credit Agreements to the City after the Credit Issuance Date, it will not assert any right or claim to any LAF Funds on account of such post-Credit Issuance Date Transfers, unless and until the Alleghany LAF Entitlement and the Natomas Creek LAF Entitlement have been paid in full.

7. Conditions to Effectiveness of this Agreement. Natomas Creek and Alleghany hereby agree that this Agreement shall not be effective unless all of the following conditions are satisfied:

(a) The first distribution of LAF Funds by the City after the Agreement Date shall take place on or before October 31, 2010; and

(b) The aggregate amount of Available LAF Funds from the first distribution of LAF Funds made after the Agreement Date will be at least \$10,712,453.00, with Natomas Creek and Alleghany each receiving 50% of such Available LAF Funds; and

(c) All subsequent distributions by the City of LAF Funds after the initial distribution of LAF Funds by the City after the Agreement Date, shall be distributed in accordance with Section 2 in equal shares to Alleghany and Natomas Creek until the Natomas Creek LAF Entitlement and the Alleghany LAF Entitlement are paid in full; provided, however, that once the Natomas Creek LAF Entitlement or the Alleghany LAF Entitlement, as applicable, is paid in full, then Alleghany or Natomas Creek, as applicable, shall receive 100% of such LAF Funds until the Alleghany LAF Entitlement or the Natomas Creek LAF Entitlement, as applicable, is paid in full.

If any of the conditions referred to in subparagraphs (a), (b) or (c) above is not satisfied, then this Agreement shall be of no further force or effect and neither Party shall have any further duties or obligations under this Agreement; provided, however, that each Party shall be entitled to retain for its own account any and all Available LAF Funds received by such Party prior to the date on which one or more of such conditions is not satisfied, subject to the provisions of Sections 3 and 4 above, which will remain in force with respect to such funds. Once the Alleghany LAF Entitlement and the Natomas Creek LAF Entitlement are paid in full, this Agreement shall have no further force or effect with respect to any LAF Funds distributed thereafter.

8. Confidentiality. Natomas Creek and Alleghany each agree to keep the terms of this Agreement strictly confidential; provided, however, that (a) Natomas Creek and Alleghany shall each have the right to disclose the terms of this Agreement to the City, to their professional advisors, or otherwise as may be necessary in order to comply with applicable law and applicable regulatory requirements, or in any judicial or arbitration proceedings; and (b) for avoidance of doubt the provisions of this Section 8 do not apply to or bind the City.

9. No Admission of Liability. Neither the execution of this Agreement nor the performance by a Party of its duties and obligations hereunder shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claim or cause of action released pursuant to this Agreement or (b) an acknowledgment or admission by either Party of any fault or liability whatsoever to each other or any third party.

10. Miscellaneous.

(a) Further Assurances. The Parties agree to execute and deliver, or cause to be executed and delivered, all such instruments and other documents, and shall take, or cause to be taken, such other actions as any Party may reasonably request from time to time in order to carry out the intent and purposes of this Agreement.

(b) Amendments and Waiver. No amendment, waiver or consent with respect to any provision of this Agreement shall in any event be effective, unless the same shall be in writing and signed by the Party thereby affected, and then such amendment, waiver or consent

shall be effective only in the specific instance and for the specific purpose for which given. The failure of any Party at any time or times to require performance of any provisions hereof shall not affect that Party's right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement in any one or more instances shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement. Any waiver may be conditional.

(c) Notices. All notices, requests, demands and other communications which are required or permitted hereunder shall be in writing and shall be sufficient if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, (iii) sent by overnight courier with a nationally recognized courier or (iv) sent by facsimile transmission confirmed in writing in any of the foregoing manners, addressed as follows:

If to Alleghany:

Mr. David J. Bugatto, President and CEO
Alleghany Properties LLC
2150 River Plaza Drive, Suite 155
Sacramento CA 95833
Facsimile: (916) 648-7739

With a copy to:

Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, CA 90013
Attention: Michael Cohen
Facsimile: (213) 892-5454

If to Natomas Creek:

Mr. Kern W. Schumacher
Natomas Creek, LLC
2200 E. Camelback Road, Suite 101
Phoenix, Arizona 85016
Facsimile: (602) 956-1503

With a copy to:

Law Offices of Gregory D. Thatch
1730 I Street, Suite 220
Sacramento, CA 95814
Attention: Gregory D. Thatch, Esq.
Facsimile: (916) 443-4632

And to:

Mr. Brad Ross
Natomas Creek, LLC
P.O. Box 30076
Salt Lake City, Utah 84130
Facsimile: (801) 977-9387

If sent by mail, notice shall be considered delivered three (3) Business Days after the date of mailing; if sent by overnight courier with a nationally recognized courier, notice shall be considered delivered the next Business Day after the date of mailing; and if sent by any other means set forth above, notice shall be considered delivered upon actual delivery thereof. Any Party may by notice to the other Parties change the address to which notice or other communications to it are to be delivered or mailed.

(d) Assignment; Use of LAF Credits.

