



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814 15
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Meeting Date: 8/23/2011

Report Type: Public Hearing

Title: Northwest Land Park (P10-039) (Noticed 8-10-11, Passed for Publication on 8-16-11, Published on 8-19-11)

Report ID: 2011-00613

Location: Area bounded by Broadway on the north, 5th Street on the east, McClatchy Way on the south, and I-5 on the west (District 4)

Recommendation: Conduct a public hearing and upon conclusion, adopt 1) an Ordinance rezoning certain real property from Heavy Commercial (C-4) (1.4 acres), Light Industrial (M-1) (16.15 acres), Heavy Industrial (M-2) (10.65 acres) and Heavy Industrial Review (M-2-R) (3.5 acres) to Limited Commercial PUD (C-1-PUD) (1 acre), General Commercial PUD (C-2-PUD) (1.4 acres) and Multi-Family PUD (R-4-PUD) (29.3 acres), 2) an Ordinance approving a Development Agreement between the City Of Sacramento and Northwest Land Park, LLC; the CHY Company; CHY II; and Cousins Market, 3) a Resolution certifying the Environmental Impact Report and adopting the Mitigation Monitoring Program for the Northwest Land Park Project, 4) a Resolution amending the City of Sacramento Bikeway Master Plan for Northwest Land Park, 5) a Resolution establishing the Northwest Land Park Planned Unit Development and approving Guidelines and Schematic Plan, and 6) a Resolution approving the Northwest Land Park Project's Phase 1 Tentative Map, Subdivision Modification, and Special Permit.

Contact: David Hung, Associate Planner, (916) 808-5530; Gregory Bitter, Principal Planner, (916) 808-7816, Community Development Department

Presenter: David Hung, Associate Planner, (916) 808-5530, Community Development Department

Department: Community Development Dept

Division: Planning

Dept ID: 21001221

Attachments:

- 01-Description/Analysis
- 02-Background
- 03-Vicinity
- 04-Ordinance Rezone
- 05-Ordinance Development Agreement
- 06-Resolution EIR
- 07-Resolution Bikeway Master Plan Amendment
- 08-Resolution PUD Establishment
- 09-Resolution Phase 1 Project
- 10-Comment Letters

City Attorney Review

Approved as to Form
Sabina D. Gilbert
8/17/2011 12:08:17 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
8/9/2011 1:33:00 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 8/12/2011 8:38:27 AM

Assistant City Manager: John Dangberg - 8/15/2011 12:56:34 PM



Description/Analysis

Issue: The applicant is requesting entitlements to develop 31.7 gross acres in four phases for the Northwest Land Park project. The request for a Development Agreement, a Rezone, PUD Guidelines Establishment with Schematic Plan and a Bikeway Master Plan Amendment covers the entire property. The request for a Tentative Map, a Subdivision Modification and a Special Permit covers Phase 1 only, which consists of a 201 unit condominium development on 8.1 gross acres. Phases 2, 3 and 4 will be developed in a future time; the development of each subsequent phase will require additional entitlements. The project would include an approximately 4.5 acres public park within the central portion of the project site. The park would be developed as a neighborhood park to serve the project site and may include a neighborhood center which will be the result of adaptive reuse of the existing wholesale produce building currently on the site. All park amenities are subject to a public master planning process, which will occur at a later date. Staff has received neighborhood concerns regarding traffic impacts generated by the project and noise from existing industrial users.

Policy Considerations:

General Plan: The 2030 General Plan Update was adopted by City Council on March 3, 2009. The 2030 General Plan's goals, policies, and implementation programs define a roadmap to achieving Sacramento's vision to be the most livable city in America. The General Plan designation for most of the 31.7 acres site is Urban Neighborhood Medium Density (33 to 110 units per acre) with a small portion designated as Urban Corridor Low adjacent to Broadway. The Urban Neighborhood Medium Density designation allows for a range of development, from single family to high density apartments, to be constructed in the same designation. It also allows for a limited amount of neighborhood serving commercial uses. It is assumed to include a range of housing types and densities, with an average density that falls within the identified range of 33 to 110 units per acre. Within the Mixed-Use Urban Corridor Low area, the proposed project would include a mix of residential buildings and mixed-use buildings with approximately 15,000 square feet of commercial space on the lower floors with residential uses above. The commercial space is anticipated to be neighborhood-serving retail and commercial operations that foster pedestrian access from the new community, as well as from existing surrounding neighborhoods. The 2030 General Plan has identified goals and policies under the Land Use and Urban Design Element as well as the Housing Element in relation to the Urban Neighborhood Medium and the Urban Corridor Low land use designations which are discussed under the Background section of this report.

Land Park Community Plan: The Setzer Site is identified in the community plan as an Opportunity Area for Centers. The 2030 General Plan Preferred Build-out Land Use Projections for the Setzer Site are approximately 900 dwelling units and 1000 employees.

Central City Community Plan: The parcels abutting Broadway at the northern portion of the site are within the Central City Community Plan area. Any future developments shall adhere to the goals and policies of the Central City Community Plan and the design standards of the Central City Design Review District.

Bikeway Master Plan: The Bikeway Master Plan is an effort to coordinate and develop a bikeway system that will benefit the recreational and transportation needs of the public. The plan also recognizes the use of the bicycle as an alternative form of transportation which will reduce the amount of vehicles emissions and contribute to an improvement in air quality. Additionally, the plan seeks to integrate the efforts of government agencies to provide safe and well designed bikeway

network. The project requires an amendment to the Bikeway Master Plan to include new alignments to the Northwest Land Park development to augment the existing network.

Smart Growth Principles: City Council adopted a set of Smart Growth Principles in December 2001 to encourage development patterns that are sustainable and balanced in terms of economic objectives, social goals, and use of environmental/natural resources. The proposed project helps create a range of housing opportunities and choices, fosters walkable, close-knit neighborhoods and promotes distinctive, attractive communities with a strong sense of place.

Strategic Plan Implementation: The recommended action conforms with the City of Sacramento's Strategic Plan, specifically by adhering to goals that achieve sustainability, enhance livability, and expand economic development throughout the City.

Environmental Considerations: The City of Sacramento, as Lead Agency, prepared an environmental impact report (EIR) to evaluate the environmental effects of the proposed project. The EIR analyzed the potential impacts at a project level for Phase 1 of the project and at a programmatic level for Phases 2, 3, and 4. The Master EIR prepared for the 2030 General Plan, and certified in March 2009, was relied on for its analysis of the effects of cumulative effects. The following were analyzed in the project EIR for potential impacts: air quality, biological resources, cultural resources, global climate change, hazards and hazardous materials, noise and vibration, parks and open space, public services, public utilities, and transportation and circulation, urban design and visual resources, and utilities and service systems. Consistency with existing plans and regulations was discussed.

With mitigation, the development and operation of the Northwest Land Park Project would result in less-than-significant impacts in all issue areas. No project-specific or cumulative significant and unavoidable impacts were identified for the proposed project.

The City received seven comments on the Draft EIR. The issues of concern included potential traffic impacts on roadways and freeways; potential air quality impacts, including greenhouse gas emissions and exposure to toxic air contaminants; impacts associated with wastewater conveyance and treatment; potential impacts associated with energy use; potential impacts related to rail-corridor safety; and adequacy of bicycle and pedestrian features. A comment letter from ECOS was received after the close of the Draft EIR public comment period. This comment was sent in response to the release of the 700 Block EIR; however, it referenced the Northwest Land Park project. (See Attachment 10, Exhibit F) The attachment includes the written comment as well as the response to the comment that was included in the 700 Block Final EIR.

A revision to FEIR Appendices figure "Minor Collector (5th Street) – Typical Cross Section and Plan" is included as Attachment 6, Exhibit E. This figure will be amended in the FEIR.

The project EIR, including written comments and responses, has been posted on the City's website at: <http://www.cityofsacramento.org/dsd/planning/environmental-review/eirs/>. The Draft EIR was circulated for public comment as provided in the CEQA Guidelines, and the City has provided its response to those who submitted written comments on the Draft EIR during the comment period.

Sustainability: The City has adopted a Sustainability Master Plan to complement the City's General Plan. This was done to ensure that the City set the standard for the practices of sustainability within its own organization as well as becoming a model for any construction projects within the City. Projects should consider the following goals adopted by the City as projects are proposed within the City: 1) Reduce consumption of material and encourage the reuse and local recycling of materials; 2) Reduce the use of toxic materials; 3) Establish and continuously improve "green" building standards for both residential and commercial

development--new and remodeled; 4) Reduce dependence on the private automobile by working with community partners to provide efficient and accessible public transit and transit supportive land uses; 5) Reduce long commutes by providing a wide array of transportation and housing choices near jobs for a balanced, healthy city; 6) Improve the health of residents through access to a diverse mix of wellness activities and locally produced food, promote "greening" and "gardening" within the City; 7) Create "Healthy Urban Environments" through Restorative Redevelopment, and 8) Maintain and expand the urban forest.

Staff recommends that the applicant introduce sustainable practices during the construction of the proposed project. Staff recommends the use of energy efficient design, and the use of local materials as a minimum standard for this project.

Commission/Committee Action: On May 5, 2011, the Northwest Land Park Project was presented to the City's Parks and Recreation Commission. Following discussion of the project, the Commission unanimously recommended that any future Quimby in lieu fees collected from the project be invested in public recreation facilities on public parks or school grounds, or the purchase of a park or public rights on school grounds within a two mile radius of the project, and that any master planning of facilities be coordinated with the Sacramento City Unified School District. A two mile radius is the service area for community-serving park facilities. On July 14, 2011, the Planning Commission forwarded to the City Council the recommendation for approval by a vote of **nine ayes and zero nays (one recusal)**.

Rationale for Recommendation: Staff recommends the Council approve the entitlements for the project. Staff finds: 1) the proposal is consistent with the policies of the General Plan and the Land Park Community Plan; 2) the proposed use is compatible with surrounding uses; and 3) the project provides ownership housing in a variety of styles within the community.

Financial Considerations: The project has no near term fiscal impacts to the City. The proposed Development Agreement does include language that would exempt the project from new Development Impact Fees through December 31, 2018. The exemption would have an initial term of five (5) years, which would be extended to December 31, 2018 if building permits have been issued for the construction of at least 300 residential units within the project prior to the expiration of the initial term. This exemption would only apply to new Development Impact Fees not currently in effect. The project will be required to participate in all current Development Impact Fee programs and will be subject to any fee increases associated with these existing programs. The purpose of this proposed exemption is to provide greater economic certainty for the developer during the initial two (2) phases of the Northwest Land Park project.

At this time, the City is not actively contemplating the imposition of any new Development Impact Fee programs. If the City were to impose a new Development Impact Fee program prior to December 31, 2018, there could be a loss of fee revenues associated with the exemption for the Northwest Land Park project, which the City would need to replace through other available funding sources. In considering this proposed exemption, staff has analyzed the potential unique benefits associated with the project that outweigh the potential loss of revenue. These benefits include implementation of the General Plan by developing 825 residential units in a challenging infill area, related taxes and fees associated with residential construction, construction and funding the maintenance of private streets within the development, and the formation of a community facilities district to provide funding for community services and public improvements to both the project site as well as the surrounding community.

Staff supports the proposed Development Agreement language related to the temporary exemption from any new Development Impact Fee program. Staff believes the benefits associated with the project outweigh the potential loss of revenues associated with the imposition of a future Development Impact Fee program.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.



Background Information: The project site is currently developed with light industrial, office and commercial uses, including the Setzer Forest Products plant and various produce storage and distribution facilities associated with the Sacramento Farmer’s Market. Surrounding land uses include a mix of light industrial, commercial and residential. News 10 TV Station and Saccani Distributing Company are two of the adjacent businesses northeast of the site. Directly abutting the site to the south are Jedediah Smith Elementary School and Arthur Benjamin High School. Residential properties owned by Sacramento Housing and Redevelopment Agency are also located to the south. To the west of the site is Interstate 5. A rail tunnel is located under Interstate 5 with rail spurs that extend onto the site.

General Plan Considerations: The General Plan designation for most of the 31.7 acres site is Urban Neighborhood Medium Density (33 to 110 units per acre) with a small portion designated as Urban Corridor Low adjacent to Broadway.

In the Urban Corridor Low land use designation, located at the north end of the project site along Broadway, mixed uses are permitted including, but not limited to:

- Retail, service, office and residential uses
- Gathering places such as plazas, courtyards or parks
- Compatible public, quasi-public and special uses
- Large-scale development should include a mix of nonresidential and residential uses with more intense development near major intersections

Development Standards for Urban Corridor Low are:

- Minimum density: 20 dwelling units per net acre
- Maximum density: 110 dwelling units per net acre
- Minimum floor area ratio: 0.30
- Maximum floor area ratio: 3.00
- Height guideline: 2-6 stories

Urban Corridor Low goals and policies supported by this project include:

- *Land Use and Urban Design. (Goal LU 6.1) Corridors.* Support the development of major circulation corridors that balance their vehicular function with a vibrant mix of uses that contribute to meeting local and citywide needs for retail, services, and housing and provide pedestrian-friendly environments that serve as gathering places for adjacent neighborhoods.

The Urban Neighborhood Medium land use designation provides for moderate- to higher-intensity urban housing and neighborhood-supporting uses including the following:

- Small-lot single-family dwellings
- Small-lot single-family attached dwellings (e.g., duplexes, triplexes, townhomes)
- Multi-family dwellings (e.g., apartments and condominiums)
- Mixed-use neighborhood-serving commercial
- Compatible public, quasi-public and special uses

Development Standards for Urban Neighborhood Medium are:

- Minimum density: 33 dwelling units per net acre

- Maximum density: 110 dwelling units per net acre
- Minimum floor area ratio: 1.50
- Maximum floor area ratio: 4.00
- Height guideline: 3-8 stories

Some of the Urban Neighborhood Medium goals and policies supported by this project are:

- *Land Use and Urban Design. (Goal LU 4.1) Neighborhoods.* Promote the development and preservation of neighborhoods that provide a variety of housing types, densities, and designs and a mix of uses and services that address the diverse needs of Sacramento residents of all ages, socio-economic groups, and abilities.
- *Land Use and Urban Design. (Goal LU 4.4) Urban Neighborhoods.* Promote vibrant, high-density, mixed-use urban neighborhoods with convenient access to employment, shopping, entertainment, transit, civic uses (e.g., school, park, place of assembly, library, or community center), and community-supportive facilities and services.
- *Land Use and Urban Design. (Goal LU 4.5)* Ensure that complete new neighborhoods embody the city's principles of Smart Growth and Sustainability.
- *Housing Element. Housing Diversity (Goal H-1.2)* Provide a variety of quality housing types to encourage neighborhood stability.
- *Housing Element. Balanced Communities (Goal H-1.3)* Promote racial, economic, and demographic integration in new and existing neighborhoods

Staff can support individual phases to be outside of the density range of the general plan designation if the whole project, as identified in the schematic plan, meets the density range of 33 to 110 units per acre, and if the project complies with the following policies from **Land Use Chapter 4 (Neighborhoods)** requiring a variety of housing types and densities:

- *Residential Diversity. (LU 4.1.9)* The City shall avoid concentrations of single-use high-density multi-family residential uses (e.g., apartments and condominiums) in existing or new neighborhoods.
- *Balanced Neighborhoods. (LU 4.1.10)* The City shall require new major residential development to provide a balanced housing mix that includes a range of housing types and densities.

The project, with an overall density of 33 to 40 units per net acre, is within the range of 33 to 110 units per net acre of the General Plan land use designation. The proposed project meets the 2030 General Plan goals and policies related to Citywide Land Use and Urban Design and the Housing Elements.

Public/Neighborhood Outreach and Comments: The project was routed to the following neighborhood advisory groups: Land Park Community Association, Upper Land Park Neighborhood Association, Greater Broadway Partnership, Southside Park Neighborhood Association, Beverly Way Neighborhood Association, Newton Booth Neighborhood Association, College Plaza Neighborhood Association, Richmond Grove Neighborhood Association, Sacramento Area Bicycle Advocates and WALKSacramento. Some of the above groups (Greater Broadway Partnership, Upper Land Park Neighborhood Association and Land Park Community Association) had commented on the Draft EIR and their comments and staff response can be found within the Final EIR. The applicant has also met individually with

representatives from some of the above groups for outreaching efforts. Below are some of the major concerns regarding the development from the individual groups followed by staff response.

Land Park Community Association:

Initial comments, listed below, were sent to Planning staff on October 15, 2010, attached to this report in Attachment 10:

1. Economic viability of project is questioned.
2. Incorporate commercial uses within the mixed-use area and also through the re-use of existing industrial structures.
3. Prefers meandering park and opening of tunnel under Interstate 5.
4. Supports retention of some of the existing industrial buildings.
5. 5th Street should be pedestrian and bicycle friendly.

Staff Response: The project will be developed in phases with initial development in the vacant portion of the site; subsequent phases will be developed as economically viable. Applicant has now included the retention and adaptive reuse of the Market Club building and the Wholesale Produce Building as part of the overall project. The Market Club and Festival Street will serve as open air market and the Wholesale Produce Building will be rehabilitated to serve as neighborhood center in the proposed park. Additional neighborhood serving commercial is also anticipated on the ground floor of the future mixed use building on Broadway. The project is conditioned to provide bike lane for each direction on 5th Street.

Craig Chaffee of Upper Land Park Community Association:

Initial comments, summarized below, were sent to Planning staff on July 31, 2010 and November 2, 2010, respectively, and attached to this report in Attachment10:

1. Phase 1 should not be a high density development since it's closest to the existing residential neighborhood and will adversely impact it.
2. The risks of unbearable traffic problems coming into the neighborhood are still extremely high.

Staff Response: Phase 1 is just above the minimum density of 33 units per acre for Urban Neighborhood Medium. The applicant has reduced the number of units from 208 to 201. The applicant has placed the densest housing type, the Brownstones, at the northernmost part of Phase 1 and the least dense housing type, the Bungalows, at the southern part of Phase1, closest to the nearest residential homes. To mitigate for additional traffic, the project is required to dedicate sufficient right-of-way (If needed) and restripe 5th street to include one travel lane in each direction and bike lane for each direction separated by a continuous two-way left turn lane along the project's frontage in phase 1.

Greater Broadway Partnership:

From letter dated June 14, 2011 (see Attachment 10), the Greater Broadway Partnership acknowledges that some of their earlier concerns were addressed by the developer, and that they do not oppose the project, but they think that the project can be a much stronger development and a real asset to the area if the following issues are also addressed:

1. Increase the Mixed Use in the Project: More commercial uses shall be incorporated into the earlier phases of the project.
2. Modify the street layout to increase walkability and separate the residential area from the industrial area.
3. Improve Open Space District

Staff Response: In addition to the Mixed-Use District at Broadway, the applicant has now incorporated the adaptive reuse of the Market Club Building for commercial, retail and office use in Phase 2 of the project. The Phase 1 development incorporates a 'grid' street layout that should contribute positively to walkability. The Setzer Run provides a meandering open space within the project site and ties into the centralized park site; the Setzer Run, along with the park, provides linkage to both pedestrians and bicyclists.

Sacramento Area Bicycle Advocates:

In a letter to the City's Environmental Planning Services dated February 15, 2011, the following statement was made:

1. Project fails to provide safe, comfortable and desirable bicycle access.

Staff Response: Staff believes that the proposed Setzer Run and park site provide safe and comfortable bicycle access within the site, through the redundancy of street connections and the provision of off-street bicycle trails.

WalkSacramento:

The following points were discussed in a letter dated November 17, 2010, attached to this report in Attachment 10:

1. Use the City's pedestrian-friendly street standard 53' right-of-way residential street (with detached sidewalks) in place of the proposed street cross sections with attached sidewalks for 4th Street, Tailoff Way, Lug Way, and Cleat Way.
2. Use the City's pedestrian-friendly street standard 59' right-of-way local commercial street (with detached sidewalks) in place of the proposed street cross section with attached sidewalks on 5th Street.
3. Use structural soil wherever possible for planting shade trees.
4. Upper story front setbacks should be greater than primary building setbacks.
5. Add more "eyes on the street" to the "Urban Courts" homes along 4th street.
6. Increase width of internal walkways and private access walkways to at least five feet.
7. Move the "Neighborhood Center" to 5th Street.
8. Separate the multi-use trail (Class I bikeway) from sidewalks and streets.
9. Add a Class I bikeway directly between Festival Way and Setzer Run.
10. Extend Tailoff Way (Phase 1) to Log Pond Loop (Phase 3).
11. Reduce the Phase 2 block lengths to less than 500'.
12. Move the neighborhood-serving mixed-use to the east side of the project site.
13. Ensure that access to the potential Miller Park tunnel is retained.

Staff Response: The 53' street cross-section was reduced to 41' in exchange for additional building setback and building separation, to ensure that there is adequate planting and canopy area within the development. The final street and block layout for Phases 2, 3 and 4 will be determined when the applicant submits for a tentative map for those phases; only Phase 1 is

being mapped at this time. The development of the park site, the multi-use trail, the neighborhood center and the tunnel connection to Miller Park will also be further analyzed and addressed in later phases. Staff has also encouraged applicant to provide setbacks at upper stories of homes and more housing types with ground floor living space and more eyes on the street.

Planning Commission Public Hearing: The project was heard by the Planning Commission on July 14, 2011. At the hearing, a number of speakers generally spoke in support of the proposal, including members of the Land Park Community Association, the Greater Broadway Partnership and the Sacramento City Unified School District as well as other community members; however, there were some outstanding concerns such as traffic and noise impacts that the community still want to see addressed. To mitigate for the impacts, the Planning Commission, with consent by the applicant, made the following revisions to the project:

- a. Amend the PUD Guidelines to depict locations of ten-foot high walls and add conditions #1 and #2 to the Planned Unit Development Resolution to address noise impacts as follows:
 - Upon issuance of a building permit for residential units along the northern boundary of Phase 2, the project applicant shall construct a ten-foot high uniform wall along the boundary of the project site where Phase 2 abuts the existing uses (currently owned by Sacconi Distributing Company and the Gary and Roland Sacconi Trusts) on the south side of First Avenue, and shall plant fast-growing trees, such as Italian cypress trees, adjacent to the ten-foot high wall on the Project side.
 - Upon issuance of a building permit for residential uses on the eastern boundary of Phase 4, the project applicant shall construct a ten-foot high uniform wall along the eastern boundary of Phase 4 where it abuts the existing use on the north side of First Avenue, and shall plant fast-growing trees, such as Italian cypress trees, adjacent to the ten-foot high wall on the Project side. In the event the project applicant does not seek building permits to construct residential units along the eastern boundary of Phase 4, this condition shall have no effect.
- b. Add condition #3 to the Planned Unit Development Resolution and condition #A18 to the tentative map conditions to address traffic impacts as follows:
 - The applicant shall explore the feasibility of constructing a traffic circle at the intersection of McClatchy and 5th Streets as part of their public improvements. The traffic circle shall be constructed per City standards and to the satisfaction of the Department of Transportation. If the traffic circle construction is found to be infeasible, the applicant shall contribute the sum of \$50,000 to go towards a Neighborhood Traffic Management Program (NTMP) within the adjacent neighborhood, including 5th Street and Vallejo Street. If the construction of the traffic circle is found to be feasible, the applicant has agreed to construct the traffic circle. Should the total design and construction cost of the traffic circle be less than \$50,000, the remaining balance shall be paid towards the above referenced NTMP. This one time contribution, from the applicant, shall satisfy all requirements towards any neighborhood traffic calming program related to the development of the Northwest Land Park PUD.
- c. Revise Mitigation Measure 5.6-2(b) of the Mitigation Monitoring and Reporting Program to read:

So long as existing industrial and commercial uses continue to operate, the project applicant shall design residential structures, immediately adjacent to the existing commercial operations located along 1st Avenue in Phases 2 and 4, to achieve a reduction between exterior and interior noise levels in accordance with City standards through the use of certain design-specific measures

With the above amendments, the Planning Commission forwarded a recommendation of approval of the project to the City Council.

Project Design:

The following discusses project in relation to the Development Agreement, the Bikeway Master Plan Amendment, the Rezone, the PUD Establishment and Schematic Plan, the Tentative Map, the Subdivision Modification, and the Special Permit for condominiums.

Land Use

Development Agreement

The applicant has coordinated with the City Attorney's Office to create a development agreement between the City of Sacramento and Northwest Land Park, LLC, the CHY Company, CHY II, and Cousins Market. The Development Agreement Ordinance and a copy of the Development Agreement for this project are included with this staff report (Attachment 5).

The proposed Development Agreement is a contract that grants a vested right to develop the Northwest Land Park project in accordance with the proposed Planned Unit Development (PUD), as analyzed in the project EIR. The term "vested right" means that the PUD and zoning districts can't be amended in the future and applied in a manner that would prevent the current or future developers from completing the development plan. The Development Agreement also freezes City zoning regulations and planning policies in effect at the time the agreement is approved so that new regulations would not apply to the development. There are certain exceptions, such as preventing risks to the public health and safety, and compliance with CEQA and other environmental regulations.

The term of the Agreement is limited to an Initial Term of 10 years with the option for one – 5 year extension, for a total of 15 years. In order to secure the five year extension, final subdivision maps must be recorded and special permits approved for least 400 residential dwellings by the end of the initial 10-year term.

The provisions of the Northwest Land Park DA that are more specific to this particular development can be found in Exhibit M "Special Conditions". The provisions to note include: 1) allowing the continued use of office and industrial operations within Phases 2, 3 and 4 until residential development occurs within a particular phase, 2) provisions for the use of a neighborhood center within the proposed park, and 3) provisions establishing priority use of Project-generated Quimby in-lieu fees and Park Development Impact Fees for improvements

on the adjacent school sites for an urban farm, the neighborhood park, and other community parks or schools within a three-mile radius of the Project site.

The project has no near term fiscal impacts to the City. The proposed Development Agreement does include language that would exempt the project from new Development Impact Fees through December 31, 2018. The exemption would have an initial term of five (5) years, which would be extended to December 31, 2018 if building permits have been issued for the construction of at least 300 residential units within the project prior to the expiration of the initial term. This exemption would only apply to new Development Impact Fees not currently in effect. The project will be required to participate in all current Development Impact Fee programs and will be subject to any fee increases associated with these existing programs. The purpose of this proposed exemption is to provide greater economic certainty for the developer during the initial two (2) phases of the Northwest Land Park project.

At this time, the City is not actively contemplating the imposition of any new Development Impact Fee programs. If the City were to impose a new Development Impact Fee program prior to December 31, 2018, there could be a loss of fee revenues associated with the exemption for the Northwest Land Park project, which the City would need to replace through other available funding sources. In considering this proposed exemption, staff has analyzed the potential unique benefits associated with the project that outweigh the potential loss of revenue. These benefits include implementation of the General Plan by developing 825 residential units in a challenging infill area, related taxes and fees associated with residential construction, construction and funding the maintenance of private streets within the development, and the formation of a community facilities district to provide funding for community services and public improvements to both the project site as well as the surrounding community.

Staff supports the proposed Development Agreement language related to the temporary exemption from any new Development Impact Fee program. Staff believes the benefits associated with the project outweigh the potential loss of revenues associated with the imposition of a future Development Impact Fee program.

Bikeway Master Plan Amendment

The project includes an amendment to the Bikeway Master Plan to incorporate the bikeway network in the Northwest Land Park project. In particular, the proposed new alignments are:

1. A new off-street bikeway connecting Front Street in Miller Park through the new development and ending at the new park at Festival Way.
2. A new on-street bikeway on 3rd Street between Broadway and the new Crate Street. This will include bike lanes.
3. A new on-street bikeway on Crate Street between 3rd Street and 5th Street. This will be bike route signage.

The proposed alignments for the project will further help to develop a bikeway system that will benefit the recreational and transportation needs of the public.

Rezone

The project proposes to rezone approximately 31.7 acres from C-4, M-1, M-2 and M-2-R to R-4-PUD, C-1-PUD, and C-2-PUD as detailed below:

Designation	Existing (gross ac)	Proposed (gross ac)	Difference (gross ac)
Heavy Commercial (C-4)	1.4	0	-1.4
Light Industrial (M-1)	16.15	0	-16.15
Heavy Industrial (M-2)	10.65	0	-10.65
Heavy Industrial Review (M-2-R)	3.5	0	-3.5
Multi-Family Planned Unit Development (R-4-PUD)	0	29.3	+29.3
Limited Commercial Planned Unit Development (C-1-PUD)	0	1.0	+1.0
General Commercial Planned Unit Development (C-2-PUD)	0	1.4	+1.4
TOTAL	31.7	31.7	

The R-4 zone is a multi-family residential zone located generally adjacent to R-5 zoning. Minimum land area per unit is seven hundred fifty (750) square feet. Maximum density for the R-4 zone is fifty-eight (58) dwelling units per acre. The C-1 zone is a limited commercial zone which allows certain office, retail stores, and commercial service establishments which are compatible with residential developments. The C-2 zone is a general commercial zone which provides for the sale of commodities, or performance of services, including repair facilities, offices, small wholesale stores or distributors, and limited processing and packaging.

The proposed density projection at each phase ranges from 33 to 58 units per net are and is within the maximum density allowed in the R-4 zone. The C-1 zone would allow retail and restaurant uses associated with the proposed open air market in Phase 2. The C-2 zone would allow residential mixed-use with neighborhood supportive commercial uses in Phase 4. The rezone request and density can be supported due to its consistency with General Plan policies stated below:

- **Balanced Neighborhoods.** The City shall require new major residential development to provide a balanced housing mix that includes a range of housing types and densities. (LU 4.1.10)

- Mixed-Use Corridors. The City shall create or improve mixed-use corridors by requiring compact development patterns that are oriented to and frame the street, establish a safe and comfortable environment for walking, and avoid encroachment upon adjacent residential areas. (LU 6.1.1)

PUD Designation, Guidelines and Schematic Plan

The project proposes to develop approximately 31.7 acres in a new Planned Unit Development named Northwest Land Park Planned Unit Development (PUD). At built-out, the site will be developed with up to 825 residential units, commercial/retail, and office uses. The Northwest Land Park PUD Guidelines and Schematic Plan are submitted in this application to address the development of the entire site. The PUD Guidelines establish specific development standards, such as lot setbacks and lot coverage, and additional development criteria in order to ensure orderly development within the PUD for the development. The Schematic Plan depicts the anticipated development of the site and delineates the use and density of the project under consideration. The proposed PUD Guidelines and Schematic Plan require approval of the City Council.

Some of the objectives of the proposed development are:

1. To develop a new residential and mixed-use neighborhood in close proximity to the Central City and major employment centers in the downtown area.
2. To design a land use mix that promotes walking, bicycling and transit use.
3. To incorporate public parks and open space for recreational opportunities.
4. To develop a residential neighborhood that will architecturally complement the existing established Land Park, Southside Park, Broadway, Midtown and Central City neighborhoods.

The project contains four phases, allowing the initial community phases to emerge on vacant land and for existing industrial uses to gradually transition out of the community. The demolition of existing buildings on the site shall occur along with the development of each individual phase. The four phases are described by the PUD Schematic Plan as follows:

Table 3: Proposed Schematic Plan Summary for Project					
Project Designation	Proposed Land Use Designation	Gross Acres	Net Acres	Units	Net Density
Phase 1	Residential (Condos)	8.1	5.75	201	34 units per net acre
Phase 2	Residential (Condos), Open Air Market, Neighborhood Center	7.9	4.0	132-190*	33 to 47 units per net acre
Phase 3	Residential (Condos), Park	8.5	5.7	188-270*	33 to 47 units per net acre

Phase 4	Residential (Condos)	6.0	5.0	165-237*	33 to 47 units per net acre
Phase 4	Mixed-Use	1.2	1.2	24-70*	20 to 58 units per net acre
Total		31.7	21.65	691-825	33-40 (residential) 20-58 (in mixed-use)

*Total residential units at build-out shall not exceed 825 units.

The signature elements of the project are:

1. **Festival Street.** Located adjacent to 5th Street in Phase 2 of the development, the street connects to 4th Street when opened and functions as an open outdoor plaza when periodically closed to vehicular traffic.
2. **Open Air Market.** A farmer’s market is planned for the reuse of existing structures between the park and 5th Street, along Festival Street. The market will provide the sale of local goods and produce.
3. **Adaptive Reuse Building.** A portion of the existing wholesale produce building to be adaptively reused to serve as a community-oriented facility to complement the neighborhood park. The facility is envisioned to support community gatherings, continued education, public health and safety and other indoor community events.

Optional Elements are:

1. **Metal Burner Structure.** A cylindrical structure located near the railroad undercrossing may be preserved and modified as a distinctive community icon.
2. **Rail Tunnel.** There is a tunnel under Interstate 5 adjacent to the western boundary of the project currently provides rail access into the Setzer site. With its potential abandonment in a later phase, a pedestrian and bicycle connection may be created between the Northwest Land Park neighborhood and Miller Park, located along the Sacramento River. The proposed use of the tunnel requires coordination and approval from State and local agencies.

Land Use Districts:

Three specific land use districts are defined within the project boundary and discussed in the PUD Guidelines:

Residential District (RD)—supports medium density residential development and a variety of compact, urban-scaled housing types. The majority of the district will develop as condominium units arranged on commonly owned parcel.

Mixed-Use District (MXD)—supports high density residential and complementing commercial and service uses that will serve the community.

Open Space District (OS)—supports parks, recreational areas, trails and civic facilities for use by the community.

The following Residential Building Types are proposed for the project:

Cluster Housing – A grouping of two or more single family dwelling units connected with at least one common exterior wall or elements such as porches, verandas, and balconies, but not under the same roof.

Duplex – Two individual dwelling units located in a single-building.

Multiple-Family Dwellings/Apartments – Three or more dwelling units located in a single building.

Single-Family Detached Condominiums – Stand-alone building containing one dwelling unit.

Proposed building development standards for the PUD:

Table 4: Building Development Standards					
Building Type	Maximum Lot Coverage	Min. Lot Area/Lot Width	Building Setback at Street	Building Setback Side/Rear	Height
Residential District (RD)					
Non-residential	90%	N/A	10'	5'	45'
Residential	90%	1,200 s.f./20'	10'	5'	40' / 55'
Open Space District (OSD)					
All Buildings	N/A	N/A	0	5'	35'
Mixed-Use District (MXD)					
All Buildings	N/A	N/A	0	5'	75'

Proposed parking standards for the PUD:

Table 5: Parking Standards		
Building Type/Use	Required Motor Vehicle Parking Ratio	Required Bicycle Parking Ratio
Cluster Housing	1 per unit	0.5 per unit or 2 per building whichever is greater
Duplex	1 per unit	None
Multiple-Family Dwellings/Apartments	1 per unit	0.5 per unit or 2 per building whichever is greater
Single-Family Detached Condos	1 per unit	None
Commercial Tenant in Mixed-Use Bldg.	25% less than City Standard	Per City Code
Open Air Market	None required	None required
Community Building	None required	None required

Signage: A comprehensive signage design package shall be approved by the Planning Director for all proposed signage. Signage shall exhibit a consistent theme and style throughout the development. For signage at the Open Air Market, staff proposes that a sign program be submitted for approval by the Planning Director.

Open Space: An approximately 4.5 acres park is located central to the project site to provide recreational opportunities for the surrounding neighborhoods. A portion of the existing wholesale produce building will be modified as an adaptive reuse building to complement the neighborhood park and provide indoor community space. The Setzer Run Greenway Corridor is composed of linear parklands planned to radiate outward from the central park. Setzer Run contains a continuous multi-use trail that is interconnected with the community’s open space network and links recreational areas to the park, the adjacent schools and the tunnel to Miller Park if developed.

Staff finds that the PUD Guidelines and Schematic Plan conform to policies of the General Plan and Land Park and Central City Community Plans to provide adequate housing sites and opportunities for all households and to promote efficient development within an opportunity area. Furthermore, the PUD Schematic Plan will not be injurious to the public welfare, nor to other properties in the vicinity of the development in that the project is compatible with adjacent developments and the site will be developed according to the requirements of the PUD Guidelines.

Phase 1: Tentative Map design

Map Design: The tentative map proposes to subdivide 3 existing parcels within Phase 1 into 17 residential condominium lots, 3 private street lots and one temporary detention basin lot on approximately 8.1 gross acres (5.75 net acres). The temporary basin will be converted to park land in future Phase 2. The tentative map design is summarized below:

Table 6: Map Design Summary			
Lot Number:	Total Gross Acreage:	Total Net Acreage:	Use:
1 - 17	5.75	5.75	Condominiums
A	0.62	0	Temporary Detention Basin
B (Tailoff Wy), C (Lug Wy), and D (Cleat Wy and 4 th St)	1.73	0	Private Streets built to City standards
Total	8.1	5.75	

The project creates condominium parcels which consist of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. [Civil Code Section 1350 (f)].

Vehicular Circulation and Parking: The main vehicular access to Phase 1 development is 5th Street to the east; private streets B, C and D all connect to 5th Street. Private Streets B, C, and D (at Cleat Way) are shown with 41'-0" street section with five-foot sidewalks and no planter strip; 4th Street is shown with 43'-0" street section with five-foot sidewalks. The Phase 1 street sections are supported for the proposed infill development. For Phase 1 development, 4th Street (private) ends just to the east of the temporary detention basin; when Phase 2 will be developed, 4th Street will be extended northward up to Crate Avenue. A temporary turnaround is provided at the end of 4th Street for Phase 1 development. All streets within Phase 1 are proposed to be private streets built to City standards. On-street parking is provided at all private streets. Garages to individual units are accessed by private drives off the private streets; the applicant is proposing artificial turf at some of the private drives which is subject to approval by the City's Department of Transportation and Fire Department. The project is conditioned to dedicate sufficient right-of-way (If needed) and restripe 5th street to include one travel lane in each direction and bike lanes for each direction separated by a continuous two-way left turn lane along the project's frontage in phase 1.

Pedestrian Circulation: Pedestrians can access the site from 5th Street to the east and McClatchy Way to the south. Sidewalks are provided at the new private streets.

Walls and Fencing: Existing chain link fencing to remain on the west of 4th Street abutting school site.

On April 6, 2011, the Subdivision Review Committee, with all ayes, voted to recommend approval of the proposed Tentative Map, subject to the conditions of approval as found in Attachment 9.

In evaluating tentative maps, the Commission is required to make the following findings:

1. None of the conditions described in Government Code Section 66474, subsection (a) through (g), inclusive, exist with respect to the proposed subdivision;
2. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the City General Plan and Title 16 Subdivisions of the City Code, which is a specific plan of the City (Gov. Code §66473.5);
3. The discharge of waste from the proposed subdivision into the existing community sewer system will not result in a violation of the applicable waste discharge requirements prescribed by the California Regional Water Quality Board, Central Valley Region, in that existing treatment plants have a design capacity adequate to service the proposed subdivision (Gov. code §66474.6);
4. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Gov. Code §66473.1);
5. The City Council has considered the effect of the approval of this tentative subdivision map on the housing needs of the region and has balanced these needs against the

public service needs of its residents and available fiscal and environmental resources (Gov. Code §66412.3).

Staff finds that the Tentative Map is consistent with the policies of the General Plan and Title 16 of the City Code. The site is physically suitable for the type of development proposed and suited for the proposed density; the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife and their habitat, and the design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through, or use of, property within the proposed subdivision. The project will not overly burden the sewer system, nor will it preclude future passive or natural heating and cooling opportunities.

Phase 1: Subdivision Modification

The applicant is requesting non-standard elbow within the project site as shown on the Phase 1 tentative map. The City's design standards requires all streets to intersect or intercept each other so that for a distance of at least one hundred (100) feet the street is approximately at right angles to the street it intersects or intercepts. A non-standard elbow is shown at the intersection of 4th Street and Cleat Way. By the creation of the non-standard elbow, the project requires the approval of a Subdivision Modification. In evaluating subdivision modifications, the Commission is required to make the following findings:

1. That the property to be divided is of such size or shape, or is affected by such topographic conditions, or that there are such special circumstances or conditions affecting the property that it is impossible, impractical, or undesirable in the particular case to conform to the strict application of these regulations;

Due to the shape of the parcel and site constraints, it is impractical or undesirable in this particular case to conform to the strict application of these regulations.

2. That the cost to the subdivider of strict or literal compliance with the regulation is not the sole reason for granting the modification;

The cost to the subdivider of strict or literal compliance with the regulation is not the sole reason for granting the modification.

3. That the modification will not be detrimental to the public health, safety or welfare or be injurious to other properties in the vicinity;

The modification will not be detrimental to the public health, safety or welfare or be injurious to other properties in the vicinity in that the elbow does not abut residential driveways and adequate turning movements by fire trucks can be achieved.

4. That granting the modification is in accord with the intent and purposes of these regulations and is consistent with the general plan and with all other applicable specific plans of the city.

The density and the land use are consistent with general plan goals and policies for Urban Neighborhood Medium designation.

Taking into account of the shape and constraints of the site, and given that the elbow does not abut residential driveways and can provide adequate turning movements by fire trucks, staff supports the non-standard elbow. The proposal is consistent with the goals and policies for Urban Neighborhood Medium designation.

Phase 1: Special Permit

For Phase 1, the applicant proposes to develop 201 condominium units on approximately 5.75 net acres in the proposed Multi-Family PUD (R-4-PUD) zone. Section 17.192 of the Zoning Code permits new condominium developments with the issuance of a special permit. In evaluating special permit proposals of this type, the Planning Commission is required to make the following findings:

1. A special permit shall be granted upon sound principles of land use.
Staff finds that the proposed residential development is an appropriate land use that will have positive contribution to the surrounding area, in that the project site is in close proximity to future commercial and open space uses and that the site will be well served by auto, bicycle, and pedestrian linkages.
2. A special permit shall not be granted if it will be detrimental to the public health, safety or welfare, or if it results in the creation of a nuisance.
Staff finds that the proposed condominium development site and building design are consistent with the Northwest Land Park PUD Guidelines and the Multi-Family Residential Design Principles and will not be detrimental to public health, safety or welfare.
3. A special permit use must comply with the objectives of the general or specific plan for the area in which it is to be located.
The proposed project is consistent with the goals and policies of the Urban Neighborhood Medium designation in the General Plan and the Land Park Community Plan.

Staff believes that the current proposal is a well designed project in that it provides various housing types and different architectural variations, and it provides usable private and public outdoor spaces for the residents. The proposed project should have a positive contribution to the surrounding area. The density of the project, at 34 units per acre, is consistent with the General Plan and zoning land use designations.

Access, Circulation and Parking

Vehicular and pedestrian access to Phase 1 is provided at 5th Street. Additional pedestrian connections are provided from McClatchy Way. All internal streets within the site are private streets built to City standards. Private drives provide access to garages within the buildings.

Pedestrian paseos provide circulation and connection between buildings. Following is a summary of off-street and on-street parking:

Table 7: Vehicular Parking				
Use	Required Parking	Proposed Off-Street Parking	Difference (off-street)	Proposed On-Street Parking
Condominiums	201 (one/unit)	295	+94	69

Per the proposed Northwest Land Park PUD Guidelines, a minimum of 1 parking space per unit is required. Therefore, the proposal is required to provide a minimum of 201 parking spaces. The applicant is proposing 295 off-street garage parking for 201 units, with some units having two parking spaces. A total of 69 on-street parking spaces are provided for residents and guests.

Height, Bulk and Setbacks

The proposed PUD Guidelines contain the following Building Development Standards:

Table 8: Building Development Standards					
Building Type	Maximum Lot Coverage	Min. Lot Area/Lot Width	Building/Landscape Setback at Street	Building Setback Side/Rear	Height
Residential	90%	1,200 s.f./20'	10' with exceptions (see below)	5'	40' / 55'

Building/landscape setback areas shall average 10-feet in width extending from the right-of-way edge into the adjacent property. The following lists specific design situations that allow for setback exceptions:

- Sidewalks and driveways that provide access between the street and a building entrance may be located within the landscape setback area.
- Ground floor covered porches, balconies, stairs, and non-habitable architectural elements may encroach into the landscape setback areas by up to five (5) feet.
- Structural areas, including habitable building areas and garages, may encroach into the landscape setback areas up to seven (7) feet.
- The maximum aggregate length of street frontage with encroachments shall not exceed 40% of the total length of street frontage on any given street.
- Adequate planting space shall be provided along all street frontages to provide a minimum of three (3) trees in every 120 linear feet of frontage, or roughly 40' spacing on center. Thirty percent (30%) or more of the minimum required trees shall be classified as large or medium canopy species.

All buildings in Phase 1 development are required to meet the above standards.

Building design, signage and landscaping

The condominium buildings range from height of three stories to four stories with lofts, or from 30 feet to 52 feet. The exterior wall treatments consist of integral color plaster, board and batten, horizontal siding, hardboard shingle siding, brick and stone veneer, and plaster trim. Roofing is proposed to be integral color shingle tile, flat tile and 'S' tile. Vinyl windows, fiberglass entry doors, sliding glass doors, decorative shutter, metal rail/guardrail, and metal sectional garage doors are also used. All building side elevations facing a street shall be enhanced with window openings, trims and decorative elements. The applicant is proposing six housing types as detailed below.

1. The Brownstones are located at the northernmost portions of the site. The six-plex buildings are four stories with loft and each has ground floor parking and living areas on floors above. Four units have 2-car tandem parking and two units have 1-car parking at the garages. One of the buildings contains an accessible van space for one of the units. Each unit has an outdoor deck. All unit entries face onto a pedestrian paseo; all garages are accessed at the private drives.
2. The City Homes are located at the northern portion of the site adjacent to the Brownstones. The three-plex buildings are four stories in height and each has ground floor parking and living areas on floors above. Two units have 2-car parking and one unit has 1-car parking at the garages. Each unit has an outdoor deck. All unit entries face onto a pedestrian paseo or adjacent street; all garages are accessed at the private drives.
3. The Towns are located at the central portion of the site. The two-plex buildings are three stories in height and each has ground floor parking and living areas on floors above. One unit has a 2-car garage and the other unit has a 1-car garage. Each unit has an outdoor deck. All unit entries face onto a pedestrian paseo or adjacent street; all garages are accessed at the private drives.
4. The Urban Courts are located at the central portion of the site. The two-plex buildings are three stories with loft and each has ground floor parking and living areas on floors above. Each unit has a 1-car garage and an outdoor deck. All unit entries face onto a pedestrian paseo or adjacent street; all garages are accessed at the private drives.
5. The Cottages are located at the central portion of the site. The two-plex buildings are three stories in height. One type of building has ground floor parking and the other type of building has parking located in another building. Each unit is provided with a 1-car garage. All unit entries face onto a pedestrian paseo or adjacent street; all garages are accessed at the private drives.
6. The Bungalows are located at the southern portion of the site. The attached two-plexes and three-plexes are two to three stories in height and each has a 2-car garage. The three-plex has living area on the ground floor. All units are connected by an open deck

in between the buildings. All unit entries face onto a pedestrian paseo or adjacent street; all garages are accessed at the private drives.

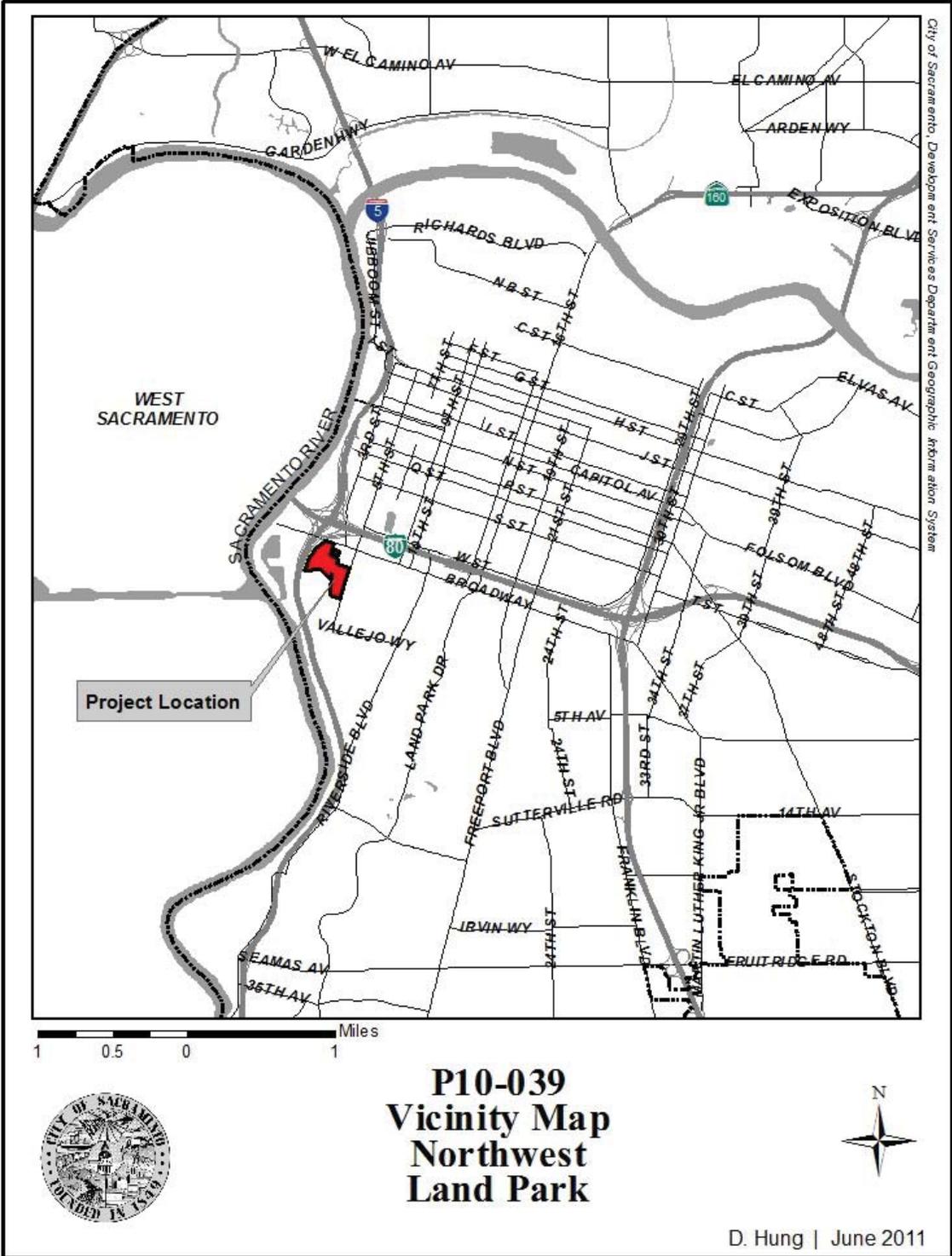
The following is a general summary of the building types:

Table 9: Building Type Summary				
Building Type	Building Count	Unit Count	Maximum Height	Number of Floors
Brownstones (6-plex)	7	42	52'-0"	4 + loft
City Homes (3-plex)	6	18	42'-0"	4
The Towns (2-plex)	20	40	30'-0"	3
Urban Courts (2-plex)	21	42	40'-0"	3 + loft
Cottages (2-plex)	15	30	40'-0"	3
Bungalows (Attached 2-plex and 3-plex)	29	29	31'-0"	2 - 3
Total	98	201		

Five elevation types are used: Spanish (Elevation A), Shingle (Elevation B), Craftsman (Elevation C), Traditional (Elevation D), and European (Elevation E). Each elevation has 3 color schemes. No two same elevation types or same color scheme shall be located adjacent to each other.

A preliminary landscaping plan for the project is provided. Trees are proposed at the pedestrian paseos. Street trees are shown along 5th Street and the internal private streets. The proposed landscaping on site will consist of shade trees and accent trees, as well as shrubs and vines. The proposed landscaping is required to be consistent with the Northwest Land Park Planned Unit Development (PUD) Guidelines.

A comprehensive signage design package shall be approved by the Planning Director for the Phase 1 development. Signage area and locational standards shall be consistent with the City of Sacramento Sign Code, or as conditioned. For future Phase 2, a sign program shall be submitted for the Open Air Market, subject to approval by the Planning Director.



City of Sacramento, Development Services Department Geographic Information System



ORDINANCE NO.

Adopted by the Sacramento City Council

AN ORDINANCE AMENDING TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) BY REZONING CERTAIN REAL PROPERTY FROM THE HEAVY COMMERCIAL (C-4) ZONE, LIGHT INDUSTRIAL (M-1) ZONE, HEAVY INDUSTRIAL (M-2) ZONE, AND HEAVY INDUSTRIAL REVIEW (M-2-R) ZONE TO LIMITED COMMERCIAL PUD (C-1-PUD) ZONE, GENERAL COMMERCIAL PUD (C-2-PUD) ZONE, AND MULTI-FAMILY PUD (R-4-PUD) ZONE (AREA BOUNDED BY BROADWAY ON THE NORTH, 5TH STREET ON THE EAST, MCCLATCHY WAY ON THE SOUTH, AND I-5 ON THE WEST) (APN: 009-0030-008, 019, 043, 045; 009-0223-007, 012, 013, 016; 009-0237-018; 009-0270-009, 015, 017, 028, 029, 032, 033; 009-0286-001, 012, 013, 014, 018) (P10-039)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

SECTION 1

Title 17 of the Sacramento City Code (the Zoning Code) is amended by rezoning the property shown in the attached Exhibits A and B, generally described, known and referred to as Northwest Land Park (APN: 009-0030-008, 019, 043, 045; 009-0223-007, 012, 013, 016; 009-0237-018; 009-0270-009, 015, 017, 028, 029, 032, 033; 009-0286-001, 012, 013, 014, 018) from Heavy Commercial (C-4) (1.4 acres), Light Industrial (M-1) (16.15 acres), Heavy Industrial (M-2) (10.65 acres), and Heavy Industrial Review (M-2-R) (3.5 acres) to Limited Commercial PUD (C-1-PUD)(1.0 acres), General Commercial PUD (C-2-PUD) (1.4 acres), and Multi-family PUD (R-4-PUD) (29.3 acres).