(i) Each of Natomas Creek or Alleghany shall be entitled to assign its rights under this Agreement and delegate its duties under this Agreement to any Affiliate (referred to herein as an "Affiliate Assignee") who acquires all or a portion of the land acquisition fee credits of such Party relating to the then Natomas Creek LAF Entitlement or the then Alleghany LAF Entitlement, as applicable, in each case without the consent or approval of the other Party. In the event of any such assignment, the assigning party shall give the other Party written notice of such assignment within ten (10) business days thereafter.

(ii) Each of Natomas Creek or Alleghany shall be entitled to assign its rights under this Agreement and delegate its duties under this Agreement, without the consent of the other Party, to any Person (referred to herein as a "Business Assignee") who acquires all or substantially all of the business of such Party, either through a sale of assets, or by way of merger, consolidation or otherwise, as long as all of such Party's land acquisition fee credits relating to its then Alleghany LAF Entitlement or then Natomas LAF Entitlement, as applicable are assigned and transferred to the same Person in connection therewith, either directly or by operation of law.

(iii) In addition, nothing contained in this Agreement shall prevent or restrict any Party from selling, assigning or otherwise disposing of all or a portion of its land acquisition fee credits to any Person (referred to herein as an "LAF Credit Assignee"), without the consent of the other Party, including some or all of its land acquisition fee credits included within the then Natomas Creek LAF Entitlement or the then Alleghany LAF Entitlement, as applicable, in one or more transactions which do not constitute a transaction referred to in subparagraph (d)(i) or (d)(ii) above.

(iv) For purposes of this Agreement, the term "Participating Assignee" shall mean, with respect to each distribution of LAF Funds to be made after the date of this Agreement, any Affiliate Assignee, Business Assignee or LAF Credit Assignee, but only if such Affiliate Assignee, Business Assignee or LAF Credit Assignee, as

applicable, executes and delivers to the City a written waiver, on a form prescribed by the City ("Waiver Form"), within thirty (30) days after the date on which the City requests such a waiver. For avoidance of doubt, any Affiliate Assignee, Business Assignee or LAF Credit Assignee who for any reason fails, refuses or neglects to execute and deliver a Waiver Form to the City within the aforesaid thirty (30) day period shall not constitute a "Participating Assignee."

(1) For each distribution of LAF Funds after the date of this Agreement, each Participating Assignee of Alleghany with respect to its unused land acquisition fee credits included within the Alleghany LAF Entitlement shall be entitled to the benefits of this Agreement and shall share in the Available LAF Funds being distributed to Alleghany in connection with such distribution, pro rata in accordance with City Policy.

(2) For each distribution of LAF Funds after the date of this Agreement, each Participating Assignee of Natomas Creek with respect to its unused land acquisition fee credits included within the Natomas Creek LAF Entitlement shall be entitled to the benefits of this Agreement and shall share in the Available LAF Funds being distributed to Natomas Creek in connection with such distribution, pro rata in accordance with City Policy.

(v) In addition, nothing contained in this Agreement shall prevent, restrict or impair the right of Alleghany or Natomas Creek, or any of their successors or assigns, from using land acquisition fee credits attributed to Public Lands covered by the Reimbursement/Credit Agreements in connection with any development of land.

(e) Section 3 Binding on Successors and Assigns. The provisions of Section 3 of this Agreement shall be binding upon all successors and assigns of the Parties hereto and each of them, including but not limited to all Participating Assignees.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the internal substantive laws of the State of California.

(g) Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(h) Certain Rules of Construction. Words in the singular include the plural and in the plural include the singular. The word "or" is not exclusive. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The word "including" shall mean including, without limitation. Each Party acknowledges that this Agreement has been negotiated at arms' length by the Parties and their respective counsel and that none of the Parties shall be deemed the author or drafter of this Agreement for purposes of construction of the terms hereof or for any other purpose. All Parties have participated substantially in the negotiation and drafting of this Agreement and each Party hereby disclaims any defense or assertion that any ambiguity herein should be construed against the drafter.

(i) Entire Agreement. This Agreement contains the entire understanding among the Parties with respect to the subject matter hereof and supersedes all other agreements, understandings and undertakings among the Parties on the subject matter hereof.

(j) Attorneys' Fees. If any action, suit or proceeding is brought to enforce or interpret the terms of this Agreement or to protect the rights obtained hereunder, or to recover damages for breach of this Agreement, then, if successful in whole or in part in such action, the prevailing party or parties in such action, suit or proceeding shall be entitled to recover from the non-prevailing party or parties hereto any and all of the costs of suit and reasonable attorneys' fees incurred by the prevailing party or parties in connection therewith, including attorneys' fees on appeal, costs and disbursements, in addition to such other relief to which any such prevailing party or parties may be entitled; provided, however, that for avoidance of doubt, the provisions of this Section 10(j) shall not apply to any express third-party beneficiaries of this Agreement, including, without limitation, the City.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures (including those in PDF format) shall be treated as if they were originals.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement (and Dedication) to be executed as of the date first written above.

ALLEGHANY PROPERTIES LLC

NATOMAS CREEK, LLC

By _____
David J. Bugano, President and CEO

By _____
Keri W. Schumacher
Sole Member and Manager

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IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement (Past Dedications) to be executed as of the date first written above.

ALLEGHANY PROPERTIES LLC

NATOMAS CREEK, LLC

By:



David J. Bugatto, President and CEO

By:

Kern W. Schumacher
Sole Member and Manager