SECTION 2

Rezoning of the property described in the attached Exhibits A and B by the adoption of this Ordinance shall be deemed to be in compliance with the procedures for the rezoning of property described in the Comprehensive Zoning Ordinance, Title 17 of the City Code, as amended, as said procedures have been affected by recent court decisions.

SECTION 3

The City Clerk of the City of Sacramento is hereby directed to amend the official zoning map, which is a part of said Comprehensive Zoning Ordinance, Title 17 of the City Code, to conform to the provisions of this Ordinance.

Table of Contents:

Exhibit A: Existing Zoning Exhibit – 1 page

Exhibit B: Proposed Rezone Exhibit – 1 page

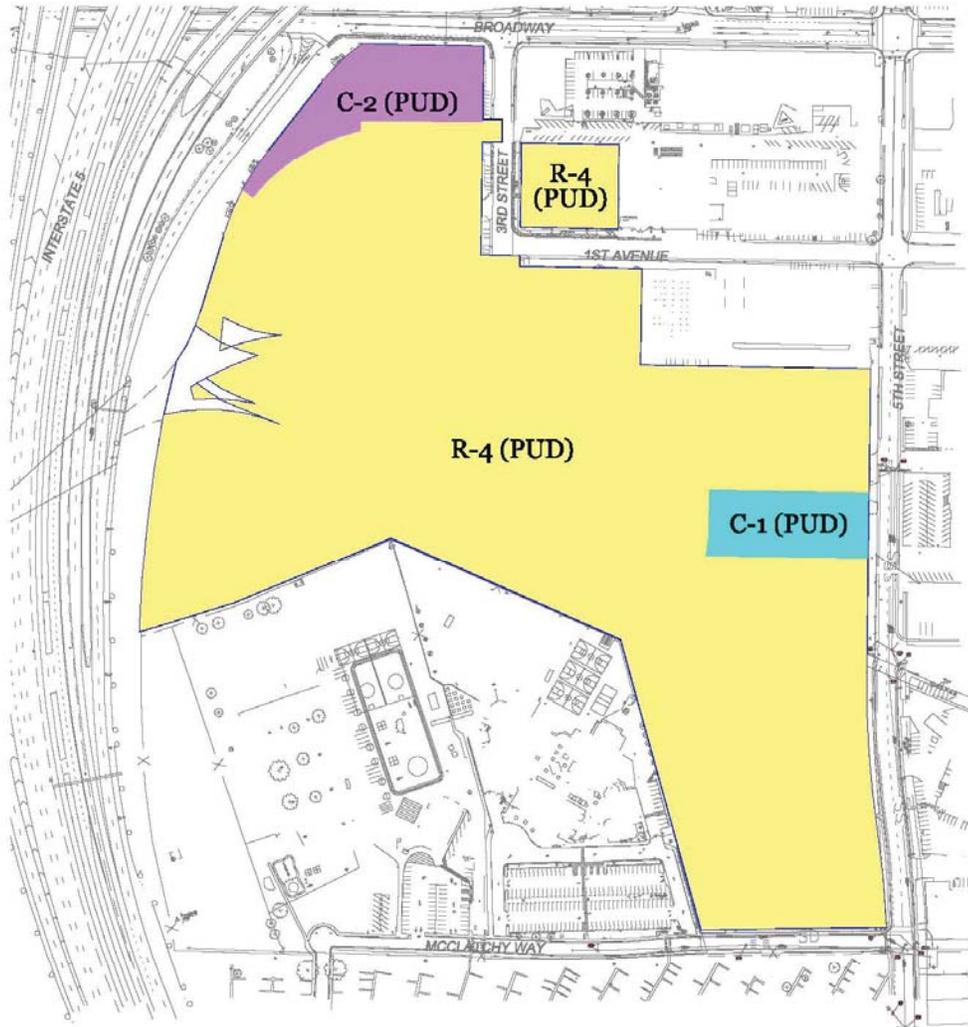


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NORTHWEST LAND PARK

A "NORTHWEST LAND PARK, LLC" DEVELOPMENT

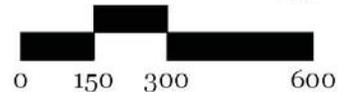
PHASES 1-4 - PROPOSED ZONING DESIGNATION



PROPOSED ZONING DESIGNATION:

-  R-4 - MULTI-FAMILY ZONE (PUD OVERLAY)
-  C-1 - LIMITED COMMERCIAL ZONE (PUD OVERLAY)
-  C-2 - GENERAL COMMERCIAL ZONE (PUD OVERLAY)

06/16/2010





ORDINANCE NO.

Adopted by the Sacramento City Council

AN ORDINANCE RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND NORTHWEST LAND PARK, LLC, THE CHY COMPANY, CHY II, AND COUSINS MARKET, FOR AREA BOUNDED BY BROADWAY ON THE NORTH, 5TH STREET ON THE EAST, MCCLATCHY WAY ON THE SOUTH, AND I-5 ON THE WEST. (APN: 009-0030-008, 019, 043, 045; 009-0223-007, 012, 013, 016; 009-0237-018; 009-0270-009, 015, 017, 028, 029, 032, 033; 009-0286-001, 012, 013, 014, 018) (P10-039)

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

SECTION 1

This Ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement, by and between the City of Sacramento and Northwest Land Park, LLC, the CHY Company, CHY II, and Cousins Market, a copy of which is attached hereto.

SECTION 2

The City Council finds:

1. The agreement is consistent with the City's 2030 General Plan, including the goals, policies, standards and objectives of the Land Park and Central City Community Plans;
2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of the Land Park and Central City Community Plans;
3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;
5. The landowner will participate in all programs established and/or required under the General Plan, including the Land Park and Central City Community Plans, and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public;
6. The landowner has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

SECTION 3

The Development Agreement attached hereto is hereby approved, and the City Manager is authorized to execute after the effective date of this Ordinance said Development Agreement on behalf of the City of Sacramento. This approval and authorization is based upon the Environmental Impact Report and Mitigation Monitoring and Reporting Program which is the subject of a separate resolution adopted by City Council prior to or concurrent with the adoption of this Ordinance.

Table of Contents:

Exhibit A: Development Agreement – 109 pages

Exhibit B: Status of Contract Requiring Council Approval Form – 1 page

*Recording Requested by and Benefiting
the City of Sacramento, a Government Entity –
No Fee Required per Government Code 6103*

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street
Sacramento, CA 95814

DEVELOPMENT AGREEMENT

FOR

NORTHWEST LAND PARK

Project No. P 10-039

Between

CITY OF SACRAMENTO

and

NORTHWEST LAND PARK, LLC

and

THE CHY COMPANY, CHY II, and COUSINS MARKET

Northwest Land Park Development Agreement

Revision Date: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

**NORTHWEST LAND PARK
DEVELOPMENT AGREEMENT**

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Northwest Land Park Development Agreement

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Revision Date: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
NORTHWEST LAND PARK LLC
and
THE CHY COMPANY, CHY II, and COUSINS MARKET
FOR THE
NORTHWEST LAND PARK PROJECT**

This DEVELOPMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2011, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and NORTHWEST LAND PARK, LLC, a California Limited Liability Company (NWLP); and The CHY COMPANY, a California General Partnership, successor by merger to SETZER FOREST PRODUCTS, a California General Partnership; CHY II, G.P., a California General Partnership; and COUSINS MARKET LLC, a California Limited Liability Company (separately and collectively "Setzer") (NWLP and Setzer collectively, the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intention of the Parties. These Recitals are intended to paraphrase and summarize this Agreement; however, the Agreement is expressed below with particularity and the Parties intend that their specific rights and obligations be determined by those provisions and not by the Recitals. In the event of an ambiguity, these Recitals may be used as an aid in interpretation of the intentions of the Parties.

A. **Definitions.** These Recitals use certain capitalized terms that are defined in Section 1.0 of this Agreement. The Parties intend to refer to those definitions when a capitalized term is used but is not defined in these Recitals.

B. **Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development,

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in 1979 the Legislature of the State of California adopted Article 2.5 of Chapter 4 of Division 1 of the Government Code, commencing at Section 65864 (the "Statute"), which authorizes the CITY to enter into this binding Agreement with LANDOWNER in order to establish certain rights and obligations of the Parties relative to Development of the Property for the Project. The authority for the CITY's approval of this Agreement is contained in the Statute, the City Charter, the Procedural Ordinance, other applicable City ordinances, resolutions and procedures. CITY and LANDOWNER desire to enter into this Agreement pursuant to the provisions of the Statute in order to provide for the orderly Development of the Project on the Property.

C. **Property Subject to Agreement.** LANDOWNER owns certain legal or equitable interests in the Property which is located within the City. LANDOWNER seeks to develop the Property for the Project consistent with the General Plan and Land Park Community Plan, as those plans may have been amended as part of the process for approval of the Project.

D. **Procedural Requirements.** The City Planning Commission and the City Council held duly noticed public hearings on the approval of the Project Entitlements, and approval of this Agreement.

E. **Environmental Compliance.** The Final Environmental Impact Report prepared for the Project was certified as adequate and complete and specific findings, Mitigation Measures, and a Mitigation Monitoring Program were approved by the City Council to allow for the Development of the Project.

F. [This section intentionally omitted.]

G. **Plan Compliance.** LANDOWNER desires to facilitate implementation of the General Plan and Community Plan, (collectively "Plans"), and LANDOWNER therefore agrees to develop the Property for the Project in a manner consistent with the policies, terms and conditions of the Plans, provided that LANDOWNER is assured that no subsequent changes in the Plans after the Effective Date which would affect LANDOWNER's Vested Rights shall apply to the Property or the Project during the term of this Agreement, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

H. **Project Entitlements.** Development of the Property for the Project in accordance with the terms and conditions of this Agreement will provide for the orderly growth and Development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan, Community Plan, Zoning Ordinance, Subdivision Ordinance and other applicable provisions of the City Code. This Agreement limits the CITY's rights to revoke, terminate, change or amend the

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Project Entitlements, or to require the LANDOWNER to comply with any ordinances or resolutions enacted after the Effective Date that conflict with or impede Development of the Property for the Project, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

I. **Procedural Ordinance.** The City Council adopted the Procedural Ordinance by which CITY will consider, adopt, amend and subsequently review development agreements by and between CITY and a given landowner. The Procedural Ordinance, and as it may be amended in the future after the Effective Date in accordance with the Statute, shall apply to the approval, review, amendment and enforcement of this Agreement. CITY and LANDOWNER have taken all actions mandated by, and have fulfilled all requirements set forth in, the Procedural Ordinance for the adoption of this Agreement by the City Council.

J. **Agreement Voluntary.** This Agreement is voluntarily entered into by LANDOWNER in order to secure the benefits hereof and a Vested Right to develop the Property for the Project and to limit the CITY's right to subject the Property and Development of the Project to ordinances, policies, rules and regulations that may be enacted in the future which conflict, supplant or are contrary to the express terms and conditions set out herein. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, and Community Plan, and in consideration of the agreements and undertakings of LANDOWNER as specified in the Project Entitlements, Special Conditions, and Mitigation Measures. The Parties are entering into this Agreement voluntarily in consideration of the rights conferred and the obligations incurred as specified herein.

K. **Consideration.** Development of the Property in accordance with the terms of this Agreement requires major investment by LANDOWNER in Public Facilities, as well as Dedications and Reservations of land for public benefit and purposes, and a substantial commitment of the resources of LANDOWNER to achieve the public purposes and benefits of the Project for the CITY. By entering into this Agreement, CITY will receive such benefits, the assurances of implementation of the General Plan and Community Plan as applied to the Property, and the Development of the Property, which is currently vacant and/or underutilized, that will generate new tax revenues for the CITY. By entering into this Agreement, LANDOWNER will obtain a Vested Right to proceed with Development of the Property for the Project in accordance with the Agreement's terms and conditions and CITY's approval of the Project Entitlements may increase the value of LANDOWNER's Property.

L. **Consistency Findings.** The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, and Land Use and Development Regulations. The implementation of this

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Agreement is in the best interest of CITY because it promotes the health, safety and general welfare of its existing and future residents. The potential environmental impacts of Development of the Project on the Property were adequately considered in the environmental documentation prepared by CITY and adoption of the Adopting Ordinance complies in all respects with the CEQA. This Agreement provides assurances that the Project will not proceed without the timely provision of Public Facilities and Public Services required to serve the Project. This Agreement is just, reasonable and fair and equitable under the circumstances facing the CITY, and it provides sufficient benefits to the community to justify entering into this Agreement.

AGREEMENT

NOW, THEREFORE, based on the Recitals, the mutual promises and covenants of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

[The remainder of this page intentionally left blank.]

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1.0 DEFINITIONS AND EXHIBITS

For purposes of this Agreement and all Exhibits, the capitalized terms shall have the meanings set forth below or in the Recitals, unless the context otherwise requires or if the capitalized term is defined in a particular section. Words not defined in this Agreement shall be given their common and ordinary meaning. The word "shall" is always mandatory.

The documents which are attached to this Agreement and labeled as exhibits (Exhibits) and which are referred to in this Agreement are incorporated into this Agreement by such reference. The documents which are referenced in this Agreement or in the Exhibits which may not be physically attached to this Agreement are also incorporated into this Agreement by such reference.

1.1 **Adopting Ordinance:** The ordinance pursuant to which the City Council approves this Agreement.

1.2 **Allocation Procedures:** Those procedures set forth in Section 5.2 of this Agreement, whereunder the various land uses and densities of the Project are distributed to and among the various parcels, or portions of them, comprising the Property.

1.3 **Annual Review:** The process and procedures whereby CITY reviews, pursuant to Government Code Section 65865.1, the nature and extent of compliance by LANDOWNER and Assignee(s) with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in Section 5.10 of this Agreement.

1.4 **Assessment:** A special assessment (or special tax in the case of a Community Facilities District) levied on real property within all or part of the Project area for the purpose of financing Public Facilities and Public Services in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.

1.5 **Assessment District Policy Manual:** The document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.

1.6 **Assignee:** A third Person executing an Assignment and Assumption Agreement.

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1.7 **Assignment:** The sale, assignment or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement and the Assignment and Assumption Agreement.

1.8 **Assignment and Assumption Agreement:** The agreement in the form set out in Exhibit K, or such other form as shall be proposed by LANDOWNER or Assignee and approved by the City Attorney.

1.9 **Building Permit:** A permit issued pursuant to Title 15 of the City Code that allows for construction of improvements on the Property as specified in the permit.

1.10 **CEQA:** The California Environmental Quality Act (CEQA), as set forth at California Public Resources Code, Division 13, commencing at Section 21000 (CEQA Act), and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000 (CEQA Guidelines), and as the CEQA Act and CEQA Guidelines are amended from time to time.

1.11 **City:** The City of Sacramento.

1.12 **City Agency:** The Redevelopment Agency of the City of Sacramento, the Housing Authority of the City of Sacramento, and the Sacramento Housing and Redevelopment Agency when the City Council acts as the governing board of that agency.

1.13 **City Code:** The Sacramento Municipal Code as adopted by the City Council, as said Code may be amended from time to time, and the provisions of the Sacramento City Charter as it may apply to the provisions of the Sacramento Municipal Code and this Agreement, as said Charter may be amended by a vote of the electorate from time to time.

1.14 **City Council:** The Council of the City of Sacramento.

1.15 **Community Plan:** The Land Park Community Plan as adopted by the City Council on March 3, 2009, as said plan may be amended from time to time.

1.16 **Days:** As used in this Agreement, "days" shall mean calendar days.

1.17 **Dedication:** The transfer of real property, or a defined interest therein, under an Irrevocable Offer of Dedication to CITY, City Agency or Public Agency free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public

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Agency, at no cost as specifically set forth in the Project Entitlements, Special Conditions, or Mitigation Measures. Exhibit H summarizes for the Parties' convenience the contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY or Public Agency, together with a categorical listing of the types of Public Facilities to be developed on said lands, as of the Effective Date.

1.18 **Deed of Trust:** A real property security device whereby the LANDOWNER as debtor (trustor) conveys title to real property consisting of all or a portion of the Property to a trustee as security for a debt owed to the creditor (beneficiary).

1.19 **Design Guidelines:** The architectural and site design standards that are applicable to Development of the Property for the Project as approved by the City Council as the Northwest Land Park Planned Unit Development Guidelines and as referenced in the Project Entitlements, which Design Guidelines are set forth in Exhibit L, and as said Design Guidelines may be amended from time to time as provided herein.

1.20 **Development (or Develop):** The use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements in accordance with the Land Use and Development Regulations, Building Permits, and all other Project Entitlements.

1.21 **Development Fee:** All fees now or in the future to be imposed on and/or collected by the CITY from LANDOWNER or Assignees as a condition of Development of the Property for the funding of construction or rehabilitation of Public Facilities, including those lawfully imposed by another Public Agency having jurisdiction and which CITY is required or authorized to collect pursuant to federal or State law, local ordinance, or agreement.

1.22 **Development Plan:** The LANDOWNER's plan for Development of the Property for the Project as set forth or referenced in Exhibit B.

1.23 **Development Milestone:** The level of Development necessary for LANDOWNER to qualify for an extension of the Term of this Agreement, as set forth in Sections 2.1 and 2.1.1.

1.24 **Discretionary Action:** A discretionary approval or disapproval that requires exercise of judgment, deliberation or a decision, and that contemplates and authorizes the imposition of revisions or conditions by CITY, including any board, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity.

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1.25 **Effective Date:** The date on which the Adopting Ordinance becomes effective (not the date the Adopting Ordinance was approved by the City Council).

1.26 **Extension Period:** A specified period of time, in five (5) year increments, by which LANDOWNER may extend the Term of this Agreement consistent with the requirements set forth in Section 2.1.1.

1.27 **Final Environmental Impact Report:** The report prepared for the Project in accordance with CEQA that was certified by the Planning Commission by its record of decision and/or by the City Council by its resolution, as described in Exhibit D.

1.28 [This section intentionally omitted.]

1.29 **General Plan:** The General Plan of the City of Sacramento, as adopted by the City Council on January 19, 1988, as amended on March 3, 2009, and as said plan may be amended from time to time.

1.30 [This section intentionally omitted.]

1.31 **Inclusionary Housing Ordinance:** Title 17, Chapter 17.190 of the City Code, entitled the "Mixed Income Housing Ordinance," and as said ordinance may be amended from time to time.

1.32 [This section intentionally omitted.]

1.33 **Irrevocable Offer of Dedication:** In accordance with the provision of Government Code Section 66475 et seq., an unconditional and irrevocable offer by LANDOWNER to transfer real property, or an interest therein, to CITY or Public Agency pursuant to the provisions of the Plans, Project Entitlements, Special Conditions, or Mitigation Measures. Exhibit I provides the form of the Dedication agreement if the Irrevocable Offer of Dedication is not set out on the tentative and final subdivision map or if the Parties desire to specify the terms of the Dedication and the acceptance of the property or interest therein.

1.34 [This section intentionally omitted.]

1.35 [This section intentionally omitted.]

1.36 **Land Use and Development Regulations:** The Zoning Ordinance, Subdivision Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with any other City ordinances,

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resolutions, rules, regulations and official policies of the City as they exist on the Effective Date, which govern or regulate land use and/or development in the Community Plan area which encompasses the Property.

1.37 **Lender:** A Person (or a successor in interest to such person) who has advanced funds to, or who is otherwise owed money by, LANDOWNER as a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such note or other evidence of indebtedness is secured by a Mortgage or Deed of Trust on all or a portion of the Property.

1.38 **Ministerial Action:** A ministerial approval or disapproval and means an action that merely requires a determination whether there has been compliance with applicable statutes, ordinances, resolutions, regulations or conditions of approval including, without limitation, the Plans, Project Entitlements, Special Conditions, and Mitigation Measures.

1.39 **Mitigation Measures:** The measures adopted by the Planning Commission and/or by the City Council as part of the certification of the Final Environmental Impact Report as of the Effective Date which apply to Development of the Property for the Project and as may be referenced in the Project Entitlements and as described in Exhibit D, as well as those which may be added or amended and incorporated into this Agreement pursuant to this Agreement.

1.40 **Mitigation Monitoring Program:** The plan for implementation of the Mitigation Measures as of the Effective Date and as may be referenced in the Project Entitlements and as described in Exhibit D, and as may be amended and incorporated into this Agreement pursuant to this Agreement.

1.41 **Mortgage:** A contract by which the LANDOWNER as mortgagor (debtor) hypothecates or pledges real property consisting of all or a portion of the Property, or otherwise grants a security interest therein to a Lender (mortgagee), to secure performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.

1.42 **NEPA:** The National Environmental Policy Act as set forth at 42 U.S.C. commencing at Section 4300, the Council on Environmental Quality regulations set out in 40 CFR 1500 et. seq., applicable NEPA regulations of federal agencies, Executive Orders related to NEPA compliance, and as said Act and regulations may be amended from time to time.

1.43 **Parties:** The City of Sacramento and LANDOWNER.

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1.44 **Person:** A person, firm, association, organization, partnership, business trust, corporation or company.

1.45 **Plans:** The General Plan and Community Plan. The reference to "Plans" may also include the Development Plan as the context indicates.

1.46 **Phase:** One of the four (4) anticipated phases of development of the Project as set forth in the Development Plan.

1.47 **Procedural Ordinance:** Chapter 18.16 of the City Code, which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review and related matters with respect to development agreements for lands outside of the North Natomas Community Plan area (which is governed by Ordinance No. 95-012).

1.48 **Project:** The permitted uses, location, density or intensity of use, height or size of buildings and including, without limitation, the provisions for Dedication and Reservation of land for public purposes, as set forth in the Plans, Project Entitlements, Special Conditions, and Mitigation Measures.

1.49 **Project Entitlements:** The plans, ordinances, resolutions, maps, plan review, design review, preservation review, and permits and approvals which have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which are set out in Exhibit C, as well as all Subsequent Approvals. The Project Entitlements also include minor changes to the Development Plan approved pursuant to Section 2.3.4 and substantive changes to the Development Plan for which an amendment to this Agreement has been approved pursuant to Section 2.3.3.

1.50 **Property:** The real property owned or controlled by LANDOWNER as described in Exhibit A.

1.51 **Protest Waiver:** The agreement set forth in Exhibit G and executed by LANDOWNER pursuant to this Agreement or in connection with the condition of any Project Entitlements.

1.52 **Public Agency(ies):** A city (other than CITY), county, special district, public utility, school district, regional agency formed pursuant to federal or state law, joint powers agency, municipal corporation, or a non-profit corporation formed by a public entity to provide services to or charitable benefits for the public, and the City Council does not act as the governing board of that agency.

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1.53 **Public Facilities:** All public infrastructure, facilities, improvements and amenities needed to serve the Project as identified in the Plans, the Development Plan, Project Entitlements, Special Conditions, or Mitigation Measures; or as may otherwise be constructed or owned by, or conveyed to, CITY, City Agency or Public Agency, including, without limitation: (i) streets, alleys, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) bus turnouts and stops; (iii) surface and storm drainage improvements; (iv) sanitary sewer improvements; (v) water storage and transmission facilities; (vi) flood control improvements; (vii) solid waste facilities; (viii) electrical and gas utilities; (ix) street lighting; (x) parks, plazas, open space, greenbelts, trails, and landscaping; (xi) community centers,; and (xii) publicly owned artwork. The Public Facilities to be constructed by LANDOWNER pursuant to the Project Entitlements, Mitigation Measures and Special Conditions are summarized for the convenience of the Parties in Exhibit H.

1.54 **Public Financing Mechanism:** An assessment district, a community facilities district, a fee district, area of benefit district, or any similar financing mechanism imposed on real property or as a condition of development approval, excluding Development Fees.

1.55 **Public Services:** All services provided by CITY, City Agency and Public Agency to serve the residents and the businesses to be located on the Property, as may be identified in the Plans, Development Plan, Project Entitlements, Special Conditions, or Mitigation Measures; including, without limitation, the maintenance, operation or the provision of, as the context implies: (i) streets, alleys, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) bus transit services; (iii) surface and storm drainage improvements and pollution control services; (iv) sanitary sewer improvements and pollution control services; (v) water storage and transmission facilities and water services; (vi) flood control improvements; (vii) solid waste services; (viii) electrical and gas utilities; (ix) street lighting; (x) parks, plazas, open space, greenbelts, trails, and landscaping; (xi) community centers,; and (xii) publicly owned artwork.

1.56 **Reconfiguration:** The reconfiguration, adjustment or resubdivision, reparcelization, lot line adjustments, reversions to acreage, air rights, maps or other alteration of property lines through parcel or subdivision mapping, lot line adjustment, or lot merger, which may affect the description of LANDOWNER's Property as set out in Exhibit A.

1.57 [This section intentionally omitted.]

1.58 **Reservation:** In accordance with the provision of Government Code Section 66479 et seq., the transfer of real property, or a defined interest therein, to CITY, City Agency or Public Agency, free of all encumbrances, mortgages, liens, leases,

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easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency at a purchase price set out in the Reservation Agreement, the form of which is provided as Exhibit J.

1.59 **Sign Code:** Chapter 15.148 of the City Code (signs) and Chapter 12.36 of the City Code (awnings and canopies), and as said chapters may be amended from time to time.

1.60 **Special Conditions:** Those conditions, terms and requirements specified in Exhibit M.

1.61 [This section intentionally omitted.]

1.62 **Subdivision Ordinance:** The Subdivision Ordinance of the City of Sacramento which is set out in Title 16 of the City Code, and as said ordinance may be amended from time to time.

1.63 **Subsequent Approvals:** Any Ministerial or Discretionary approval or other action by CITY to implement the Development Plan after the Effective Date that is necessary or desirable to implement LANDOWNER's Vested Rights under this Agreement, including Discretionary and Ministerial Actions, that are not set out as a Project Entitlement as described in Exhibit C.

1.64 **Subsequent Rule:** All City ordinances, resolutions, rules, regulations and official policies that are adopted after the Effective Date.

1.65 **Tentative Map:** The tentative subdivision map for Phase 1 that subdivides LANDOWNER's Property into legal parcels pursuant to the Subdivision Map Act (commencing at Section 66410 of the Government Code) as approved by the City Council as part of the Project Entitlements, as more particularly described in Exhibit C.

1.66 **Term:** The length of this Agreement in terms of time as specified in Section 2.1, or as that time may be extended pursuant to an amendment of this Agreement.

1.67 **Vested Right:** A property right conferred by this Agreement, pursuant to Government Code Section 65865.4, to develop the Property for the Project in accordance with the Development Plan and consistent with the Plans, Project Entitlements, Special Conditions, and Mitigation Measures that may not be cancelled or revoked by CITY after the Effective Date, except as expressly provided in this Agreement.

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1.68 **Zoning:** The division of the City into districts, and the application of zoning regulations thereto, which include (without limitation) regulation of the type of land use, density, height or bulk of buildings (structural design), setbacks, and parking as set out in the Zoning Ordinance.

1.69 **Zoning Map:** The map that specifies the applicable zoning classifications for the lots on the Tentative Map in accordance with the Plans and Zoning Ordinance, which is part of the Project Entitlements, as more particularly described in Exhibit C.

1.70 **Zoning Ordinance:** The Comprehensive Zoning Ordinance of the City of Sacramento, which is set out in Title 17 of the City Code, and as said ordinance may be amended in the future from time to time.

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2.0 GENERAL TERMS AND CONDITIONS.

2.1 **Term.** The Term of this Agreement shall mean and include the Initial Term plus any Extension Period, unless it is sooner cancelled by a Party for default as provided in Section 7.6, or terminated for convenience or for other reasons as provided in Section 7.8.

2.1.1 **Initial Term and Extensions.** The Term of this Agreement shall commence on the Effective Date and may extend for specified periods thereafter based on the length of the Initial Term and the Extension Period, contingent on the LANDOWNER's completion of the level of Development as defined below (Development Milestone) relating to the Extension Period. The Extension Period shall consist of five years, commencing as of the last day of the Initial Term. Upon a failure of LANDOWNER to achieve the Development Milestone, there shall be no extension of the Term and the Agreement shall expire as of the ending date of the Initial Term.

2.1.1.1 **Initial Term:** Ten (10) years after the Effective Date.

2.1.1.2 **Extension:** Additional five (5) year extension if final subdivision maps have been recorded and special permits have been approved for at least 400 residential dwellings (Development Milestone) as of the end of the Initial Term.

2.1.2 **Extension Requirements.** In addition to the requirements set out in Section 2.1.1, the specific conditions for exercise of the extension options are as follows:

2.1.2.1 As of the end of the Initial Term, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto, as determined by the CITY in its sole discretion and subject to a default hearing pursuant to Section 7.7.1 if LANDOWNER protests CITY's determination.

2.1.2.2 The option to extend the Term shall be exercisable by delivering to CITY written notice of LANDOWNER'S intention to exercise the option to extend the Term not later than close of business of the last day of the Initial Term.

2.1.3 **Maximum Term.** Except as provided in sections 2.1.4 and 2.1.5 with respect to moratoriums and litigation, the Parties specifically intend that under no circumstances shall the Term of this Agreement extend beyond fifteen (15) years, unless this Agreement is amended in accordance with Section 2.3.

2.1.4 **Effect of Moratoriums on Term of Agreement.** If a Subsequent Rule is enacted prior to the expiration of the Term of this Agreement that limits the rate of

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Development over time or governs the sequence of Development of the Project, and that Subsequent Rule applies to the Property as provided in Section 4.10, the Term of this Agreement shall be extended by the amount of time that the Subsequent Rule is in effect on the Property.

2.1.5 Effect of Litigation on Term of Agreement. Pursuant to Section 4.4.3, if litigation is filed under Section 4.4.3, the Term of this Agreement shall be extended by the amount of time between the date the litigation was filed and the date of the final judgment if the law, regulation or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

2.2 Development Timing.

2.2.1 Project Schedule. Other than for the purpose of determining whether the Term of the Agreement shall be extended as described in Section 2.1, above, this Agreement contains no requirement that LANDOWNER must initiate or complete Development of the Project or any phase thereof, or Development of the Property or any portion thereof, within the Term of this Agreement or within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to Develop the Property for the Project in accordance with LANDOWNER's own schedule; provided, however, that Development of the Property is substantially consistent with the Development Plan, as evaluated in the Final Environmental Impact Report and subject to the conditions set out in the Project Entitlements, Special Conditions, and Mitigation Measures. Any act which is required to be completed within a specific time period, as set out in the Project Entitlements, Special Conditions, and Mitigation Measures, shall be timely completed as provided therein. Pursuant to further environmental review in the event that such further review is required by law or addressed in the Project Entitlements, Special Conditions, Mitigation Measures, the Land Use and Development Regulations, or other provisions of this Agreement, any phasing provisions that are set out in a Subsequent Approval shall be applicable to the Project.

2.2.2 Application of Subsequent Rule Affecting Rate of Development. Except for moratoriums as addressed in Section 4.10, no Subsequent Rule which limits the rate of development over time shall be applicable to the Property or the Project. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions, phasing provisions or schedule compliance as set out herein, or to excuse the timely completion of any act which is required to be completed within a specified time period, as set out in: (i) the Project Entitlements, Special Conditions, or Mitigation Measures, ; (ii) any other provision of this Agreement; (iii) any applicable provision in the City Code or the Land Use and Development Regulations in effect as of the Effective Date; or (iv) any applicable Subsequent Rule.

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2.3 Amendments, Suspension or Termination of Agreement.

2.3.1 Amendments. Except as otherwise expressly provided herein, this Agreement may be amended from time to time by the mutual written consent of the Parties in accordance with the express terms of this Agreement, the provisions of Government Code Section 65868 and the Procedural Ordinance. No waiver, alteration, or modification of this Agreement shall be valid unless it is made in writing and signed by the Parties.

2.3.2 Requests for Development Plan and Project Changes. The Parties acknowledge that nothing contained herein is intended to limit LANDOWNER or an Assignee's right to apply to CITY for changes in the Development Plan and Project Entitlements, and amendments to the Plans and Land Use and Development Regulations to allow for additional or different Development, or for a reduction in the level of Development, from that set out in and contemplated by this Agreement, subject to compliance with CEQA, Subsequent Rules, applicable state and City laws and regulations, and the applicable provisions of this Agreement. Nothing herein shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any such application.

2.3.3 Substantive Changes to Development Plan and Project . Substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions by LANDOWNER will necessitate an amendment to this Agreement to incorporate the revised Development Plan and the applicable changes to the terms and conditions of the Project Entitlements, Special Conditions, Mitigation Measures, and related documents and agreements. A "substantive change" to this Agreement, the Development Plan, Project Entitlements, or Special Conditions is one that changes the Term of this Agreement or for which an application is made to modify any of the following: the permitted uses; density or intensity of use; height or size of buildings; provisions for reservation and dedication of land; conditions, terms, restrictions and requirements relating to subsequent discretionary actions; monetary contributions by a landowner; or any other material term or condition of this Agreement. If either Party notifies the other Party that an amendment is needed due to the proposed substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions, the Parties shall meet and negotiate in good faith the terms of an amendment to this Agreement. The scope of the good faith negotiation is limited to such amendment(s) necessary to effectuate the substantive changes to the Development Plan contemplated in this Section 2.3.3, and shall not reopen other provisions of this Agreement not affected by the proposed amendment(s). The CITY may suspend or withhold a Subsequent Approval if reasonably required by the circumstances then existing at the time of the proposed change in the Development

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Plan until the Parties can come to an agreement on the terms of such an amendment or mutually agree to the termination of this Agreement.

2.3.4 Minor Changes. This Agreement need not be amended to allow for changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions that are not substantive, as described in section 2.3.3 and the Procedural Ordinance, but rather are minor in character. The Parties acknowledge that refinement and further implementation of the Development Plan may demonstrate that certain minor changes may be appropriate with respect to Project details and performance of the Parties under this Agreement, and the Parties desire to retain a certain degree of flexibility with respect to such details and performances. If and when the Parties find and mutually agree that clarifications, minor changes, or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, changes or adjustments through an operating written memorandum approved by the Parties, with the city manager acting on behalf of CITY. After execution, the operating memorandum shall be attached to this Agreement. Further minor changes as necessary from time to time may be agreed upon by the Parties by subsequent written approval of the Parties. Unless required by the Statute or the Procedural Ordinance, no operating memorandum shall require prior notice or public hearing, nor shall it constitute an amendment to or termination for convenience in whole or in part of this Agreement. Minor changes subject to this subsection 2.3.4 shall include planning director plan review amendments and special permit minor modifications.

2.3.5 Suspension. Subject to prior notice and opportunity to review the factual basis therefore and further subject to a hearing of such facts, the CITY may suspend this Agreement, or a portion thereof, if the CITY finds and determines, based on specific findings of fact, and in the reasonable exercise of its sole discretion, that suspension is necessary or desirable to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the suspension, and the Term of this Agreement shall be extended by amendment in accordance with Section 2.3.

2.3.6 Termination. This Agreement will terminate at the earlier of the date when (i) the Term expires, (ii) it is terminated for convenience as provided in Section 4.4.1 or 7.8, or (iii) it is cancelled for default as provided in Section 7.6.

2.4 Interests of LANDOWNER. LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including the Lender, if any, have executed and are bound by this Agreement. The Parties acknowledge that Setzer currently holds legal

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title to Phases 2, 3 and 4 of the Project and NWLP currently holds legal title to Phase 1 of the Project. NWLP intends to purchase Phases 2, 3 and 4 as the market allows. The Parties agree that LANDOWNER shall have the right, but not the obligation, to continue existing commercial and industrial operations in Phases 2, 3 and 4 as they exist as of the date of adoption of the Adopting Ordinance, until such time that LANDOWNER elects to develop a Phase pursuant to the Entitlements.

2.5 **Binding Covenants.** The burdens of this Agreement shall be covenants that run with the land and be binding upon the owners of the Property including, without limitation, LANDOWNER, affiliates of LANDOWNER, Lender and Assignees. The benefits of this Agreement shall inure to the Parties and to their Assignees subject to compliance with Section 2.6.

2.6 **Assignment.**

2.6.1 **Right to Assign.** LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer or assignment. LANDOWNER's failure to provide such notice to CITY shall not invalidate such sale, transfer or assignment; however, any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without executing and delivering to CITY an Assignment and Assumption Agreement.

2.6.1.1 In addition, LANDOWNER shall be permitted to assign all or any portion of its interests under this Agreement without CITY consent and without formal notice requirements set forth in Section 2.6.1 by either:

(A) any of the following instances (collectively, "Permitted Affiliate Transfers"): (1) to, by or among members of NWLP or Setzer and (2) to new or additional development entities provided that majority control (51% or greater) of such entity (directly or indirectly through one or more intermediaries) remains with NWLP or Setzer ("Permanent Affiliates"). With respect to any Permitted Affiliate Transfer, such assignee shall assume all of Landowner's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and LANDOWNER shall be

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released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.; or

(B) the assignment by any of the Setzer entities of all of its rights and interest in either Phase 2, 3 or 4 to NWLP, or to new or additional development entities, which constitute Permanent Affiliates as identified above ("Setzer Transfer"). With respect to any Setzer Transfer, such assignee shall assume all of Setzer's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and Setzer shall be released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.

2.6.2 Release. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, CITY shall release LANDOWNER from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

2.6.3 Assignees. The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under this Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in form of the Assignment and Assumption Agreement attached hereto as Exhibit K and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.

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2.7 **Plan or Project Entitlement Amendments Involving Assignees.**

2.7.1 **By Assignee.** If an Assignee files an application with CITY that proposes to amend the Plans, Project Entitlements, or the Land Use and Development Regulations and such amendment could affect the Vested Rights of LANDOWNER or of another Assignee(s), CITY shall endeavor to provide reasonable notice to LANDOWNER before acting on such application. CITY shall not be required to obtain the prior approval of LANDOWNER or of the other Assignee(s) to approve such application notwithstanding the terms of this Agreement or an Assumption and Assignment Agreement.

2.7.2 **By LANDOWNER.** If LANDOWNER files an application with CITY that proposes to amend the Plans, Project Entitlements or the Land Use and Development Regulations and such amendment could affect the Vested Rights of an Assignee(s), CITY shall not be required to provide notice or obtain the prior approval of the Assignee(s), notwithstanding the terms of this Agreement or an Assumption and Assignment Agreement. CITY shall only be required to provide notice to adjacent landowners of the application pursuant to then applicable provisions of the Zoning Ordinance and City Code.

2.7.3 **Approval Rights.** LANDOWNER shall be solely responsible for obtaining any prior approval rights over applications to amend the Plans, Project Entitlements or the Land Use and Development Regulations by an Assignee(s), and for obtaining any waivers of LANDOWNER's applications by an Assignee(s), at the time LANDOWNER sells, transfers or assigns a portion of the Property to a third party which may become an Assignee to this Agreement. The provisions in this Section 2.7 shall apply to LANDOWNER's successors in interest, to each initial Assignee(s) and its successors in interest, and to all property owners and affiliates of all or a portion of the Property during the Term of this Agreement.

2.7.4 **CITY Processing.** In processing an application as described in this Section 2.7, CITY shall have the sole exclusive discretion to approve or deny a Discretionary Action or a Ministerial Action after the Effective Date, subject to Section 3.2, and consistent with the terms of this Agreement.

2.7.5 **Indemnity.** LANDOWNER and an Assignee(s) that files an application as described in this Section 2.7 shall defend and indemnify CITY in any third-party action claiming that CITY has violated LANDOWNER's and/or an Assignee(s)'s Vested Right under this Agreement in approving such application, in accordance with the provisions of Section 7.1; provided, however, that the indemnity provided in this Section 2.7.5 shall

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not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

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3.0 VESTED DEVELOPMENT RIGHTS.

3.1 **Entitlement to Develop Project.** Subject to the express terms, conditions, reservations, and exclusions as set out in this Agreement, CITY hereby grants to LANDOWNER a Vested Right to develop the Property for the Project in accordance with the terms and conditions set out in the Development Plan, Project Entitlements, Special Conditions, and Mitigation Measures, and in accordance with the Land Use and Development Regulations. The General Plan shall control in regards to any conflicts between LANDOWNER's Vested Right and the Land Use and Development Regulations. In Development of the Property for the Project, LANDOWNER shall not be subject to compliance with any Subsequent Rule except as expressly set forth in this Agreement. The Plans, Project Entitlements, Special Conditions, Mitigation Measures, and Vested Rights, which authorize and limit Development of the Property for the Project in accordance with their respective terms, are intended to be construed in harmony with each other.

3.1.1 **Compliance with Project Entitlements.** The Parties acknowledge that the Subsequent Approvals will apply to the Plans, Project Entitlements, Special Conditions, Design Guidelines, Mitigation Measures, and Tentative Map conditions. In addition, the location, size and type of land uses in the Development Plan may be conditioned or restricted as permitted under the Land Use and Development Regulations and as otherwise provided herein. Nothing contained in this Agreement is intended or may be construed as an assurance or representation by CITY to LANDOWNER that the Development Plan can be fully implemented within the Term of this Agreement or that LANDOWNER will be able to fully exercise its Vested Rights.

3.1.2 **Development Inconsistent with Development Plan.** If LANDOWNER submits an application to CITY for Development that differs from the Development Plan, but does not require an amendment to this Agreement as provided in Section 2.3.4, then upon approval by CITY, LANDOWNER's Vested Rights under this Agreement will be adjusted to include the modification in the Development. Such adjustment in the Vested Rights shall be considered and implemented as a minor change under Section 2.3.4 of this Agreement. If an application proposes or requires a substantive change to the Plans, Project Entitlements, Special Conditions, Mitigation Measures, or Land Use and Development Regulations under Section 2.3.3, then the right to develop the Property in accordance with the terms and conditions of that application, if approved, will not be vested under this Agreement unless and until this Agreement is amended to incorporate the approval pursuant to Section 2.3.3.

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3.2 Subsequent Approvals.

3.2.1 **Scope.** Development of the Property for the Project is subject to all required Discretionary Actions and Ministerial Actions that have not otherwise been approved by CITY or City Agency prior to the Effective Date. Subsequent Approval would include, without limitation, approval of tentative and final parcel and subdivision maps, additional tentative subdivision maps to further subdivide a parcel, special permits, variances, plan review, design review, preservation review, and grading permits and Building Permits required for Development of the Project and consistent with the Development Plan. Upon approval by CITY, LANDOWNER's Vested Rights under this Agreement shall be deemed to include the Subsequent Approval.

3.2.2 **Processing.** Nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law. CITY shall not unreasonably deny, delay or condition any Subsequent Approval required for Development of the Project that is necessary or desirable to the exercise of LANDOWNER's Vested Rights under this Agreement as long as the application is in compliance with the Plans, Project Entitlements, and the Land Use and Development Regulations.

3.2.3 **Conditions.** In reviewing and approving applications for Subsequent Approvals that are Discretionary Actions, CITY may exercise its independent judgment and may attach such terms, conditions, restrictions and requirements (collectively "Conditions") as follows:

3.2.3.1 Conditions that are consistent with the policies, goals, standards and objectives of the Plans, Design Guidelines and Land Use and Development Regulations as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such Discretionary Actions.

3.2.3.2 Any conditions imposed as a condition of approval of a Subsequent Approval shall be consistent with the provisions of this Agreement unless: (i) CITY and LANDOWNER mutually agree to such changed Conditions, (ii) the Subsequent Approval is subject to compliance with the Subsequent Rule as provided herein, (iii) the conditions are imposed as a mitigation measure for compliance with CEQA, NEPA or a related environmental statute as described in Section 4.1, and/or (iv) additional Public Facilities are necessary to serve the Development of the Property as proposed in LANDOWNER's entitlement application or changes in the location or size of Public Facilities is required as described in Section 4.9.

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3.2.4 **Additional Discretionary Actions.** CITY shall not apply any Subsequent Rule that create a requirement for any new or additional Subsequent Approvals for the Project, other than additional Ministerial Actions, except as provided in Section 3.3.

3.3 **Subsequent Rules.**

3.3.1 **Limitation on Application of Subsequent Rules.**

3.3.1.1 Subject to Section 4.0 and except as otherwise set forth in this Agreement, during the Term of this Agreement, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if it would conflict with or impede the Vested Rights of LANDOWNER as set out in this Agreement without LANDOWNER's express written consent. The terms "conflict" and "impede" would include, without limitation, Subsequent Rules that would directly or indirectly modify the Project Entitlements or would substantially increase the cost of Development in order to comply with the Subsequent Rule. Application of a Subsequent Rule relating to new or increases in Development Fees and Assessments are addressed in Section 4.0.

3.3.1.2 [This section intentionally omitted.]

3.3.1.3 To the extent that any Subsequent Rule which is applicable to the Property or the Project is not in conflict with or does not impede the Vested Rights of LANDOWNER as set out in this Agreement, or is otherwise made applicable by other provisions of this Agreement, such Subsequent Rule shall be applicable to Development of the Property.

3.3.2 **No General Limitation on Future Exercise of Police Power.** The CITY retains its right to exercise its broad and general police powers and to apply such powers within the Property, except when such exercise would expressly conflict with or impair a Vested Right granted to LANDOWNER under this Agreement, as provided in Section 3.3.1.

3.3.3 [This section intentionally omitted.]

3.3.4 [This section intentionally omitted.]

3.3.5 **No Limit on Power of CITY to Adopt Subsequent Rule.** Notwithstanding anything contained herein to the contrary, this Agreement does not limit the power and right of the CITY to amend, repeal, suspend, or otherwise modify the Plans or Land Use and Development Regulations, or to adopt and amend from time to time other ordinances, resolutions, rules, and procedures governing development within

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the City, provision and financing of Public Facilities or Public Services, and any other matters that may be related to or affect Development of the Project on the Property or the subject matter of this Agreement; however, such Subsequent Rule shall only apply to the Property or the Project as provided in Sections 3.3 and 4.0 or as otherwise provided in this Agreement.

3.3.6 [This section intentionally omitted.]

3.3.7 **Beneficial Changes.** To the extent that any Subsequent Rules would benefit LANDOWNER and LANDOWNER desires that the Land Use and Development Regulations as amended should be applicable to Subsequent Approvals, LANDOWNER shall notify CITY in writing of its desire to be subject to the amended Land Use and Development Regulations, and the Parties shall mutually agree to amend this Agreement in accordance with Section 2.3.

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4.0 EXCLUSIONS FROM VESTED RIGHTS.

4.1 Environmental Compliance.

4.1.1 CEQA Compliance. The CITY prepared and certified the Final Environmental Impact Report for the Project and imposed certain Mitigation Measures in compliance with CEQA for approval of the Project Entitlements. CITY and LANDOWNER shall comply with and perform the Mitigation Measures when and where applicable to each Party as specified in the Mitigation Monitoring Program. Because this Agreement and the Mitigation Measures are intended to mitigate all significant environmental impacts of the Project CITY shall not impose any additional mitigation measures as a condition of any Subsequent Approval, except mitigation measures that CITY determines that it is required to impose under CEQA for the approval or certification of any mitigated negative declarations or subsequent or supplemental environmental impact reports that are required to be approved or certified under CEQA as a condition of such Subsequent Approval. Nothing contained in this Agreement limits the CITY's ability to comply with CEQA, the CEQA Guidelines and the CITY's CEQA procedures, and as they may be amended from time to time.

4.1.2 NEPA Compliance. If the scope of the Project includes Public Facilities that are to be funded in part with federal funds or requires approval of a federal agency, as identified in any agreements between the Parties, the CITY shall comply with the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations, and other related federal environmental statutes and regulations. If the environmental reports required for compliance with NEPA have not been completed prior to the Effective Date, the CITY may impose additional mitigation measures as a condition of any Subsequent Approval as CITY is required to impose for compliance with NEPA and other related federal environmental statutes and regulations that are set out as conditions of, or the basis for, approval of a categorical exclusion, environmental assessment, environmental impact statement or permit by the applicable federal agency for construction of Public Facilities undertaken by CITY or LANDOWNER located within the Property or required for Development of the Project.

4.2 Retained Right to Discretionary Design Review. Notwithstanding anything contained herein to the contrary, this Agreement does not limit CITY's Discretionary Actions regarding design review of all buildings and structures proposed to be developed on the Property in accordance with the Land Use and Development Regulations. However, in conducting its design review, CITY will apply the Design Guidelines and CITY shall exercise its review in such a manner that does not reduce the square footage or the floor area ratio for the subject site as otherwise allowed under the Land Use and Development Regulations and the Project Entitlements. CITY retains the right to reasonably modify or amend the Design Guidelines as long as such

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amendments are consistent with the Project Entitlements, Plans, and Land Use and Development Regulations and do not conflict with or impede LANDOWNER's Vested Rights.

4.3 [This section intentionally omitted.]

4.4 **Changes Mandated by Other Agencies.**

4.4.1 **Amendment or Suspension of Agreement.** Nothing in this Agreement shall preclude the application to the Property of a Subsequent Rule if the terms and conditions set out in a Subsequent Rule are specifically mandated by changes in state or federal laws or regulations or by action of a Public Agency after the Effective Date. In the event state or federal laws or regulations or an action by a Public Agency either (i) prevents or precludes LANDOWNER's or CITY's compliance with one or more provisions of this Agreement, or (ii) requires changes in the Project Entitlements, Special Conditions, or Subsequent Approvals, the Parties shall meet and confer in good faith to determine whether the laws, regulations or actions apply to the Property and/or the Project and whether suitable amendments to this Agreement can be made in order to maintain LANDOWNER's Vested Rights and the CITY and LANDOWNER obligations as set out in this Agreement. If the Parties are unable to agree on the terms of an amendment to this Agreement to comply with such laws, regulations and actions, the Parties shall consider whether suspension of the applicable provision(s) of this Agreement is appropriate, and if so, the terms and conditions of such suspension. If the Parties are unable to agree on the terms of an amendment or suspension with respect to the applicable provision(s) of this Agreement, either Party shall have the right to terminate this Agreement for its convenience in whole or in part by complying with the noticing procedures set out in Section 9.2.

4.4.2 **No Liability of CITY.** To the extent that any actions of federal or state agencies, actions of Public Agencies, or actions of CITY required by federal or state agencies or Public Agencies and taken in good faith in order to prevent adverse impacts upon CITY by state or federal agencies or Public Agencies, have the effect of preventing, delaying or modifying Development of the Property for the Project, CITY shall not in any manner be liable to LANDOWNER for such prevention, delay or modification. Such actions may include, without limitation: (i) flood plain or wetlands designations, (ii) the imposition of air quality measures or sanctions, (iii) the imposition of traffic congestion or travel restriction measures, or (iv) the imposition of new or additional restrictions related to environmental contamination of the Property, regardless as to whether such conditions were known or unknown as of the Effective Date. CITY's actions to comply with such federal or state laws and regulations or actions of Public Agencies shall not be arbitrary or capricious. Nothing contained herein shall be

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construed as precluding CITY's contractual defenses of impossibility of performance or frustration of purpose to the extent recognized by California law.

4.4.3 Reserved Right to Contest Laws, Regulations and Actions. CITY and/or LANDOWNER shall have the right to institute litigation challenging the validity of the laws, regulations or actions of federal and state agencies and Public Agencies as described in Section 4.4.1. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued; provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the contested law, regulation or action, CITY shall not be required to undertake such action until the litigation is resolved or the law, regulation or action is otherwise determined invalid, inapplicable or is repealed. If the final judgment invalidates the law, regulation or action, or determines that it does not affect the validity of this Agreement or the obligations of the Parties as set out in this Agreement, this Agreement shall remain in full force and effect. The Term of this Agreement shall be extended by the amount of time between the date when the litigation was filed and the date of the final judgment if the law, regulation or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

4.5 Building Codes.

4.5.1 No Limit on Right of CITY Regarding Uniform Codes or Standards and Local Amendments. Notwithstanding anything in this Agreement to the contrary, this Agreement does not limit the right of CITY to adopt building, plumbing, electrical, fire and similar uniform codes, and Public Facilities standards and specifications, to adopt modifications of and local amendments to those uniform codes and standards and specifications from time to time, and to require development of the Property and the Project to comply with those uniform codes and standards and specifications in effect at the time of plan review or Building Permit issuance for the Project, regardless as to whether the plans and Building Permits are requested for the Project Entitlements or for Subsequent Approvals.

4.5.2 Green Building Ordinance. Notwithstanding anything in this Agreement to the contrary, if the CITY enacts an ordinance that would require buildings on a city-wide basis or within the Community Plan area to be designed and constructed with materials, methods or in a manner that would reduce energy consumption, greenhouse gas emissions, and/or heat island effects (the "Green Building Ordinance" or "Ordinance"); such Ordinance shall apply to the Property and the Project.

4.6 No Effect on Right to Tax, Assess, or Levy Fees or Charges. Notwithstanding anything in this Agreement to the contrary, this Agreement does not limit the power and

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right of the CITY to impose new or increases in existing taxes or assessments on, or require payment of application, processing, inspection, or building permit fees, and related charges by LANDOWNER or by any other entity or owner of property in the City. All applications by LANDOWNER for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, inspection fees and other similar fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

4.7 **Development Fees.** Except as provided in Exhibit M, LANDOWNER shall be subject to the imposition of any new or increased development impact fees (Government Code § 66000 *et seq.*) or other fee, as defined in Section 1.21as Development Fees, pursuant to the nexus study that is prepared to implement the new or increased development impact fee or program, as such nexus study may be amended from time to time.

4.8 **Health and Safety and Supervening Laws.** Notwithstanding the provisions in Section 3.3.1, during the Term of this Agreement the CITY may adopt and apply a Subsequent Rule to Subsequent Approvals if: (i) CITY upon notice and hearing, in the reasonable exercise of its discretion and based upon findings of fact and determinations of law, certifies to LANDOWNER that application of a Subsequent Rule is necessary to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property; or (ii) such Subsequent Rule is mandated or required by supervening federal, state, or Public Agency law, regulation or action enacted prior to or after the Effective Date. The foregoing two options include, without limitation, any flood control restrictions or requirements that may be adopted on a city-wide basis or that may only apply to the Community Plan area that encompasses the Property.

4.9 **Changes in Location or Size of Public Facilities.** If at the time of the required Dedication or Reservation of land to CITY, City Agency or Public Agency for Public Facilities as specified in this Agreement, the location of or the quantity of land required for the Public Facilities has changed from that depicted or specified in the Plans or Project Entitlements to such a significant degree or extent that could not reasonably have been anticipated as of the Effective Date such that the location or quantity is inconsistent with the Development Plan, and/or Project Entitlements, the Parties shall meet and negotiate and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow Development of the Property for the Project in a reasonable manner, taking into account the changes in Public Facilities needed to serve the Project that arose after the Effective Date. If agreement is reached between the Parties, the procedures specified in Section 2.3 shall apply to amend this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience in whole or in part by providing notice as specified in Section 9.2.

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4.10 **Suspension of Development**. No Subsequent Rule enacted prior to the expiration of the Term of this Agreement which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall apply to the Property, except when the CITY enacts a moratorium pursuant to a declaration of a local emergency or a state of emergency which suspends development rights, the moratorium encompasses the Property or the Project, and the basis for enactment of the moratorium complies with the provisions of Section 4.8.

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5.0 CITY'S OBLIGATIONS AND COMMITMENTS.

5.1 **CITY's Good Faith in Processing.** Subject to the provisions of this Agreement and LANDOWNER's compliance with each and every term and condition herein, CITY agrees that it will accept in good faith for processing, review, and Discretionary or Ministerial Action, all complete applications for tentative parcel maps, zoning, planned unit development designation, planned unit development guidelines, schematic plans, parcel maps, subdivision maps, special permits, variances, design review, preservation review, Building Permits, or other entitlements for Development of the Property for the Project in accordance with the Plans, Project Entitlements, Special Conditions, Mitigation Measures, Land Use and Development Regulations, and the terms of this Agreement. CITY shall inform the LANDOWNER, upon request, of the necessary submission requirements for each application for a permit or other entitlement for Development and shall review said application and shall schedule the application for review and Discretionary Action by the appropriate CITY board, commission or City Council or for Ministerial Action by CITY staff.

5.2 **Allocation Procedures for Uses, Units, and Building Sizes.** CITY procedures and approvals for allocating the land uses, housing unit numbers and types, and densities and building square footages approved for the Project among the various parcels of land and portions thereof comprising the Property shall be in conformance with the Development Plan, Project Entitlements, Plans, and Special Conditions. Unless otherwise specified in the Development Plan, Project Entitlements, Plans, and Special Conditions, the allocation of nonresidential square footages and housing units shall be as identified in Subsequent Approvals for the Project. The appropriate entitlement to address the allocation of building square footage and housing units shall be determined by CITY. Except as otherwise set forth in Exhibit M, allocations for residential development by type of housing unit and density shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

5.3 **Extension of Entitlements.** All subdivision tentative maps, special permits, or any other land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Agreement, as set out in the Development Plan, Project Entitlements, and Subsequent Approvals, shall be valid for a minimum term equal to the full Term of this Agreement (including the Initial Term and any Extension Period resulting from exercise by LANDOWNER of the options provided for in Section 2.1), or for a period of thirty-six (36) months from date of approval of the entitlement, whichever is longer, but in no event for a longer period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of Section 8.5 relating to estoppel certificates shall apply to any request made by LANDOWNER to

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CITY with respect to the life of any entitlement covered by this Section 5.3. Nothing in this Section 5.3 shall be construed, or operate, to extend the Term of this Agreement.

5.4 **Reconfiguration of Parcels.** LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be processed and Discretionary Action taken in accordance with the provisions of this Agreement. Where Reconfiguration requires a special permit, variance, planned unit development designation, or other entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of approving the application. CITY shall process such Subsequent Approvals in a manner consistent with the Plans and Project Entitlements as provided in Section 3.2.

5.5 [This section intentionally omitted.]

5.6 [This section intentionally omitted.]

5.7 **Public Facilities Financing Proceedings.**

5.7.1 **Proceedings Initiated by LANDOWNER.** In the event that LANDOWNER desires to initiate proceedings for the formation of a Public Financing Mechanism to fund the construction of Public Facilities required to be funded or constructed by LANDOWNER pursuant to the conditions of approval of the Project Entitlements, Special Conditions, or in the Mitigation Measures, LANDOWNER shall file an application with CITY for that purpose in accordance with the Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a substitute therefor. Any application filed by LANDOWNER that could affect or burden one or more Phase(s) not yet acquired by NWLP must be executed by both NWLP and Setzer. CITY agrees to diligently process any such application, provided that such application: (i) is complete and is accompanied by payment of City fees applicable on the date of filing of the application; (ii) otherwise complies with the City Code as it exists on the date of the application, including but not limited to the Assessment District Policy Manual; (iii) is consistent with City policies and procedures; (iv) provides for a property value to lien ratio and other financial terms that are reasonably acceptable to CITY; (v) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion, to establish the Public Financing Mechanism; and (vi) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

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5.7.2 **Alternative Financing Methods.** Notwithstanding any other provision of this Agreement to the contrary, CITY agrees that upon request made by LANDOWNER, CITY will consider making exceptions to the Assessment District Policy Manual to allow for alternative methods of financing Public Facilities; provided, however, that CITY reserves its discretion to condition use of any such alternatives on satisfaction of performance preconditions and to consider underwriting considerations and criteria. Further, CITY may in its reasonable discretion deny any such request upon grounds, including, without limitation, consistency of application of its policies and the potential for establishing negative precedent.

5.7.3 [This section intentionally omitted.]

5.7.4 **Maintenance Districts.** LANDOWNER may, following the procedures specified in Section 5.7.1, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping, lighting or other Public Facilities, whereunder lands benefiting from the Public Facilities and their maintenance are assessed for a proportionate share of the maintenance cost.

5.8 [This section intentionally omitted.]

5.9 [This section intentionally omitted.]

5.10 **Annual Review.** In accordance with Government Code Section 65865.1 and the Procedural Ordinance, CITY shall annually during the Term review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct the Annual Review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future Annual Review or to otherwise enforce the provisions of this Agreement, nor shall a Party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement. The Annual Review shall be limited in scope to compliance with the terms and conditions of this Agreement.

5.10.1 **Proceedings.** The procedures specified in the Procedural Ordinance for conduct of the Annual Review by the City Manager and City Council shall apply to each Annual Review of this Agreement. At least ten (10) days prior to the commencement of any Annual Review by the City Council, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects. At the conclusion of the Annual Review, CITY shall make written findings and determinations on the basis

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of substantial evidence, as to whether or not LANDOWNER or its successors and any Assignees have complied in good faith with the terms and conditions of this Agreement.

5.10.2 Failure of Compliance. Any determination by the City Council of LANDOWNER's failure to comply with the terms and conditions of this Agreement shall be a default subject to the notice requirements and cure periods set forth in Section 7.6.

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6.0 LANDOWNER'S OBLIGATIONS AND COMMITMENTS.

6.1 Project Entitlements, Mitigation Measures and Special Conditions.

LANDOWNER shall be obligated to comply with the terms and conditions set out in the Project Entitlements, Special Conditions, and Mitigation Measures for Development of the Property for the Project, and with the terms and conditions of this Agreement. When required in order to obtain a Subsequent Approval, LANDOWNER shall execute a mitigation monitoring agreement and such other agreements as may be necessary in CITY's judgment in order to implement any Mitigation Measure and the Mitigation Monitoring Program or to comply with other terms of this Agreement, and shall fully cooperate with CITY in implementing the Mitigation Measures and Mitigation Monitoring Program and the terms of such other agreements.

6.2 [This section intentionally omitted.]

6.3 LANDOWNER's Waivers. LANDOWNER hereby agrees to the provisions of the Protest Waiver, which is a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of Public Financing Mechanisms and Development Fees, and in levying assessments and taxes pursuant thereto, and CITY's actions in implementing the Project Entitlements. As set forth in the Protest Waiver, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Project Entitlements. The Protest Waiver shall be binding on LANDOWNER by LANDOWNER's execution of this Agreement if LANDOWNER fails to separately execute the Protest Waiver provided as Exhibit G.

6.4 Public Facilities Construction by LANDOWNER. When required by the conditions of approval of the Project Entitlements, Plans, Special Conditions, Mitigation Measures, and/or Subsequent Approvals and by any applicable reimbursement agreements, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct the specified Public Facilities required for Development of the Property for the Project substantially consistent with the Development Plan.

6.5 Park and Open Space Development. LANDOWNER shall develop some or all of the parks and open spaces located within that final map, as provided in the Special Conditions set forth in Exhibit M and as may be specified in the Tentative Map conditions, under the terms of CITY's standard form Park Credit/Reimbursement Agreement. LANDOWNER shall receive credit for the cost of developing those parks and open spaces as provided in City Code Chapter 18.44 and Exhibit M.

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6.6 Levies Imposed by Public Agencies. LANDOWNER shall be responsible for: (i) all fees (including Development Fees), charges, assessments, special taxes or levies of any sort imposed by any federal, state or Public Agency in the future as a charge for financing of Public Facilities and Public Services for the Project and for Mitigation Measures imposed for the purpose of mitigation of environmental impacts associated with the provision of the Public Facilities or Public Services; (ii) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of Public Facilities, where the Property is located within a district formed for that purpose by any federal, state or Public Agency; and (iii) ad valorem real estate taxes and utility fees and taxes. In the event that any of the fees, charges, assessments, special taxes or levies covered by this Section 6.6 are imposed and/or collected by or with the assistance of CITY, LANDOWNER shall nevertheless be responsible therefor. Failure to pay such fees, charges, assessments, taxes or levies when due shall be a default under this Agreement. However, nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law, the formation of any assessment district, the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof, or the nature and amount of any tax, fee, assessment or charge imposed, except as provided in Section 6.3.

6.7 Local, State and Federal Laws. LANDOWNER shall assure that the construction of the Project is carried out in conformity with all applicable federal and state laws and regulations, and the laws and regulations of Public Agencies which have jurisdiction over Development of the Property. Before commencement of Development of the Property including, without limitation, grading of land or construction of any buildings, structures or other works of improvement upon the Property; LANDOWNER shall at its own expense secure any and all certifications and permits which may be required by any federal or state agency or a Public Agency having jurisdiction over such development. LANDOWNER shall permit only persons or entities which are duly licensed in the State of California, County of Sacramento and City of Sacramento, as applicable, to perform grading, development or construction work on the Property for Development of the Project.

6.8 Transfer of Land. As set forth in the Plans, Project Entitlements, and Special Conditions, LANDOWNER has agreed to transfer lands by Dedication or Reservation that are needed for Public Facilities to CITY, City Agency, or Public Agency as specified or appropriate. LANDOWNER shall transfer the land required to be transferred by Dedication to CITY, City Agency, or Public Agency utilizing the Irrevocable Offer of Dedication agreement form provided as Exhibit I or by placing a Dedication or an Irrevocable Offer of Dedication, as directed by CITY, on a final subdivision or parcel map in accordance with Government Code Sections 66439 and 66447. LANDOWNER shall transfer the land required to be transferred by Reservation to CITY or to a Public

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Agency utilizing the Reservation form provided as Exhibit J and in accordance with Government Code Section 66480. LANDOWNER shall transfer the land required to be transferred by Dedication or by Reservation at such time as is either: (i) required pursuant to a condition or term of any entitlement for use or Development of the Property; or (ii) requested by CITY, City Agency or Public Agency where LANDOWNER has not applied for an entitlement for use or Development of the Property, but the land is needed, in CITY's, City Agency's and/or Public Agency's sole discretion, for purposes of construction and improvement of Public Facilities. CITY shall accept such transfers of land by Dedication or Reservation, as provided therein.

6.9 Allocation Dispute Resolution.

6.9.1 Where a dispute exists between LANDOWNERS with respect to the terms of this Agreement, LANDOWNERS may pursue all remedies available in law or equity, consistent with the terms of their "Option Agreement and Escrow Instructions dated September 11, 2009 ("Option Agreement") or any other agreement between LANDOWNERS related to the Property and/or development of the Project ("Property Agreement"). The terms of this Development Agreement in no way expand or limit the remedies set forth in the Option Agreement or Property Agreement. In the event of such dispute between LANDOWNERS, LANDOWNERS shall hold harmless the CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees from and against any and all damages relating to LANDOWNERS' dispute.

6.9.2 Where a dispute exists between LANDOWNER, Assignee, and/or any successor or successors in interest with respect to any matter involving the CITY's allocation of the land uses, housing units, densities and building square footages for or on the Property in compliance with the Development Plan and Project Entitlements as set out in Section 5.2, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees be a party to such dispute or to the dispute resolution procedures. All of the provisions of this Agreement relating to LANDOWNER's obligation to defend and indemnify CITY and payment of CITY costs shall apply to all disputes relating directly or indirectly to such allocation.

6.10 **Annual Report.** LANDOWNER shall annually, within thirty (30) days after each anniversary of the Effective Date, submit to the City Manager a brief written report on the progress of Development of the Property for the Project as authorized under this Agreement during the prior twelve (12) month period. The annual report shall include,

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at a minimum, (i) the additional square footage of commercial and office development and the number of housing units constructed or under construction, (ii) the Public Facilities constructed or under construction by LANDOWNER, and (iii) the land Dedications and Reservations conveyed to CITY, City Agency, or Public Agency. The CITY will review the annual report in accordance with Section 5.10. LANDOWNER shall pay a processing fee for each annual review in the amount established by resolution of the City Council.

6.11 **Indemnification.** LANDOWNER agrees to defend and indemnify CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to Develop the Property, whether undertaken by LANDOWNER or LANDOWNER's affiliates, contractors, subcontractors, agents or employees. Said indemnification pursuant to this Section 6.11 shall not extend to claims that are based on an indemnified Party's gross negligence or willful misconduct.

6.12 **Reimbursement for Agreement Costs.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER or by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is \$140.00 per hour. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

6.13 [This section intentionally omitted.]

6.14 [This section intentionally omitted.]

6.15 **Setzer's Limited Obligations as Landowner.** Setzer, as owner of any Phase(s) within the Property for which no Subsequent Approval for Development thereof has been approved, will not oppose any Development of the other Phase(s) not owned by Setzer and will cooperate with and support NWLP, or any successor owner of such other Phase(s), at no cost or expense to Setzer, with respect to any Development of such other Phase(s) consistent with the Project Entitlements, Special Conditions, Mitigation Measures and this Agreement. In particular, if and to the extent required by this Agreement, Setzer will transfer any lands within the Phase(s) owned by Setzer in accordance with and as may be required by Section 6.8 above to support Development of any other Phase(s) consistent with the Project Entitlements, Special Conditions,

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Mitigation Measures and this Agreement. Setzer's cooperation with and support of such Development shall not affect any obligation of NWLP under the Option Agreement to compensate Setzer for any such land transfer.

Unless and until Setzer obtains approval of a Subsequent Approval to Develop a Phase owned by Setzer, Setzer shall not be obligated to comply with or perform any of the "LANDOWNER" obligations under Sections 6.1, 6.4, 6.5 (except with respect to the transfer of land under Section 6.8), 6.6 or 6.7 of this Agreement applicable to Development of the other Phase(s) not owned by Setzer, and the City shall look solely to NWLP, or any successor thereof involved in Development of the other Phase(s), for satisfying those obligations. Similarly, Setzer's waiver of Protest Rights under Section 6.3 above shall not obligate Setzer or any Phase owned by Setzer to pay any Development Fees or any fees, taxes or assessments that may be imposed or levied by any Public Financing Mechanism related to Development of the Project unless and until Setzer obtains a Subsequent Approval to Develop such Phase. Upon any application for any Subsequent Approval for Development of a Phase owned by Setzer, such Setzer entity would assume all rights and obligations as a LANDOWNER for Development of such Phase.

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7.0 LITIGATION, DEFAULT, AND TERMINATION.

7.1 Litigation by Others.

7.1.1 **Challenge to Agreement or Entitlements.** In the event of any action is instituted by a third party challenging the validity of any portion of this Agreement, or its application or effectiveness at any time during its Term, including, without limitation (i) any action by a third party challenging the proceedings taken for its approval (including the CEQA requirements), (ii) any action challenging the validity of any of the Project Entitlements (including CEQA challenges), (iii) any action by a third party to enforce the application of a voter approved initiative to Development of the Property for the Project, or (iv) any action by a third party challenging any other act undertaken by the Parties in furtherance of this Agreement or its terms including, without limitation, Subsequent Approvals; the Parties agree to cooperate in the defense of the action.

7.1.2 **Defense.** In all such litigation, the following shall apply:

7.1.2.1 CITY may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.

7.1.2.2 In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each Party shall bear its own attorney fees and costs.

7.1.2.3 In the event that CITY determines to tender the defense of the action to LANDOWNER, CITY shall promptly notify LANDOWNER of its determination. LANDOWNER shall, upon such notice from CITY, at LANDOWNER's expense, defend the action on its behalf and on behalf of CITY either with counsel selected by CITY and approved by LANDOWNER, which approval by LANDOWNER shall not be unreasonably withheld, or by counsel selected by LANDOWNER and approved by CITY, which approval shall not be unreasonably withheld. The final selection of counsel shall be determined by CITY in its sole discretion. LANDOWNER shall have the right to settle such action without CITY's consent thereto, provided LANDOWNER accepts defense and obligation without reservation, and that such settlement does not obligate CITY to make any payment or perform any obligation, or otherwise prejudice CITY, as determined by CITY in its sole discretion. LANDOWNER shall bear all attorney fees and costs associated with such defense from and after the date of the tender. However, CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

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7.1.3 Effect of Judgment. If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any Project Entitlement or Subsequent Approval, the following shall apply:

7.1.3.1 If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order.

7.1.3.2 CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow Development of the Property for the Project to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified in Section 2.3 shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement for its convenience by giving the other party notice as provided in Section 9.2.

7.1.3.3 In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously, subject to LANDOWNER's payment of CITY's costs to comply with the terms of the judgment or order.

7.1.4 No CITY Liability for Damages. Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable to LANDOWNER in damages in any litigation instituted by a third party as described in this Section 7.1.

7.2 Force Majeure and Enforced Delay. In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to: (i) war, insurrection, terrorist acts, riots or other civil commotions; (ii) vandalism or other criminal acts; (iii) strikes, walkouts, or other labor disputes; (iv) acts of God, including floods, earthquakes, fires, casualties, or other natural calamities; (v) enactment of conflicting or supervening federal or state laws or regulations; (vi) shortages of materials and supplies or delivery interruptions; or (vii) litigation instituted by third parties challenging the validity of this Agreement or Subsequent Approvals. A Party's financial inability to perform shall not be a ground for claiming an enforced delay. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of

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either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay and the Term of this Agreement shall be extended by amendment in accordance with Section 2.3.

7.3 **Waiver.** Except as otherwise expressly provided herein to the contrary, by entering into this Agreement LANDOWNER waives its right to challenge the fairness or appropriateness, as applied to the Property and/or the Project: (i) the Plans, Project Entitlements, Special Conditions, and Mitigation Measures; (ii) Public Financing Mechanisms and Development Fees; (iii) the Dedications and Reservations for Public Facilities and Public Services, (iv) the Inclusionary Housing Ordinance, (iv) the Design Guidelines, (v) the Land Use and Development Regulations, and (vi) all actions implemented in furtherance of the foregoing as specified herein.

7.4 **Legal Actions by Parties.** In addition to the provisions set out in Section 7.6 and any other rights or remedies as set out in this Agreement; either Party may institute legal action to cure, correct, or remedy any default by any other Party to this Agreement, to enforce any covenant or obligation herein, or to enjoin any threatened or attempted violation hereunder. Subject to any mutual extensions, notice and opportunity to cure, the term "default" shall mean a material failure of performance or a substantial and unreasonable delay in performance by either Party of any of term, condition, obligation or covenant of this Agreement. Default by either Party may include, without limitation, a material failure to: (i) transfer land for Public Facilities as required by Dedication or Reservation, (ii) undertake construction of Public Facilities, and/or (iii) implement or comply with the terms and conditions of the Project Entitlements, including the Mitigation Measures, Mitigation Monitoring Plan, and Special Conditions.

7.4.1 **CITY Liability.** Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

7.4.2 **Limitation of Legal Actions.** No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

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7.4.3 Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, the state in which the Agreement is signed. The Parties agree to submit any disputes arising under the Agreement to a court of competent jurisdiction located in Sacramento, California. Nothing in this Agreement shall be construed to prohibit the Parties from engaging in alternative dispute resolution processes prior to initiating legal proceedings, including, without limitation, mediation and arbitration, upon the discretion and mutual consent of the Parties.

7.4.4 Legislative Mandamus. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY. To the extent CITY acts in an adjudicatory manner for any Subsequent Approval by conducting hearings, receiving evidence and making findings of fact, such actions shall be reviewed under principles of administrative mandamus in accordance with applicable law.

7.5 Attorney Fees. In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either Party to enforce or interpret any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief; the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this Section 7.5 and any other portion of this Agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Sacramento County, including direct, indirect and overhead costs.

7.6 Default. Subject to any extensions of time by mutual consent of the Parties, and subject to the cure provisions set forth herein, any default (as that term is defined in Section 7.4) of this Agreement shall constitute a breach and the non-defaulting Party may cancel this Agreement for default.

7.6.1 LANDOWNER Default. In addition to any other remedy specified in this Agreement, in the event that notice of default has been given by CITY to LANDOWNER, CITY shall not be obligated to issue any Building Permit or grant any Subsequent Approval for the Project until such time as the default is cured. If cancellation of this Agreement for default is proposed by CITY with respect to only a portion of the Property or the Project that is affected by LANDOWNER's default as

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specified in the CITY's notice of default, only those Building Permits and Subsequent Approvals applicable to that portion of the Property and/or the Project shall be affected by the suspension of Building Permits and Subsequent Approvals until the such time as the default is cured. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent an Assignee from receiving Building Permits and Subsequent Approvals for Assignee's portion of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default by NWLP on any portion of the Property or the Project impair Setzer's right to continue operating existing commercial and industrial uses.

7.6.2 CITY Default. In addition to any other remedy specified in this Agreement, in the event that notice of default has been given by LANDOWNER to CITY, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.

7.6.3 Nonwaiver. Waiver of any default under this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent default either of the same or of another provision of this Agreement.

7.6.4 No Cross Default. Where a portion of the Property has been transferred in accordance with the Assignment provisions of this Agreement and notice of default has been given by CITY to an Assignee: (i) neither LANDOWNER nor any non-defaulting Assignee shall be liable for the default of that Assignee; (ii) the rights of LANDOWNER and non-defaulting Assignees under this Agreement shall not be affected by the default of that Assignee; and (ii) CITY shall not be in default or otherwise liable to LANDOWNER or a non-defaulting Assignee for the CITY's action to declare a default. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER or non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. Notwithstanding the foregoing, CITY, in its sole discretion, shall have the right, following notice and hearing, to terminate this Agreement, as to the LANDOWNER and the non-defaulting Assignees, for CITY's convenience if CITY certifies to LANDOWNER and any non-defaulting Assignees that the default of the defaulting Assignee would prevent or

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impede CITY's performance of its obligations to LANDOWNER and non-defaulting Assignees under this Agreement.

7.6.5 Cure Period. In the event of an alleged default of any term or condition of this Agreement, the Party alleging such default shall give the other Party notice in writing as provided in Section 9.2 specifying the nature of the alleged default, the manner in which said default may be satisfactorily cured, and a reasonable period of time in which to cure the default, which shall not be less than thirty (30) days. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

7.7 Remedies After Expiration of Cure Period. After expiration of the cure period, if the alleged default has not been cured in the manner set forth in the notice and to the satisfaction of the Party issuing the default notice, the non-defaulting Party may at its option: (i) institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, injunctive relief, or cancellation of this Agreement; or (ii) give the other Party notice of intent to cancel this Agreement.

7.7.1 Public Hearing. In the event that notice of intent to cancel this Agreement is given by either Party, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default pursuant to Government Code Section 65868 and the Procedural Ordinance. Where LANDOWNER is the Party alleged to be in default, CITY shall provide LANDOWNER: (i) a reasonable opportunity to respond to all allegations of default at such public hearing; (ii) at least thirty (30) days prior written notice of the date, time and place of the public hearing; and (iii) copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing. LANDOWNER shall be given an opportunity to be heard at the public hearing. The burden of proof whether the LANDOWNER is in default shall be on CITY, the burden of proof whether the CITY is in default shall be on the LANDOWNER, and the burden on whether default has been properly cured shall be on the Party alleged to be in default.

7.7.2 Cancellation of Agreement. At the conclusion of the public hearing, if the City Council finds, based on substantial evidence, that the LANDOWNER was in default and the default has not been cured to the satisfaction of CITY, or if the City Council determines that because of the default a serious risk to the public health or safety exists, this Agreement shall be either be cancelled for breach as of the date of the City Council's determination, or the City Council may modify this Agreement and impose such conditions as are reasonably necessary to address the default and/or protect the

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interests of the CITY and the public. LANDOWNER may thereafter institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief. Expiration of the Term of this Agreement shall be tolled during the period of legal proceedings if there be a judicial determination invalidating or reversing the CITY's cancellation of this Agreement.

7.8 Termination for Convenience.

7.8.1 Termination Upon Completion of Development. This Agreement shall terminate as to each parcel of land contained within the Property when that parcel of land: (i) has been fully developed; (ii) all occupancy permits for the buildings constructed thereon have been issued by CITY; (iii) CITY has accepted the Public Facilities constructed by LANDOWNER thereon or required to serve that parcel; (iv) CITY, City Agency and/or Public Agency has accepted the Dedications or Reservations thereon; and (v) all of LANDOWNER'S obligations in connection therewith as set out in this Agreement are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's Community Development Department, determine if the Agreement has terminated with respect to any parcel of land contained within the Property, and shall not unreasonably withhold termination as to that parcel if LANDOWNER's obligations therewith are satisfied. CITY shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including, without limitation, CITY's administrative and legal expenses. Such fee shall be determined in accordance with CITY's established fees and charges then in effect.

7.8.2 Multi Family and Single Family Residential Projects. This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when CITY has issued an occupancy permit for that residence or building.

7.8.3 Termination Upon Mutual Consent of the Parties. This Agreement may be terminated prior to the expiration of the Term by mutual written agreement of the LANDOWNER and CITY and/or between CITY and Assignee, and any such termination shall not be binding on Assignee or LANDOWNER, as applicable, if it has not executed the written agreement with CITY.

7.8.4 Termination by Expiration of Term. This Agreement shall expire as of the date of the expiration of the Term, without notice or any further action of either Party, unless at least one hundred and eighty (180) days prior to said expiration, the Term is extended by mutual agreement of the Parties as set out in an amendment.

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7.8.5 **Termination by CITY.** Whenever this Agreement expressly provides for CITY to unilaterally terminate the Agreement, CITY may exercise such right to terminate the Agreement for its convenience by providing LANDOWNER with written notice as provided in Section 9.2 at least thirty (30) days prior to the effective date of termination as set out in the notice.

7.9 **Recorded Notice of Termination or Cancellation.** Upon termination or cancellation of this Agreement, CITY shall, on its own initiative and/or upon LANDOWNER's request, record a notice of such termination or cancellation against the Property or specific parcels of land in a form satisfactory to the City Attorney that the Agreement has been terminated or cancelled. The notice shall be recorded by CITY within thirty (30) days after CITY's determination that this Agreement is terminated or cancelled. The aforesaid notice may specify, and LANDOWNER agrees, that termination or cancellation shall not affect in any manner any continuing obligations under this Agreement which survives its termination or cancellation as set out herein or in a recorded covenant.

7.10 **Effect of Cancellation/Termination on LANDOWNER's Obligations.** Cancellation or termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with the Plans, Project Entitlements, Mitigation Measures, Special Conditions, Public Financing Mechanisms, Development Fees, Land Use and Development Regulations, Design Guidelines, and Subsequent Approvals. The foregoing includes, without limitation, tentative maps, special permits, variances, Building Permits, and all other entitlements and permits issued for the Property and/or the Project prior to the effective date of cancellation or termination which are required: (i) for LANDOWNER to complete construction of any improvements on the Property for which a final map or Building Permit had been issued; (ii) for CITY to provide any Public Facilities and/or Public Services to serve improvements on the Property either completed prior to the effective date of cancellation or termination or to be completed under the Building Permits and final maps issued prior to the effective date, or to serve residents and businesses that are then occupying the Property or will occupy the Property under the Building Permits and final maps issued prior to the effective date; and (iii) for LANDOWNER's performance of obligations under the Land Use and Development Regulations, Project Entitlements, Mitigation Measures or Special Conditions which had otherwise been deferred under the terms of this Agreement. Notwithstanding the cancellation or termination of this Agreement or anything contained herein to the contrary, LANDOWNER shall also be obligated to comply with any covenants of this Agreement that are to survive after cancellation or termination of this Agreement, whether express or implied, or which have been recorded against the Property under the terms of a separate agreement.

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8.0 LENDER PROVISIONS.

8.1 Lender Rights and Obligations.

8.1.1 **No Impairment.** Neither LANDOWNER's entering into this Agreement nor its default under this Agreement shall alter, defeat, render invalid, diminish or impair the lien of any Mortgage or Deed of Trust on the Property made in good faith by the Lender and for value. This Agreement shall not prevent or limit LANDOWNER in any manner, at LANDOWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage, Deed of Trust or other security instrument securing financing with respect to development of the Property or adjacent properties for the Project.

8.1.2 **Prior to Lender Possession.** No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertains to the Property or such portion thereof in which it holds an interest. Nothing in this Section 8.1 shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including, without limitation, suspension, cancellation for breach and/or refusal to grant entitlements with respect to the Property.

8.1.3 **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a Mortgage or Deed of Trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. However, a Lender shall not be eligible to apply for or receive entitlements with respect to Development of the Property for the Project, or otherwise be entitled to Develop the Property or devote the Property to any uses or to construct any improvements thereon, other than the Development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and entering into an Assignment and Assumption Agreement to assume of all obligations of LANDOWNER hereunder. No Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized Assignee under the provisions of Section 2.6 of this Agreement and Lender cures LANDOWNER's default to the CITY's satisfaction as provided in Section 8.3.

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8.2 **Notice of LANDOWNER's Default.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender within thirty (30) days of sending the notice of default to LANDOWNER a copy of the default notice.

8.3 **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed set forth in CITY's written default notice. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder under the terms of the Assignment and Assumption Agreement.

8.4 **Other CITY Notices.** If CITY receives notice from a Lender requesting a copy of any notice, including a notice of default, issued by CITY to LANDOWNER pursuant to the terms of this Agreement, a copy of said notices shall be sent to Lender at the address provided herein within thirty (30) days of sending the notice to LANDOWNER.

8.5 **Estoppel Certificates.** Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such estoppel certificate, or give a written detailed response explaining why it will not do so, within thirty (30) days following the receipt of each such request. Each Party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith, including Lenders. An estoppel certificate provided by CITY establishing the status of this Agreement with respect to the Property or any portion thereof shall be in recordable form and may be recorded at the expense of the Party requesting the certificate.

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9.0 MISCELLANEOUS PROVISIONS.

9.1 **No Joint Venture, Partnership, or Other Relationship.** Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and LANDOWNER. Each Party is acting as an independent entity and not as an agent of the other in any respect. No relationship exists as between CITY and LANDOWNER other than that of a governmental entity regulating the development of private property, and the owner of such private property.

9.2 **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and LANDOWNER, or LANDOWNER's successors in interest, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

Notice to the CITY: City of Sacramento
 915 I Street
 Sacramento, California, 95814
 ATTN: City Manager

Notice to NWLP: Northwest Land Park, LLC
 12275 El Camino Real, Suite 110
 San Diego, CA 92103
 ATTN: Randall Jenson

with copies to:
 Remy, Thomas, Moose and Manley LLP
 455 Capitol Mall, Suite 210
 Sacramento, CA 95814
 ATTN: Tina Thomas

and copies to:
 Foley & Lardner LLP
 402 West Broadway, Suite 2100
 San Diego, CA 92101
 ATTN: Richard Moskitis

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Notice to SETZER: Setzer Forest Products
2555 Third Street #200
Sacramento, CA 95818

with copies to:
Weintraub Genshlea Chediak
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
ATTN: Kenneth J. Sylva

Any Party may change the address to which notices are to be mailed by giving written notice of such changed address to each other Party in the manner provided herein.

9.3 **Integrated Documents/Entire Agreement.** This Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

9.4 **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 2.3. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, any portion thereof, prior to the termination date except as specified in Section 7.10.

9.5 **Precedence.** If any direct conflict or inconsistency arises between this Agreement and the Land Use and Development Regulations, or between this Agreement and a Subsequent Rule, the provision of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the Land Use and Development Regulations or the Subsequent Rule, except as provided in Section and 3.3 and 4.0.

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9.6 **Recording.** The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following the Effective Date. If the Sacramento County Recorder refuses to record any Exhibit, the City Clerk may replace it with a single sheet bearing the Exhibit identification letter, title of the Exhibit, the reason it is not being recorded, and that the original Exhibit, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the Sacramento County Recorder to the City Clerk.

9.7 **Referendum.** CITY shall not submit the Adopting Ordinance to a referendum by action of the City Council on its own motion without LANDOWNER's written consent. This Agreement shall not become effective if a referendum petition is filed challenging the validity of the Adopting Ordinance. If the Adopting Ordinance is the subject of a referendum, LANDOWNER shall have the right to terminate this Agreement for its convenience by providing written notice to CITY as provided in Section 9.2 not later than thirty (30) days after the referendum petition is certified as valid by the County elections officer, or such later time as allowed in writing by the City Manager. The Parties' obligation to perform under this Agreement shall be suspended pending the outcome of any such the referendum election.

9.8 **Construction.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve its objectives and purposes of the Parties. All Parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain, and shall be disregarded in the construction and interpretation of this Agreement.

9.9 **Time.** Time is of the essence of each and every provision hereof.

9.10 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.11 **No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Parties and their successors and Assignees, including Lenders. No Person who is not a qualified successor of a Party or an Assignee pursuant to Sections 2.6 and 8.1.3 of this Agreement, or who has not become a party by

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duly adopted amendment to this Agreement, may claim the benefit of any provision of this Agreement.

9.12 **Effect of Agreement Upon Title to Property.** In accordance with the provisions of Government Code Section 65868.5, from and after the time of recordation of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

9.13 **Survivorship.** The LANDOWNER's obligations arising under this Agreement pertaining to indemnity and attorneys fees as set out in Sections 2.7.5, 6.9, 6.11, 7.1 and 7.5, and LANDOWNER's rights and obligations regarding approved entitlements as set out in Section 7.10, shall survive the expiration, termination or cancellation of this Agreement.

9.14 **Covenant of Good Faith and Cooperation.** CITY and LANDOWNER agree that each of them shall at all times act in good faith and to cooperate with one another in order to carry out the terms of this Agreement. Any information which is readily available and required by one Party from the other Party in order to carry out that Party's obligations under this Agreement shall be provided to that Party within a reasonable period of time and at no cost.

9.15 **Prior Agreements.** There are no oral or written representations, understandings, undertakings or agreements between the Parties related to Development of the Property that are not contained in or expressly referred to in this Agreement, and any such representations, understandings, undertakings or agreements are superseded by this Agreement. No evidence of any such representations, understandings, undertakings and agreements shall be admissible in any proceeding of any kind or nature related to the terms and conditions of this Agreement, its interpretation or default. This Agreement is specifically intended by the Parties to supersede all prior written agreements, if any, for the Development of the Property which may exist between CITY and LANDOWNER, except as may be specified in the Special Conditions. The provisions of Sections 2.7.5, 6.9, 6.11, and 7.1 of this Agreement relating to indemnification and defense of CITY by LANDOWNER shall be applicable to any claim whatsoever against CITY by an Assignee or a third party arising out of or in any way relating to any existing or future agreement between the Parties, or between LANDOWNER and City Agency, relating to the Development of the Property.

9.16 **Power of Eminent Domain.** It is understood that LANDOWNER may be required by CITY to utilize its best good faith efforts to acquire certain parcels and land and rights-of-way which are not currently owned by LANDOWNER and necessary to

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construct the Public Facilities as required by CITY to serve the Project. Should it become necessary due to LANDOWNER's failure to acquire such lands and rights-of-way, the CITY shall negotiate the purchase of the needed land and rights of way to allow LANDOWNER or CITY to construct the Public Facilities that are required to be constructed by LANDOWNER or CITY to serve the Project under this Agreement. If necessary, in accordance with the procedures established by State law, CITY may use its power of eminent domain to condemn such lands and rights-of-way. LANDOWNER shall pay for CITY's costs associated with CITY's acquisition and condemnation proceedings unless such costs are paid through a Public Financing Mechanism or Development Fee. If CITY is unable or prevented from acquiring or condemning the necessary land and rights-of-way to enable LANDOWNER or CITY to construct the Public Facilities required under this Agreement, then the Parties will meet to negotiate the terms of an amendment to this Agreement, including, without limitation, changes to the Project Entitlements and LANDOWNER's Vested Rights. Nothing in this Section 9.16 is intended or shall be deemed to constitute a determination or resolution of necessity by CITY to initiate condemnation proceedings and nothing in this Section 9.16 or in this Agreement is intended or shall be construed to constitute a prohibition against CITY or City Agency to exercise its power of eminent domain to condemn LANDOWNER's Property.

9.17 **Counterparts.** This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the Parties has executed such a counterpart.

9.18 **Authority.** Each of the signatories to this Agreement represent that he or she is authorized to sign the Agreement on behalf of such Party, all approvals, ordinances and consents which must be obtained to bind such Party have been obtained, no further approvals, acts or consents are required to bind such Party to this Agreement, and he or she is signing to guarantee the performance of such Party's obligations under this Agreement.

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DATE ADOPTED: _____

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Agreement as of the dates set forth below.

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sabrina D. Gelbert
City Attorney

LANDOWNER: NORTHWEST LAND PARK, LLC

By: *Nathan S. Birchall*
Nathan S. Birchall,
Chief Financial Officer,
Northwest Land Park, LLC

Date: *8/15/11*

FOR CITY CLERK USE ONLY

CITY AGREEMENT NO. _____ ORDINANCE NO. _____
DATE ADOPTED: _____

LANDOWNER: THE CHY COMPANY

By: *G. Cal Setzer*

Name: G. Cal Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: THE CHY COMPANY

By: *Scott Setzer*

Name: Scott Setzer, Trustee, H.C. Setzer Administrative Trust

Title: General Partner

Date: August 16, 2011

LANDOWNER: THE CHY COMPANY

By: *Mark Setzer*

Name: Mark Setzer, Trustee, H.C. Setzer Administrative Trust

Title: General Partner

Date: August 16, 2011

LANDOWNER: CHY II, G.P.

By: *G. Cal Setzer*

Name: G. Cal Setzer

Title: General Partner

Date: August 16, 2011

Northwest Land Park Development Agreement

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Revision Date: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

LANDOWNER: CHY II, G.P.

By: *Scott Setzer*

Name: Scott Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: CHY II, G.P.

By: *Mark Setzer*

Name: Mark Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: COUSINS MARKET, LLC

By: *Mark Setzer*

Name: Mark Setzer

Title: Manager

Date: August 16, 2011

(ATTACH NOTARY ACKNOWLEDGMENTS)

Northwest Land Park Development Agreement

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Revision Date: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 8/15/11 before me, Michelle Wilcox
Date Here Insert Name and Title of the Officer

personally appeared Nathan Birchall, CFO
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Michelle Wilcox
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Sacramento }
 On Aug 16 2011 before me, Alice D Ward A Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared G. Cal Setzer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement Northwest, City CHX CHX
 Document Date: August 16 2011 Number of Pages: 104
 Signer(s) Other Than Named Above: G. Cal Setzer, Scott Setzer, Mark Setzer

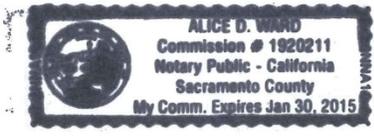
Capacity(ies) Claimed by Signer(s)

Signer's Name: <u>G. Cal Setzer</u> <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Partner — <input type="checkbox"/> Limited <input checked="" type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: <u>The CHX Company</u>	RIGHT THUMBPRINT OF SIGNER Top of thumb here	Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here
--	---	--	---

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Sacramento }
 On Aug 16 2011 before me, Alice D. Ward A Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared Scott Setzer and Mark Setzer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement, Purchase, Cont, CHX Cont
 Document Date: Aug 16 2011 Number of Pages: 104
 Signer(s) Other Than Named Above: Scott Setze, Mark Setzer, Oak Setzer

Capacity(ies) Claimed by Signer(s)

Signer's Name: <u>Scott Setzer AND MARK SETZER</u> <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input checked="" type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: <u>H.O. Setzer Admin Trust</u>	RIGHT THUMBPRINT OF SIGNER Top of thumb here	Signer's Name: _____ <input type="checkbox"/> Corporate Officer — Title(s): _____ <input type="checkbox"/> Individual <input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Attorney in Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____ Signer Is Representing: _____	RIGHT THUMBPRINT OF SIGNER Top of thumb here
--	---	--	---

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Sacramento }
 On Aug 16 2011 before me, Alice D. Ward, A Notary Public,
Date Here Insert Name and Title of the Officer
 personally appeared G. Cal Setzer, Scott Setzer, Mark Setzer
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

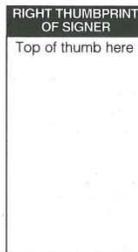
Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement, Northwest City, CH4 CH4
 Document Date: Aug 2011 Number of Pages: 104
 Signer(s) Other Than Named Above: Scott Setzer, Mark Setzer, G. Cal Setzer

Capacity(ies) Claimed by Signer(s)

Signer's Name: G. Cal Setzer, Scott Setzer, Mark Setzer Signer's Name: _____

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Individual
<input checked="" type="checkbox"/> Partner — <input type="checkbox"/> Limited <input checked="" type="checkbox"/> General
<input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee
<input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____
Signer Is Representing: <u>CH4 II</u> | RIGHT THUMBPRINT OF SIGNER
Top of thumb here
 | <input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Individual
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee
<input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____
Signer Is Representing: _____ | RIGHT THUMBPRINT OF SIGNER
Top of thumb here
 |
|--|--|--|--|

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Sacramento }
 On August 14, 2011 before me, Alice D. Ward, Notary Public
Date Here Insert Name and Title of the Officer
 personally appeared Mark Setzer
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement Northwest City, CA, CH, II

Document Date: August 14 2011 Number of Pages: 104

Signer(s) Other Than Named Above: Mark Setzer, Scott Setzer, Mark Setzer

Capacity(ies) Claimed by Signer(s)

Signer's Name: MARK SETZER Signer's Name: _____

Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____

Individual Partner — Limited General Individual Partner — Limited General

Attorney in Fact Attorney in Fact

Trustee Trustee

Guardian or Conservator Guardian or Conservator

Other: MANAGER Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

Cousins Market

EXECUTION PAGE FOR LENDER

_____, a _____ (herein "LENDER") owns an equitable interest in the Property described in Exhibit A of this Agreement as the beneficiary of that certain deed of trust and assignment of rents dated _____ and recorded on _____, as Instrument _____, in Book _____, Page _____, Official Records, Sacramento County, California.

LENDER hereby executes this Agreement and agrees to be bound by the terms and condition hereof, subject to the limitations set forth in Section 8.1.

LENDER requests that it be provided with copies of all notices mailed to LANDOWNER pursuant to the terms of this Agreement and that said copies be addressed as follows:

Attn: _____

LENDER:

By: _____

Name: _____

Title: _____

Dated: _____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT A

**DESCRIPTION OF LANDOWNER'S
PROPERTY**

THE PROPERTY CONSISTS OF PARCELS OF LAND DESIGNATED AS ASSESSOR PARCELS NOS. 009-0030-008-0000, 009-0030-019-0000, 009-0030-043-0000, 009-0030-045-0000, 009-0223-007-0000, 009-0223-012-0000, 009-0223-013-0000, 009-0223-016-0000, 009-0237-018-0000, 009-0270-009-0000, 009-0270-015-0000, 009-0270-017-0000, 009-0270-028-0000, 009-0270-029-0000, 009-0270-032-0000, 009-0270-033-0000, 009-0286-001-0000, 009-0286-012-0000, 009-0286-013-0000, 009-0286-014-0000, 009-0286-018-0000. THE PROPERTY IS LOCATED WITHIN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A-1 ATTACHED, WHICH IS INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT B

PROJECT DEVELOPMENT PLAN

SEE ATTACHED COPIES OF THE APPROVED ZONING MAP, SCHEMATIC PLAN,
AND TENTATIVE MAP EXHIBITS LABELLED AS EXHIBITS B- __.



Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE

ADOPTED: _____

NOTE: SUBSTANTIVE CHANGES TO THE ATTACHED MAPS AND PLANS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER § 2.3.3 OF THE AGREEMENT.

Northwest Land Park Development Agreement
Exhibits

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE

ADOPTED: _____

EXHIBIT C

PROJECT ENTITLEMENTS

THE FOLLOWING APPROVED ENTITLEMENTS FOR THE PROJECT, WHICH IS REFERENCED AS P -10-039, AND THE ORDINANCES, RESOLUTIONS, PERMITS AND FINDINGS AND CONDITIONS ATTACHED TO SUCH ENTITLEMENTS **AS OF THE EFFECTIVE DATE OF THIS AGREEMENT** ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: SUBSTANTIVE CHANGES TO THE FOLLOWING ENTITLEMENTS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER §2.3.3 OF THE AGREEMENT.

Commission or City Council	Date of Hearing	Description of Approved Entitlements	Ordinance, Resolution or Record of Decision	Conditions of Approval and Exhibits - Attached as:
				Exhibit C-1
				Exhibit C-2
				Exhibit C-3
				Exhibit C-4
				Exhibit C-5

Northwest Land Park Development Agreement Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT D

**FINAL ENVIRONMENTAL IMPACT REPORT
AND MITIGATION MEASURES**

THE RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT AND ADOPTING FINDINGS OF FACT, MITIGATION MONITORING PROGRAM, AND STATEMENT OF OVERRIDING CONSIDERATIONS WAS APPROVED BY THE CITY COUNCIL ON _____ BY RESOLUTION NO. _____.

THE ADOPTED MITIGATION MEASURES AS SET OUT IN THE MITIGATION MONITORING PROGRAM ARE INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

NOTE: IF THE CITY APPROVES ANY CHANGES (INCLUDING ADDITIONS) TO THE MITIGATION MEASURES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, THOSE CHANGES WILL BE INCORPORATED INTO THIS AGREEMENT WITHOUT THE NEED FOR AN AMENDMENT TO THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

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CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT E

[INTENTIONALLY OMITTED]



Northwest Land Park Development Agreement Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT F

[INTENTIONALLY OMITTED]

Northwest Land Park Development Agreement
Exhibits

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FOR CITY CLERK USE ONLY

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CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT G

PROTEST WAIVER PROVISIONS

LANDOWNER understands and agrees that financing and maintenance of the Public Facilities required under the Plans, Project Entitlements, special Condition, and Mitigation Measures may be accomplished through a variety of Public Financing Mechanisms, including, without limitation, a combination of special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), and Development Fees, all of which mechanisms are designed to spread the cost of the Public Facilities in accordance with benefit to the properties included in such Public Financing Mechanisms and other fee programs and methodologies. LANDOWNER further understands and agrees that an important component of this Agreement is LANDOWNER's advance consent to the formation of, or implementation of, any such Public Financing Mechanisms, and LANDOWNER's agreement not to protest or contest such formation, implementation or fee imposition.

Accordingly, LANDOWNER agrees for itself, its constituents, successors and assigns that it fully, finally, and forever waives and relinquishes any right it may have to protest or contest the formation or implementation of any Public Financing Mechanism to fund and maintain Public Facilities, together with any rights it may have to contest the imposition of any related fees, assessments, taxes, or other charges. Nothing in this Agreement, however, shall prevent LANDOWNER from presenting CITY any information or opinions regarding any Public Financing Mechanism that CITY may from time to time consider establishing or imposing, which information or opinions relate to the dollar amount of any fees, assessments, taxes or other charges imposed by CITY.

If a Public Financing Mechanism or Development Fee is proposed for adoption by CITY, which Public Financing Mechanism or Development Fee directly and significantly conflicts with the Nexus Study adopted by the City Council in connection with establishment of the financing mechanism or fee, LANDOWNER shall have the right to protest only the actual amount of the directly and significantly conflicting proposed fee, charge, special tax, or assessment proposed to be levied, charged, assessed or taxed against the Property by virtue of the proposed Public Financing Mechanism or Development Fee. However, LANDOWNER's right to protest, or object shall be waived unless LANDOWNER's protest or objection is made at or before the time of the public hearing wherein the proposed Public Financing Mechanism or Development Fee is established by the City Council.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

LANDOWNER shall not have the right, in connection with any land use entitlement proceeding with respect to the Property, to judicially challenge the Public Financing Mechanism or Development Fee, or the fees, charges, assessments or special taxes as applied to the Property or the Project for Public Facilities, and waives any statutory or common law right to withhold payment or to pay such fees, charges, assessment or special taxes under protest. For purposes of this Agreement, "fees, charges, assessments or special taxes" shall include any monetary exaction or payment required to be paid by LANDOWNER by virtue of or relating to Development of the Property.

Without limiting the generality of the foregoing, LANDOWNER for itself, its constituents, successors and assignees specifically, as to the Property, agrees to the following:

(1) Waives, and hereby grants advance consent to the formation and implementation of any and all special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), fee districts or other Public Financing Mechanisms of a similar nature recommended or established by CITY for the purpose of financing and maintaining Public Facilities .

Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 of the Streets and Highways Code, beginning at Section 2800), together with associated provisions of the California Constitution; (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism; and (iii) the provisions of any procedure embodied in the Sacramento City Code designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism.

(2) Waives, and hereby grants advance consent to the establishment or imposition of any and all Development Fees and special fees, exactions, development fees, assessments, taxes or other charges established by CITY for the purpose of financing and maintenance of Public Facilities. Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) to the extent applicable, those statutory and constitutional provisions specified in paragraph (1) above; and (ii) the provisions of Government Code Sections 66000, et seq., or any other provision of law providing a procedure for contest or protest of establishment or imposition of Development Fees, and special fees, exactions, development fees, assessments, taxes or other charges of a similar nature.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE

ADOPTED: _____

(3) Agrees to: (i) affirmatively petition CITY, where applicable, for the formation of all special districts and other Public Financing Mechanisms that have been or will be in the future selected or recommended by CITY ; (ii) execute an irrevocable proxy or proxies when necessary (such as in the formation of, or imposition of taxes relative to, a Mello-Roos Community Facilities District) authorizing a representative designated by CITY, who will vote in favor of establishing the specific Public Financing Mechanism in question; and (iii) execute immediately upon presentation any document which is required or convenient for the formation of the district or facilitation of the particular Public Financing Mechanism.

LANDOWNER agrees and specifically represents to CITY that it is fully aware of all of its legal rights relative to the waivers, advance consents and other agreements set forth herein, having been fully advised by its own independent attorneys. Having such knowledge and understanding of its rights, LANDOWNER has nevertheless voluntarily entered into the Agreement, of which this Exhibit is a material part. LANDOWNER is aware that CITY is relying on the representations contained in this Exhibit in entering into the Agreement.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT H

**MAP AND SUMMARY LISTING
OF LAND DEDICATIONS AND RESERVATIONS AND PUBLIC
FACILITIES TO BE CONSTRUCTED BY LANDOWNER**

A MAP OF THE APPROXIMATE LOCATION AND PURPOSES OF THE LAND DEDICATIONS AND RESERVATIONS IS ATTACHED AS EXHIBIT H-2.



Northwest Land Park Development Agreement Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT H-2

SUMMARY OF LAND DEDICATIONS, RESERVATIONS
AND CONSTRUCTION OF PUBLIC FACILITIES BY LANDOWNER

A. Streets (dedicated easements):

PUE adjacent to public streets
Dedication of public streets
PUE over private streets
Access easement over private alleys
Access easement over private Festival Way

B. Parks, Greenbelts, Trails, Plazas and other Public Open Space (dedications in fee):

Twenty foot wide public trail easement over trails, Setzer Run
Neighborhood park (+/- 4.3 acres)

C. Land for CITY and Public Agencies (by dedication or reservation):

Blanket PUE over residential lots, excepting building footprints (dedication)
Easement over residential lots for mail delivery boxes (dedication)
Storm drainage maintenance easement over detention basin (temporary) (dedication)

Northwest Land Park Development Agreement
Exhibits

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FOR CITY CLERK USE ONLY

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CITY AGREEMENT NO. _____

DATE

ADOPTED: _____

D. Public Facilities to be Constructed by LANDOWNER (dedicated in fee or easement as determined by CITY):

Tunnel (as described in Exhibit M Section G)
Setzer Run
Neighborhood park



Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT I
IRREVOCABLE OFFER OF DEDICATION FORM

SEE ATTACHED



Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

*Recording Requested by and Benefiting
the City of Sacramento, a Government Entity –
No Fee Required per Government Code 6103*

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Clerk
City of Sacramento
915 I Street
Sacramento, CA 95814

**IRREVOCABLE OFFER TO DEDICATE
(IN FEE OR EASEMENT)**

_____, a _____, (“GRANTOR”) hereby irrevocably offers to dedicate in (fee or easement) to the CITY OF SACRAMENTO, a municipal corporation (“CITY”), that certain real property (“Property”) in the City of Sacramento, County of Sacramento, State of California, described as follows:

See Exhibit “A”, legal description, and Exhibit “B”, exhibit map, attached hereto and made a part hereof.

GRANTOR, for itself, its successors and assigns hereby waives any claims for any and all damages which: (i) will accrue to the remaining property of the undersigned by reason of its severance from that portion the Property subject to this offer to dedicate, (ii) taking compensation, if any, or (iii) damages on account of the location, establishment, construction or operation of the public facilities to be located on the Property. The foregoing waivers shall include any and all rights or claims that GRANTOR may have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation. GRANTOR acknowledges for itself, its successors and assigns that it has been advised to seek the advice of counsel on the issue of waiver of severance and other damages, and has either done so or has chosen not to do so despite being given such advice.

GRANTOR acknowledges and agrees as follows:

1. This offer is given pursuant to Government Code Section 7050, and is irrevocable upon its recordation in the office of the County Recorder, County of Sacramento.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

2. This offer may be accepted at any time by the City Council of CITY. This offer may be terminated only in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.
3. CITY assumes no responsibility or liability whatsoever with respect to the Property or occurrences thereon, as a consequence of the offer set forth herein.
4. GRANTOR shall not create, nor permit to be created, any lien, encumbrance or other title impediment of any sort or nature on or affecting the Property.
5. At the time CITY accepts this offer, GRANTOR shall insure that the Property is free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except (a) easements or rights-of-way for public utilities, if any, and (b) item which CITY has expressly consented in writing, if any.
6. In the event that there are improvements upon the Property placed thereon either before or after this offer is recorded, GRANTOR shall have full legal responsibility, without cost to CITY, to remove such improvements, if this offer is accepted by CITY.
7. To the best of GRANTOR's knowledge, there are no notices or other information giving GRANTOR reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 8 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by CITY prior to acceptance of the offer.

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8. GRANTOR agrees and covenants to indemnify and defend CITY and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the presence, use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Property as long as the Property is used by CITY for the purpose for which it was dedicated. GRANTOR further agrees and understands that CITY does not, and shall not be deemed to, waive any rights against GRANTOR which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available to CITY. The provisions of this Section 8 shall survive the acceptance of the Property by CITY hereunder.

9. This offer is made by GRANTOR for itself, its heirs, successors and assigns, and shall be fully binding on such heirs, successors and assigns.

GRANTOR represents and warrants that the GRANTOR owns the entire fee interest in the Property and therefore has the legal right to execute this offer. The individual executing this offer on behalf of GRANTOR represents and warrants that he or she has been authorized to do so by GRANTOR and that GRANTOR shall thereby be obligated to perform the terms of this offer.

IN WITNESS WHEREOF, GRANTOR has executed this offer on the date set forth below.

GRANTOR(s):

By: _____
 Title:
 Print Name:

Date: _____

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DATE

EXHIBIT J
RESERVATION AGREEMENT FORM

SEE ATTACHED



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*Recording Requested by and Benefiting
The _____, a Government Entity –
No Fee Required per Government Code 6103*

Documentary Transfer Tax Not Required:
Revenue and Taxation Code §11922

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

RESERVATION OF REAL PROPERTY AGREEMENT

THIS RESERVATION AGREEMENT (herein "this Agreement") is entered into this _____ day of _____, 20____, (the "Effective Date") by and between _____ (herein "LANDOWNER") and _____ (herein "PUBLIC AGENCY").

RECITALS

A. LANDOWNER has entered into a Development Agreement (herein "the Development Agreement") dated _____, with the City of Sacramento, pursuant to which LANDOWNER agreed to develop certain property more particularly described in the Development Agreement located in the _____ Community Plan Area, subject to certain conditions and obligations set forth in the Development Agreement.

B. Pursuant to the Development Agreement, LANDOWNER is required to reserve a portion of the Property (herein "the Reservation Parcel") for the future development by PUBLIC AGENCY of specified public facilities.

C. The purpose of this Reservation Agreement is to specify the purchase price and schedule for acquisition of the Reservation Parcel.

AGREEMENT

NOW, THEREFORE, LANDOWNER AND PUBLIC AGENCY HEREBY AGREE AS FOLLOWS:

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1. Property Ownership

LANDOWNER hereby certifies that it is the owner in fee title of the real property situated in the City of Sacramento as depicted in Exhibit A, which is attached hereto and incorporated herein by this reference ("Property").

2. Consideration for Reservation

LANDOWNER's offer to reserve a portion of the Development Property for future sale to PUBLIC AGENCY as described herein is made in furtherance of a condition of approval by the City of Sacramento for LANDOWNER to develop the Property.

3. Reservation Parcel

Subject to the conditions set forth herein, LANDOWNER shall designate, set aside, and irrevocably offer to sell to PUBLIC AGENCY for _____ purposes a portion of the Property consisting of _____ as the Reservation Parcel, which is depicted on Exhibit A and described in Exhibit B, which is attached hereto and incorporated herein by this reference. In the event of a conflict between Exhibits A and B, Exhibit B shall prevail.

4. Purchase Price

In accordance with Government Code Section 66480, the purchase price for the Reservation Parcel shall be based on the fair market value of the property at the time of the filing of the tentative map that encompasses the Reservation Parcel, plus the taxes paid and any other costs incurred by LANDOWNER for the maintenance of the Reservation Parcel, including interest costs incurred on any loan covering the Reservation Parcel, from the date of filing of the referenced tentative map to the date of acquisition.

5. Documents and Agreements

At the time of filing the tentative map that encompasses the Reservation Parcel, the LANDOWNER shall provide PUBLIC AGENCY the following documents that were prepared within the prior six months: (i) an appraisal of the fair market value of the Reservation Parcel prepared by a licensed MAI appraiser, (ii) a phase I environmental site assessment of the Reservation Parcel, (iii) a preliminary title

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report for the Reservation Parcel, and a (iv) a form purchase and sale agreement for transfer of title to the Reservation Parcel.

6. Acquisition Schedule

In accordance with Government Code Section 66480, PUBLIC AGENCY shall have two years from the date of the filing of the final subdivision or parcel map that encompasses the Reservation Parcel, and such longer period if LANDOWNER is obligated to complete improvements to the Reservation Parcel and such improvements are not completed within the referenced two year period, to close escrow to acquire the Reservation Parcel. This period of time may be extended by mutual agreement of the parties.

7. Acquisition of Reservation Parcel

LANDOWNER shall negotiate with PUBLIC AGENCY in good faith to determine the fair market value of the Reservation Parcel, the purchase price, and reasonable terms and conditions of the purchase and sale agreement. PUBLIC AGENCY shall have the sole and absolute discretion to determine whether to purchase the Reservation Parcel at the price and based on the terms and condition in this Agreement and the documents referenced in Section 5, above. Nothing contained in this Agreement shall be construed as binding the PUBLIC AGENCY to purchase the Reservation Parcel.

8. Encumbrances and Improvements

From the date of this Agreement and until PUBLIC AGENCY acquires the Reservation Parcel, or provides written notice to LANDOWNER of PUBLIC AGENCY's determination to terminate this Agreement and release LANDOWNER from its obligation to set aside the Reservation Parcel for acquisition by PUBLIC AGENCY, LANDOWNER shall not construct or cause to be constructed on the Reservation Parcel: (i) any structures, including, without limitation, buildings, driveways, or signs; (ii) any utilities not existing on the Reservation Parcel as of the Effective Date of this Agreement; or (iii) the planting of any trees, although Reservation Parcel may be landscaped.

9. Hazardous Substances

To the best of LANDOWNER's knowledge, there are no notices or other information giving LANDOWNER reason to believe that any conditions existing on the Reservation Parcel or in the vicinity thereof subject or could subject an

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owner of the Reservation Parcel to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Reservation Parcel shall be governed by the provisions of Section 10 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by PUBLIC AGENCY prior to close of escrow.

10. Hazardous Substances Indemnity

LANDOWNER agrees and covenants to indemnify and defend PUBLIC AGENCY and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside or staff counsel), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property damage, or violation of any law or regulation resulting from any acts or omissions related to the presence, use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Reservation Parcel. LANDOWNER further agrees and understands that PUBLIC AGENCY does not, and shall not be deemed to, waive any rights against LANDOWNER which it may have by reason of the aforesaid indemnity and hold harmless agreement because of any insurance coverage available to PUBLIC AGENCY. The provisions of this Section 10 shall survive the transfer to title of the Reservation Parcel to PUBLIC AGENCY hereunder.

11. Notices

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the PUBLIC AGENCY and LANDOWNER or LANDOWNER's assigns and successors, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

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Notice to the PUBLIC AGENCY:

Notice to the LANDOWNER:

Notice to Lender:

Any party may change the address to which notices are to be mailed by giving written notice of such changed address to each other party in the manner provided herein.

12. Successors and Assigns

All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

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

LANDOWNER:

By: _____

PUBLIC AGENCY:

By: _____

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EXHIBIT K
ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED



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ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Assignment") is entered into this _____ day of _____, 20____, by and between _____, a _____ (hereinafter the "LANDOWNER"), and _____, a _____ (hereinafter "ASSIGNEE. The LANDOWNER and ASSIGNEE hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

A. LANDOWNER has entered into a Development Agreement with the City of Sacramento dated _____ (herein "the Development Agreement"), pursuant to which LANDOWNER obtained vested right to develop certain property as more particularly described in the Development Agreement (herein "the Property") for the project referred to as _____ (herein "the Project"), subject to LANDOWNER's compliance with certain conditions and obligations set forth in the Development Agreement.

B. LANDOWNER intends to transfer a portion of the Property to ASSIGNEE (herein the "Assigned Parcel(s)") under the terms of a written agreement between LANDOWNER and ASSIGNEE dated _____ (the "Exchange Agreement").

C. LANDOWNER has agreed to assign to ASSIGNEE, and ASSIGNEE has agreed to assume from LANDOWNER, all of the rights and obligations under the Development Agreement as they relate to the Assigned Parcel (s).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into the body of this Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Effective Date; Termination.** This Assignment shall be effective as of the "Closing Date," as defined in the Exchange Agreement (the "Effective Date"). In the event the Exchange Agreement terminates prior to the closing thereunder, this Assignment shall automatically terminate and the Parties shall have no further obligations hereunder.

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2. **Assignment and Assumption.** As of the Effective Date, LANDOWNER hereby assigns and transfers to ASSIGNEE any and all of LANDOWNER's rights under the Development Agreement as they relate to the Assigned Parcel(s), and ASSIGNEE hereby accepts and assumes all of the duties and obligations of LANDOWNER under the Development Agreement as they relate to the Assigned Parcel(s). ASSIGNEE hereby agrees to observe and fully perform all of the duties and obligations of LANDOWNER under the Development Agreement, and to be subject to all of the terms and conditions thereof, with respect to the Assigned Parcel(s).

3. **Assumption Terms and Conditions.** LANDOWNER and ASSIGNEE understand and agree that this Assignment is subject in particular to Section 2.6 of the Development Agreement, which reads as follows:

"2.6 **Assignment.**

2.6.1 **Right to Assign.** LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer or assignment. LANDOWNER's failure to provide such notice to CITY shall not invalidate such sale, transfer or assignment; however, any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without executing and delivering to CITY an Assignment and Assumption Agreement.

2.6.1.1 In addition, LANDOWNER shall be permitted to assign all or any portion of its interests under this Agreement without CITY consent and without formal notice requirements set forth in Section 2.6.1 by either:

(A) any of the following instances (collectively, "Permitted Affiliate Transfers"): (1) to, by or among members of NWLP or Setzer and (2) to new or additional development entities provided that majority control (51% or greater) of such entity (directly or indirectly through one or more intermediaries) remains with NWLP or Setzer ("Permanent Affiliates"). With respect to any Permitted Affiliate Transfer, such assignee shall assume all of Landowner's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and LANDOWNER shall be released from any

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continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.; or

(B) the assignment by any of the Setzer entities of all of its rights and interest in either Phase 2, 3 or 4 to NWLP, or to new or additional development entities, which constitute Permanent Affiliates as identified above ("Setzer Transfer"). With respect to any Setzer Transfer, such assignee shall assume all of Setzer's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and Setzer shall be released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.

2.6.2 Release. LANDOWNER shall remain obligated to perform all of terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, CITY shall release LANDOWNER from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

2.6.3 Assignees. The Assignee shall be obligated and bound by the terms and conditions of this Agreement if it executes the Assignment and Assumption Agreement, and shall be the beneficiary hereof and a party hereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to Assignee by LANDOWNER. The Assignee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred. CITY shall release Assignee from all duties, liabilities and obligations under this Development Agreement of LANDOWNER with respect to the interest(s) that are not sold, assigned or transferred to Assignee. Any such assumption agreement shall be deemed to be to the satisfaction of the City Attorney if executed substantially in form of the Assignment and Assumption Agreement attached hereto as Exhibit K and incorporated herein by this

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reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.”

4. **Assignee Development Agreement.** At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s) in accordance with the same terms and conditions as set out in the Development Agreement, subject only to those changes in the Development Agreement that are mutually agreed to by both City and ASSIGNEE, and subject to processing of the approval of that development agreement in accordance with City’s Procedural Ordinance.

5. **No Cross-Default.** The Parties acknowledge and agree that the respective obligations of LANDOWNER and ASSIGNEE under the Development Agreement shall be separate and independent from one another, such that a default by LANDOWNER of any of the LANDOWNER’s duties and obligations will not constitute a default under the Development Agreement by ASSIGNEE, and a default by ASSIGNEE of any of the ASSIGNEE’s duties and obligations will not constitute a default under the Development Agreement by LANDOWNER, and the City’s rights and remedies under the Development Agreement shall apply only to the Party, and the Property or Assigned Parcel(s), that is the subject of the default. Any duties and obligations under the Development Agreement that apply to both the Property and the Assigned Parcel(s) must be complied with by both LANDOWNER and ASSIGNEE, but as separate obligations.

6. **Successors and Assigns.** All of the covenants, terms and conditions set forth in this Assignment shall be binding upon and shall inure to the benefit of the Parties and to their respective heirs, successors and assigns.

7. **Legal Advice.** ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the duties and obligations set out in the Development Agreement to which ASSIGNEE is herby bound, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) LANDOWNER has furnished ASSIGNEE with a copy of all documents and materials containing or relating to terms and conditions of development of the Assigned Parcel(s); (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other public financing mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials, in addition to the express terms and conditions of the Development Agreement.

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8. **Representations; Entire Agreement.** ASSIGNEE hereby affirms and acknowledges that City has not made any representations, commitments or promises to ASSIGNEE that are contrary to or different from the express terms and conditions of the Development Agreement, unless such terms and conditions have been set forth in writing and approved by ASSIGNEE and the City Council prior to the execution of this Assignment. This Assignment contains the entire agreement of the Parties, no other understanding whether verbal, written or otherwise exists between the Parties, and no prior verbal or written communications regarding this Assignment shall be binding on any Party.

9. **Further Assurances.** The Parties agree to execute all such additional instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.

10. **Notices.** All notices required or provided for under this Assignment shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the other Parties and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party(ies) as indicated below:

Notice to the LANDOWNER:

Notice to the ASSIGNEE:

Notice to Lender:

Any Party may change the address to which notices are to be mailed by giving written notice of such changed address to each other Party(ies) in the manner provided herein.

11. **Governing Law.** The Assignment shall be governed by and construed in accordance with the laws of the State of California.

12. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by facsimile transmission) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date and year first above written.

By: _____
LANDOWNER

By: _____
ASSIGNEE

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EXHIBIT L
DESIGN GUIDELINES

THE NORTHWEST LAND PARK PLANNED UNIT DEVELOPMENT GUIDELINES (DESIGN GUIDELINES) DATED AS OF _____ AND APPROVED BY THE CITY COUNCIL ON _____ BY RESOLUTION NO. _____ ARE INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE AS IF SET FORTH IN FULL.

NOTE: SUBSTANTIVE CHANGES TO THE DESIGN GUIDELINES REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED, UNDER §2.3.3 OF THE AGREEMENT.

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**EXHIBIT M
SPECIAL CONDITIONS**

I. PURPOSE AND INTENT

The definitions applicable to the body of the Agreement shall apply to this Exhibit M.

Under no circumstances can Development of the Property proceed without satisfaction of the conditions specified in this Exhibit M. These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the Development of the Property for the Project, in addition to other obligations, requirements and conditions imposed as set out in the Agreement.

II. PARTIES' OBLIGATIONS

A. **Agreements With Public Agencies.** As required by CITY and subject to limitations as may be set forth in this Agreement, LANDOWNER shall enter into agreements with Public Agencies, including, without limitation:

1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District, for provision of Public Facilities, payment of fees and charges, and payment (if applicable) of any proportionate share of penalties imposed by the Environmental Protection Agency.

B. Parks and Open Space Development and Phasing.

Park Land Dedication. Pursuant to City Code Chapter 16.64, LANDOWNER shall satisfy its park dedication (Quimby) obligation of 5.0 acres per 1,000 people through the on-site dedication of a 4.32 acre± neighborhood park and payment of Quimby in-lieu fees for any remaining obligation. The neighborhood park dedication shall be made with the Final Subdivision Map for Phase 3. The Project shall satisfy its Quimby park dedication obligation on a Phase-by-Phase basis as set forth below. Any change in the sequence of development or in the boundaries of any of the Phases as shown on Map 1.D in the Design Guidelines shall constitute a substantive change in the Development Plan and this Agreement and shall be subject to Section 2.3 of this Agreement.

Phase 1. The total Quimby park dedication requirement for Phase 1 of the Project will be 2.214± acres, based on the development of 60 multi-family, 112 halfplex, and 29 single family residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by

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multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 1 (60) by 0.0088, which equals 0.528 acres; (2) the number of halfplex units in Phase 1 (112) by 0.0112, which equals 1.254 acres; and (3) the number of single family units in Phase 1 (29,) by 0.0149, which equals 0.432 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 1 through the payment of Quimby in lieu fees.

Phase 2. The total Quimby park dedication requirement for Phase 2 of the Project will be 1.652± acres, based on the development of 35 multi-family and 120 halfplex residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 2 (35) by 0.0088, which equals 0.308 acres; and (2) the number of halfplex units in Phase 2 (120) by 0.0112, which equals 1.344 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 2 through the payment of Quimby in lieu fees.

Phase 3. The total Quimby park dedication requirement for Phase 3 of the Project will be 2.30± acres, based on the development of 113 multi-family, 75 halfplex, and 31 single family residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 3 (113) by 0.0088, which equals 0.994 acres; (2) the number of halfplex units in Phase 3 (75) by 0.0112, which equals 0.840 acres; and (3) the number of single family units in Phase 3 (31) by 0.0149, which equals 0.462 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 3 through the dedication of a 4.32± net acre neighborhood park parcel as shown in the Project PUD Schematic Plan and Design Guidelines. Upon doing so, LANDOWNER will have exceeded its aggregate Quimby requirement for Phases 1, 2, and 3 and shall receive a credit for 2.02± net acres that shall be applied to Phase 4.

A temporary detention basin will be located in Phase 1 and will be removed on or before commencement of construction for Phase 2. The temporary detention basin will be located on a portion of the area that will ultimately be developed as the neighborhood park. LANDOWNER shall include the detention basin parcel in its Phase 3 tentative map, which shall include the neighborhood park site as one parcel.

Phase 4. The total Quimby park dedication requirement for Phase 4 of the Project will be 2.474± acres, based on the development of 136 multi-family and 114 halfplex residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of

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dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 4 (136) by 0.0088, which equals 1.197 acres; and (2) the number of halfplex units in Phase 4 (114) by 0.0112, which equals 1.277 acres. The 2.02± acre credit received with the dedication of the neighborhood park site with the Final Subdivision Map for Phase 3 shall be applied, leaving a park dedication requirement for Phase 4 of 0.454 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 4 through the 2.02± acre credit received with the Final Subdivision Map for Phase 3 and payment of Quimby in lieu fees for the remainder.

Community Investment: Use of Quimby Fees. LANDOWNER and CITY agree that Quimby in-lieu fees paid by LANDOWNER for the Project under this Agreement shall be utilized for community-serving recreational improvements and for development of the neighborhood park. Specifically, the Parties agree that LANDOWNER's Quimby in-lieu fees for the Project shall be applied in the following priority order to improve community serving recreation facilities: (1) on the adjacent school property which may include, but not be limited to, Jedediah Farms, an educational inner city farm utilizing sustainable green technology (see below for a detailed description of Jedediah Farms), or (2) the neighborhood park, or (3) other community parks or schools within a three mile radius of the Project site. Use of Quimby in lieu fees on school property shall be contingent on CITY receipt of a recreation easement over the school property to be improved with Quimby in lieu funds. The recreation easement will ensure that public use of the recreational improvements is protected in perpetuity. Consistent with City Code and the Park Development Impact Fee Nexus Study, as adopted in Resolution 1999-474 and as amended, Quimby in lieu fees shall not be used for the tunnel improvements and security features necessary to create a bicycle and pedestrian link to Front Street and Miller Park, nor for exterior, structural improvements to the shell of the Neighborhood Center.

Community Investment: Use of Park Development Impact Fees. LANDOWNER shall pay Park Development Impact Fees consistent with City Code and this Agreement. LANDOWNER and CITY agree that City shall utilize these fees in the following priority order: (1) to develop the neighborhood park, (2) on the adjacent school property which may include, but not be limited to Jedediah Farms, an educational inner city farm utilizing sustainable green technology (see below for a detailed description of Jedediah Farms), or (3) other community parks or schools within a three mile radius of the project site. Use of Park Development Impact Fees on school property shall be contingent on CITY receipt of a recreation easement over the school property to be improved with Park Development Impact Fee funds. The recreation easement will ensure that public use of the recreational improvements is protected in perpetuity. Consistent with City Code and the Park Development Impact Fee Nexus Study, as adopted in Resolution 1999-474 and as amended, Park Development Impact fees may not be used for the

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tunnel improvements and security features necessary to create a bicycle and pedestrian link to Front Street and Miller Park, nor for exterior, structural improvements to the shell of the Neighborhood Center.

Community Investment: Jedediah Farms. Jedediah Farms is envisioned as a vibrant small-scale working farm in an urban neighborhood setting. The proposed location of Jedediah Farms is a 2 acre Sacramento City Unified School District parcel, adjoining Jedediah Smith Elementary School. The farm will be intimately connected to the elementary school and a high school, city park, and nearby public housing community. The Parties intend the farm to become a showcase for urban farming practices, employing the principles of green technology, sustainability and safety; to provide opportunities for community and student education; to foster partnerships between the public and private sectors; and to positively engage both the students and the adjacent housing community. Participation by these stakeholders will generate a sense of "ownership" for the farm and is intended to increase daily school attendance, improve test scores, and create a greater sense of community pride.

Park Master Plan. Prior to recordation of a Final Map for Phase 3, LANDOWNER shall prepare a park master plan for the neighborhood park. Prior to recordation of a Final Map for Phase 2 and contingent upon CITY's receipt of a recreation easement over the school property to be developed, LANDOWNER shall prepare a master plan for Jedediah Farms. The master plans shall be prepared to the satisfaction of the Department of Parks and Recreation, Park Planning and Development Services (PPDS) and shall be submitted for review and shall be approved by PPDS, CITY's Parks and Recreation Commission and City Council. The neighborhood park master plan shall be designed to the appropriate neighborhood park standard as outlined in Table 18 of the City of Sacramento Parks and Recreation Master Plan 2005-2010 and as determined by PPDS. Park design shall comply with Crime Prevention through Environmental Design (CPTED) principles.

Park Development. LANDOWNER shall develop the neighborhood park and Jedediah Farms as 'turnkey' projects under a Credit/Reimbursement Agreement with CITY. LANDOWNER shall enter into a CITY standard form Credit/Reimbursement Agreement with the CITY prior to recordation of a Final Map for Phase 2 for Jedediah Farms, and prior to recordation of a Final Map for Phase 3 for the neighborhood park. The Credit/Reimbursement Agreement shall address (1) the preparation and approval of the park and farm design and improvement plans, (2) time of completion of the park and farm improvements, (3) any credits or reimbursement to be awarded to the LANDOWNER against the CITY's Park Development Impact Fee (PIF) that would be payable as a condition of issuance of building permits for the dwelling units to be constructed in the subdivision (4) any credits to be awarded to the LANDOWNER against the CITY's Quimby in lieu fees for future maps, and (5) maintenance of all improvements to be accepted into a maintenance financing district for a minimum of one

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year and until a minimum of 50% of the residential units to be served by the park have received final inspections or occupancy permits, unless the City agrees to accept park maintenance into the district at an earlier date. The maintenance period shall begin following the issuance by the CITY of a notice of completion for the improvements.

C. **Nonconforming Uses.** The Project is seeking a rezone to R4 for the residential development (see Exhibit C). Several existing uses and structures located within Phases 2 through 4, and within the area planned for R-4 zoning, do not conform to the land use regulations for the R-4 zone and, upon the Project's rezone to R-4, such uses will be considered "nonconforming uses" under Chapter 17.88 of the City's Zoning Code. CITY agrees to allow the following nonconforming uses in the R4 zone, upon the terms and conditions provided herein:

1. **Office Uses.** An existing office is currently located in Phase 4, APN 009-0237-018. LANDOWNER shall be permitted to continue to use the office for commercial purposes until such time as the LANDOWNER with legal ownership of Phase 4 (NWLP or Setzer, depending on market conditions) seeks building permits for residential construction on APN 009-0237-018, consistent with the Project Entitlements, Special Conditions, Mitigation Measures, and the terms of this Agreement. Issuance of a building permit for residential construction within Phase 4 shall not affect LANDOWNER's right to continue existing commercial and industrial operations in any other Phase.

2. **Industrial Uses.** Industrial buildings owned by Setzer are currently located in Phases 2, 3 and 4. LANDOWNER shall be permitted to continue using such buildings for industrial uses, regardless of any lapse in use, until such time as the LANDOWNER with legal ownership over Phase 2, 3 and/or 4 seeks building permits for residential construction for such Phase(s), consistent with the Project Entitlements, Special Conditions, Mitigation Measures, and the terms of this Agreement. Issuance of a building permit for residential construction within one Phase shall not affect LANDOWNER's right to continue existing commercial and industrial operations in any other Phase.

In the event LANDOWNER wishes to repair or remodel or, in the event of a fire or other natural disaster, reconstruct the existing nonconforming uses identified in Sections (C)(1) [office uses] and (C)(2) [industrial uses], above, CITY shall waive the requirements as set forth in Chapter 17.88 of the City Code and shall require LANDOWNER to obtain a building permit for necessary repairs, remodeling or reconstruction.

Nothing in this Agreement shall be interpreted to require operations in existing office/commercial and industrial buildings to be halted or interrupted until such time as

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LANDOWNER seeks building permits for residential construction for the Project consistent with the terms of this Agreement.

D. **Planned Densities.** Project density shall be calculated on a Project-wide basis, and not phase by phase. The actual densities approved for some of the Phases may be greater or less than the densities set forth in the Project Entitlements and Development Plan for each Phase (the "Planned Densities"), as provided in this Section D.

CITY and LANDOWNER agree that, in LANDOWNERS's discretion, LANDOWNER may file applications for Subsequent Approvals that propose densities that vary from the Planned Densities for each Phase and from the minimum and maximum density limits for the General Plan Land Use Designation for the project site, as long as (1) the proposed density is within the maximum density limits of the zoning designation of the project site, and (2) when combined with the density of all previously approved Phases and the range of permitted densities in future phases, is within the maximum and minimum density limits for the Project as a whole, as contained in the Development Plan and Project Entitlements.

If NWLP's election to increase or reduce the actual density for a Phase will impact density requirements for future Phases owned by Setzer, NWLP shall obtain written approval from Setzer consenting to such density increase or reduction prior to applying for a tentative map for the Phase to be developed at densities different than the Planned Densities.

The above notwithstanding, CITY may deny a Subsequent Entitlement if it determines that the proposed increase or decrease in density for a Phase will alter the character of the Project as described in the Design Guidelines and analyzed in the Project EIR, or that the proposed density will render infeasible development of any later Phase due to the resulting density required for that later Phase for the Project as a whole to conform with the Development Plan and Project Entitlements.

E. **Neighborhood Center.** LANDOWNER and CITY agree that a neighborhood center that would enhance and support the education and service needs of the community, and that may include uses such as health services, day care, and preschool, would be a positive addition to the Project and community. The location of the neighborhood center may include an existing brick building located in the center of the neighborhood park, which may be suitable for such adaptive reuse. LANDOWNER shall be responsible for all costs associated with preparation of a structural analysis of the building by a qualified professional to determine its suitability for public use, along with inspection of and remediation for any hazardous materials common to the age of the structure. LANDOWNER shall also be responsible for all improvements needed to

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enable LANDOWNER to deliver to CITY a structurally sound building, free of any hazardous materials, that meets current code standards as of the date the transfer of ownership is made, for public use by CITY or a CITY lessee.

F. **Tunnel.** An elevated section of I-5 is located immediately adjacent to the project site to the west, with a railroad tunnel and existing rail spur located beneath the freeway. (See Design Guidelines §1.5.2.) The existing rail spur connects the western boundary of the project site, via the tunnel under I-5, to Front Street and Miller Park. LANDOWNER would like to improve the tunnel to provide an important connection to Miller Park, the River and the Promenade; the bikeway tunnel will provide a key link to these amenities and an attractive means of travel for biking and walking to downtown and Old Sacramento. Tunnel improvements shall be designed in accord with CITY and State Department of Parks and Recreation. The State Department of Parks and Recreation (State Parks) is the current owner of the tunnel and rail spur. CITY shall work with LANDOWNER in good faith to acquire the railroad tunnel and rail spur from State Parks and to implement the tunnel improvements. In the event CITY and LANDOWNER cannot acquire the tunnel and rail spur from State Parks on terms reasonably acceptable to CITY and LANDOWNER, the obligations set forth in this Section II-G of the Special Conditions shall terminate.

In the event CITY and LANDOWNER are successful in acquiring the tunnel and rail spur from State Parks, CITY and LANDOWNER shall work together in good faith to identify and obtain mutually acceptable funding for the tunnel improvements. Funding for the tunnel improvements may not utilize Quimby in lieu fees or Park Development Impact Fees, but would instead be dependent upon grants, gifts, or other funding sources. LANDOWNER shall use its best efforts to commence construction of necessary improvements to the tunnel, including security features, on or before completion of Phase 4. All improvements, including safety features, are expected to be complete on or before completion of Phase 4. Upon completion of the improvements, CITY shall assume responsibility for maintenance of the tunnel and all related features, as part of its park maintenance obligations.

G. **Fair Share Mitigation.** Pursuant to mitigation measures required in the EIR, LANDOWNER shall pay its fair share of mitigation fees to CITY for the Project's impacts to peak hour operations at the I-5 NB off-Ramp/Broadway intersection.

Mitigation Measure 5.9-16 requires the applicant to pay its fair share toward the cost of installation of a traffic signal at the I-5 NB off-ramp/Broadway intersection. Payment shall be made at the time of approval of the final subdivision map for Project Phase 1. CITY and LANDOWNERS agree that LANDOWNERS' fair share fee for the traffic signal shall be 3% of the total traffic signal cost as determined by CITY at the time

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payment. As of the Effective Date, the estimated cost for this improvement is \$400,000. "Total traffic signal cost" shall include all costs associated with implementation of Mitigation Measure 5.9-16, including without limitation traffic signal installation, equipment, signing, striping, electrical and electrical conduit work, and the reconstruction of round corners if needed to accommodate signal mast arms and electrical cabinets.

Mitigation measure 5.9-15 requires the applicant to contribute its fair share toward restriping the southbound approach to the W Street/9th Street intersection to add an exclusive right-turn lane while maintaining the two existing through lanes and one existing shared through/right lane.

CITY agrees that mitigation measures 5.9-15 and 5.9-16 (discussed above) constitute LANDOWNER's total obligation to provide fair share mitigation for the Project's potential traffic impacts.

H. Special Limited Time Exemption from Certain Development Fees.

1. **Definitions.** For purposes of this Section H,

a. Development Fee means development impact fee (Government Code §66000 *et seq.*) or other development fee, as defined in Section 1.21.

b. Initial Exemption Period means year one through and including year five of the Initial Term of this Agreement.

c. Exemption Extension Period means the period commencing as of the last day of the Initial Exemption Period until December 31, 2018.

2. **Exemption.** Notwithstanding Section 4.7 of this Agreement, during the Initial Exemption Period, LANDOWNER shall not be subject to any new Development Fee imposed by CITY after the Effective Date.

Additionally, during the Exemption Extension Period, LANDOWNER shall not be subject to any new Development Fee imposed by CITY after the Effective Date if, prior to the end of the Initial Exemption Period, City has issued building permits for the construction of 300 or more residential units for the Project.

The exemption from the payment of Development Fees under this Section H applies only to Development Fees imposed by CITY and shall not apply to Development Fees imposed by a Public Agency which CITY is required or authorized to collect pursuant to Federal or State law, local ordinance, or agreement.

Northwest Land Park Development Agreement Exhibits

Revision Date: _____

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Exhibit B: Status of Contract Requiring Council Approval Form

Status of Contract Requiring Council Approval

** Form to be completed by City Attorney**

- [X] The contract is signed by the other party(ies), is approved as to form by the City Attorney, and is attached as an exhibit to the Resolution.

Contract Title Northwest Land Park Development Agreement

- [] The contract recommended for award by the City Council is for a public project (SCC Ch. 3.60); is NOT signed by the contractor; is in a form that the City Attorney will approve upon proper execution by the contractor; and is attached as an exhibit to the Resolution.

Contract Title

- [] The contract is with another governmental agency or agencies that require approval and execution by the City prior to execution by the other agency(ies). In this case, the contract is NOT signed by the other agency(ies), but is in a form that the City Attorney will approve upon proper execution by the agency(ies), and is attached as an exhibit to the Resolution.

Contract Title

- [] The contract is NOT signed by the other party(ies); however, due to special circumstances documented in writing by the Department presenting the contract, the City Attorney has confirmed in writing the legal propriety of the City Council approving and authorizing the action recommended. The unsigned contract:

Contract Title

- [] is attached as an exhibit to the Resolution
[] is NOT attached as an exhibit to the Resolution

General Comments

Agreement is attached to the Development Agreement Ordinance (Attachment 5).

Signature Field [Handwritten Signature]

Form Approved by City Attorney 12/31/10



RESOLUTION NO.

Adopted by the Sacramento City Council

CERTIFYING THE ENVIRONMENTAL IMPACT REPORT AND ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE NORTHWEST LAND PARK PROJECT (P10-039)

BACKGROUND

A. On July 14, 2011, the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve with conditions the Northwest Land Park Project.

B. On August 23, 2011, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(1)(a), (b), and (c) (publication, posting, and mail (500 feet) and received and considered evidence concerning the Northwest Land Park Project.

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

Section 1. The City Council finds that the Environmental Impact Report for Northwest Land Park Project (herein EIR) which consists of the Draft EIR and the Final EIR (Response to Comments) (collectively the “EIR”) has been completed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the Sacramento Local Environmental Procedures.

Section 2. The City Council certifies that the EIR was prepared, published, circulated and reviewed in accordance with the requirements of CEQA, the State CEQA Guidelines and the Sacramento Local Environmental Procedures, and constitutes an adequate, accurate, objective and complete Final Environmental Impact Report in full compliance with the requirements of CEQA, the State CEQA Guidelines and the Sacramento Local Environmental Procedures.

Section 3. The City Council certifies that the EIR has been presented to it, that the City Council has reviewed the EIR and has considered the information contained in the EIR prior to acting on the proposed Project, and that the EIR reflects the City Council’s independent judgment and analysis.

Section 4. Pursuant to CEQA Guidelines Sections 15091 and 15093, and in support of its approval of the Project, the City Council adopts the attached Findings of Fact in support of approval of the Project as set forth in the attached Exhibits A and B of this Resolution.

Section 5. Pursuant to CEQA section 21081.6 and CEQA Guidelines section 15091, and in support of its approval of the Project, the City Council adopts the Errata to the EIR as set forth in Exhibit D of this Resolution and the revised Mitigation Monitoring Program to require all reasonably feasible mitigation measures be implemented by means of Project conditions, agreements, or other measures, as set forth in the Mitigation Monitoring Program as set forth in Exhibit C of this Resolution.

Section 6. The City Council directs that, upon approval of the Project, the City's Environmental Planning Services shall file a notice of determination with the County Clerk of Sacramento County and, if the Project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to the provisions of CEQA section 21152.

Section 7. Pursuant to Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.

Section 8. Exhibits A to E are a part of this Resolution.

Table of Contents:

Exhibit A: CEQA Findings of Fact for the Northwest Land Park Project – 36 pages

Exhibit B: Table A to CEQA Findings – 34 pages

Exhibit C: Mitigation Monitoring and Reporting Program – 15 pages

Exhibit D: Errata to the EIR – 2 pages

Exhibit E: Figure “Minor Collector (5th Street)-Typical Cross Section and Plan” – 1 page

CEQA FINDINGS OF FACT

**OF THE CITY COUNCIL OF
THE CITY OF SACRAMENTO**

for the

NORTHWEST LAND PARK PROJECT (P10-039)

August 23, 2011

I. INTRODUCTION

The Environmental Impact Report (EIR) prepared for the Northwest Land Park Project (Project) addresses the potential environmental effects associated with constructing and operating the Project. These findings have been prepared to comply with requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). These findings refer to the Notice of Preparation (NOP) or Draft EIR (DEIR) where the material appears in either of those documents. Otherwise, references are to the Final EIR (FEIR).

CEQA generally requires that a lead agency must take reasonable efforts to mitigate or avoid significant environmental impacts when approving a project. In order to effectively evaluate any potentially significant environmental impacts of a proposed project, an EIR must be prepared. The EIR is an informational document that serves to inform the agency decision-making body and the public in general of any potentially significant environmental impacts. The preparation of an EIR also serves as a medium for identifying possible methods of minimizing any significant effects and assessing and describing reasonable alternatives to the project.

The EIR for this Project was prepared by the City of Sacramento (City) as the “lead agency” in accordance with CEQA and has been prepared to identify and assess the anticipated effects of the Project. The City, as the lead agency, has the principal responsibility for approval of the Project.

II. TERMINOLOGY OF FINDINGS

CEQA and the CEQA Guidelines require that, for each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of the three allowable conclusions:

1. Changes or alterations which avoid or mitigate the significant environmental effects as identified in the EIR have been required or incorporated into the project;
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and such changes have been adopted by such other agency or can and should be adopted by such other agency; or
3. Specific economic, legal, social, technological, or other considerations, including consideration for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the DEIR.

(Pub. Resources Code, § 21081, subd. (a)(1)-(3); CEQA Guidelines, § 15091, subd. (a)(1)-(3).)

For purposes of these findings, the terms listed below will have the following definitions:

- The term “mitigation measures” shall constitute the “changes or alterations” discussed above.
- The term “avoid or substantially lessen” will refer to the effectiveness of one or more of the mitigation measures or alternatives to reduce an otherwise significant environmental effect to a less-than-significant level.
- The term “feasible,” pursuant to the CEQA Guidelines, means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

When the City of Sacramento City Council (City Council) finds a measure is not feasible, it will provide evidence for its decision and may adopt substitute mitigation that is feasible, and designed to reduce the magnitude of the impact. In other cases, the City Council may decide to modify the proposed mitigation. Modifications generally update, clarify, streamline, or revise the measure to comport with current engineering practices, budget conditions, market conditions or existing City policies, practices, and/or goals. Modifications achieve the intent of the proposed mitigation without reducing the level of protection.

III. DEFINITIONS AND ACRONYMS

These findings use the same definitions and acronyms set forth in the EIR.

IV. PROJECT DESCRIPTION

A. PROJECT OVERVIEW

The Northwest Land Park Re-Use Alternative (the “Project”), would develop a residential/mixed-use community on approximately 31.7 acres within the Land Park and Central City Community Plan Areas. The Project, as adopted by the City Council, is the product of an iterative process in which the Council and staff have worked with the Project applicant to revise the originally proposed project to retain and rehabilitate a major portion of the existing brick Farmers Market building located on the Project site. The City’s goal in selecting a project alternative (the Re-Use Alternative) over the originally proposed project is to preserve the Farmers Market building and provide interior semi-permanent retail booths for produce, specialty foods, crafts, and regional and ethnic meals. In general, impacts associated with the Project as approved will be similar to impacts associated with the originally proposed project. (See, e.g., FEIR, vol. 1, p. 7-4 (Table 7-1) [establishing that the Re-Use Alternative would reduce impacts in six of the issue areas analyzed in the EIR and would not increase impacts associated with any issue analyzed in the EIR]; see also FEIR, vol. 1, pp. 7-5 to 7-11.)

Based on the originally proposed project, the EIR analyzed development of the following specific development components:

- 968 medium and high-density multi-family residences (up to 898 medium-density multi-family residences and up to 70 high-density multi-family residences);
- 15,000 square feet of commercial-retail uses on approximately 1.2 acres;
- Approximately 4.3 acres of park and public open space;
- Approximately 1.1 acres of private open space; and
- Approximately 5.9 acres of public rights-of-way.

The Re-Use Alternative was favored by a number of groups that submitted comments on the Draft EIR. For example, the Greater Broadway Partnership supported the alternative's additional on-site commercial and stated that "vibrant and desirable commercial and community uses such as these [proposed for the re-use alternative] would not only keep the history of the area alive, it would give the development a true sense of place." (FEIR, vol. 2, p. 4-32.) After release of the Draft EIR and the Final EIR, the Project applicant met with staff to discuss the possibility of adopting the Re-Use Alternative instead of the project as originally proposed. City Staff, with the applicant's support, made recommendations to the Planning Commission and to the City Council suggesting that the City consider the Re-Use Alternative as the Project. The Re-Use Alternative includes the following development components:

- 825 medium and high-density multi-family residences;
- 22,350 square feet of interior space in the Farmer's Market building for office, restaurant, and market uses (6,300 square feet of office space, 2,200 square feet of restaurant space, and 13,850 square feet of market space);
- Development of a neighborhood center within the existing 11,000 square foot bow-truss warehouse structure;
- 15,000 square feet of commercial-retail uses on approximately 1.2 acres;
- Approximately 4.3 acres of park and public open space;
- Approximately 1.1 acres of private open space; and
- Approximately 5.9 acres of public rights-of-way.

The Re-Use Alternative would be similar to the originally proposed project, but would modify Phase 2 of the originally proposed project to reuse portions of the existing brick Farmers Market building for market, restaurant, office, and neighborhood center uses. The market, restaurant, and office uses would be located on a portion of the project site designated for residential uses under the originally proposed project. The neighborhood center would be located in roughly the same location as the optional neighborhood center under the originally proposed project. This alternative would set the maximum number of dwelling units at 825, a reduction of 143 units as compared to the originally proposed project.

The Re-Use Alternative would develop a medium-density urban residential and mixed-use neighborhood within the existing Land Park neighborhood and the Downtown/Central City Sacramento urban center. As with the originally proposed project, the Re-Use Alternative's design would promote walking to services, biking, and

transit use and include public parks and open space to provide recreational opportunities for neighborhood residents. The site is in proximity to the major employment centers of downtown Sacramento, which would help reduce overall commuter traffic volumes. This alternative would also incorporate plans to recycle as much material as possible during the demolition and construction phases of the project. The residential and non-residential uses in this alternative would complement the existing established Land Park neighborhood.

B. THE PROJECT (RE-USE ALTERNATIVE)

The Project (the Re-Use Alternative) is an alternative project design that was analyzed in the EIR as a project alternative under CEQA. (FEIR, vol. 1, pp. 7-5 to 7-10.) Under the Re-Use Alternative, a major portion of the existing brick Farmers Market building would be retained and rehabilitated. The portion of the Farmer's Market building that would be re-used begins at the existing Market Club and extends east to 5th Street. Re-use of this Farmers Market building would provide approximately 22,350 square feet of interior space for office, restaurant, and market uses. The interior space would include 6,300 square feet of office space, 2,200 square feet of restaurant space, and 13,850 square feet of market space.

The market space would provide interior semi-permanent retail booths for produce, specialty foods, crafts, and regional and ethnic meals. The existing large exterior covered docks that extend along the existing brick Farmers Market building could house seasonal booths and provide all-weather outdoor spaces for gathering and picnicking. The proposed Festival Way (a private street) could be blocked off and programmed for short-term street fairs, art festivals, and other community gatherings with booths and venues spanning the entire block from 5th Street to the park.

The Re-Use Alternative also includes development of a neighborhood center within the existing 11,000 square foot bow-truss warehouse structure located within the area designated as the centrally located park. The neighborhood center is envisioned as a public amenity to host community gathering, continued education, and other indoor public gathering events.

In order to maintain the balance and ambience of the neighborhood, the maximum number of dwelling units under the Re-Use Alternative would be set at 825, a reduction of 143 units compared to the Project. The Re-Use Alternative would also be developed consistent with the City's 2030 General Plan designations as analyzed in Sacramento's 2030 General Plan Master EIR.

C. PROJECT SITE

The project site is bounded by Broadway Street on the north, 5th Street on the east, McClatchy Way on the south, and an elevated section of Interstate 5 (I-5) on the west. Existing uses on the project site include the currently active Setzer Forest Products plant and various produce storage and distribution facilities associated with the

Sacramento Farmers Market. Vehicular and pedestrian access points to the project site are provided by Broadway, 3rd Street, 5th Street, 1st Avenue, and McClatchy Way. The project site is predominantly covered with structures and impervious surfaces. Vegetation is sparse and controlled by weed abatement. Some maintained landscaping surrounds the existing Setzer office building at the northeast corner of 3rd Street and 1st Avenue. An existing rail spur connects the property, via a tunnel under I-5, to Front Street and Miller Park.

D. EXISTING AND PROPOSED LAND USE DESIGNATIONS AND ZONING

The City of Sacramento 2030 General Plan land use designations for the project site are Urban Neighborhood Medium Density and Urban Corridor Low. No changes to the General Plan land use designations are proposed. The “Urban Neighborhood Medium” designation applies to the majority of the project site and allows for minimum densities of 33 dwelling units per acre and maximum 110 dwelling units per acre. The Project (Re-Use Alternative) anticipates multi-family residential development at densities of approximately 38-40 dwelling units per acre. The General Plan designation “Urban Corridor Low” applies to the northernmost portion of the project site and allows minimum density of 20 dwelling units per acre and maximum 110 dwelling units per acre. The minimum floor area ratio (FAR) for mixed-use and nonresidential uses is 0.40 and the maximum FAR is 3.0. The Re-Use Alternative proposes mixed-use development on this portion of the site with a density of roughly 58 dwelling units per acre and a FAR of approximately 2.5.

Existing zoning consists of Heavy Commercial Zone (C-4), Light Industrial Zone (M-1), Heavy Industrial Zone (M-2), and Heavy Industrial Zone with Plan Review (M-2-R). The Re-Use Alternative proposes a rezone of the project site to change the zoning districts from C-4, M-1, M-2, and M-2-R to Multi-Family R-4 Zone (Planned Unit Development [PUD]), Limited Commercial C-1 PUD, and General Commercial C-2 PUD to achieve consistency with the 2030 General Plan. R-4 allows for maximum densities of 58 dwelling units per acre, and as discussed previously the Re-Use Alternative proposes multifamily residential development with densities of approximately 34 dwelling units per acre in this zone. C-2 is a general commercial zone that provides for residential development of up to 150 dwelling units per acre with a special permit and for the sale of commodities, or performance of services, including repair facilities, offices, small wholesale stores or distributors, and limited processing and packaging. Any nonresidential development in the C-2 zone that requires a discretionary entitlement shall also be subject to review for consistency with the commercial corridor design principles adopted pursuant to Section 17.132.180 and as they may be amended from time to time.

E. ADJACENT USES

An elevated section of I-5 is immediately adjacent to the site to the west, with a railroad tunnel located beneath the freeway that is owned by the State Department of Parks and Recreation.

Commercial and industrial uses, the City of Sacramento's Miller Park, and the Sacramento Marina are located beyond I-5 to the west. To the south of the site are Jedediah Smith Elementary School, Arthur A. Benjamin Health Professions High School, and properties owned by the Sacramento Housing and Redevelopment Agency. Commercial uses are located north of the project site, including the studio of the local ABC News 10 affiliate. To the east are commercial and light industrial uses.

F. PROJECT OBJECTIVES

The overarching goal of the Project is the orderly and systematic development of an integrated residential and mixed-use community that is consistent with the goals and policies of the land use designations within the City's 2030 General Plan. In support of this goal, the project applicant has developed the following project objectives.

- To develop a new, medium-density urban residential and mixed-use neighborhood reasonably close to the existing Downtown/Central City urban center consistent with the vision of the City for new residential development, as laid out in the 2030 General Plan's land use designations.
- To make efficient use of an opportunity for redevelopment of a developed site within the existing Land Park neighborhood and the Downtown/Central City Sacramento urban center.
- To design a development whose physical layout and land use mix promote walking to services, biking, and transit use.
- To incorporate public parks and open space into the project design in a manner that provides recreational opportunities for neighborhood residents and is aesthetically pleasing.
- To develop a residential community in proximity to the major employment centers of downtown Sacramento in order to help reduce the need for commuter travel.
- To recycle as much material as possible during the demolition and construction phases of the project.
- To develop a residential neighborhood that will complement the existing established Land Park neighborhood.

G. PROJECT PHASING

The project would be constructed in four phases. Construction is anticipated to begin in 2011 and continue through 2019. Each phase would be built to supply the infrastructure and stand-alone requirements for the land uses within that phase. Each phase would build the streets and block pattern infrastructure for that phase. The buildings would be designed for each block and lot within that phase. The timing of the permitting and construction of the subsequent phases would be dependent on market conditions.

H. REQUIRED DISCRETIONARY ACTIONS

The City of Sacramento requires the following discretionary actions for project approval:

- **EIR Certification.** Before the City can approve the Project, it must certify that the EIR was completed in compliance with the requirements of CEQA, that the decision-making body has reviewed and considered the information in the EIR, and that the EIR reflects the independent judgment of the City of Sacramento. Approval of the EIR also requires adoption of (1) Mitigation Monitoring and Reporting Program (MMRP), which specifies the methods for monitoring mitigation measures required to eliminate or reduce the Project's significant effects on the environment, (2) Findings of Fact, and (3) for any impacts determined to be significant and unavoidable, a Statement of Overriding Considerations. The EIR determined the Project will not result in any significant and unavoidable impacts, thus a Statement of Overriding Considerations is not required.
- **Rezone.** The Project requires a rezone of the project site to change the zoning districts from C-4, M1, M-2, and M-2-R to Multi-Family Zone (R-4), Limited Commercial Zone (C-1), and General Commercial Zone (C-2) to achieve consistency with the 2030 General Plan.
- **Development Agreement.** The City and applicant propose to enter into a development agreement, subject to City Council approval, for allocation of infrastructure costs, park dedication requirements, and various agreements.
- **PUD Designation and Development Guidelines.** The Project requires approval of a Planned Unit Development (PUD) designation. A PUD controls the development of land with specific regulations related to design. The purpose of a PUD is to provide greater flexibility in the design or development standards of integrated developments than is otherwise possible through strict application of zoning regulations. PUDs can include all or a portion of a residential neighborhood, an employment center, or a mixed residential/employment development.
- **Tentative Parcel Map.** The Project requires approval of a tentative map as part of Phase 1 of development entitlements.
- **Special Permits.** The Project requires special permits for condominium construction and development of approximately 58 dwelling units per acre in the C-2 zone.
- **Subdivision Modification.** The Project requires a subdivision modification for street modifications that are approved through the PUD process.
- **Tree Permit for Heritage Trees.** Prior to the removal, pruning, placement of chemicals, or disturbance of the soil within the drip-line of any heritage trees on the site, the City Urban Forestry Manager must first issue a permit to the applicant allowing such activities.
- **Water Supply Assessment.** Since the project would generate a demand for an amount of water required to supply at least 500 dwelling units, the City will be required to approve a water supply assessment prepared for the Project, and provide a written verification consistent with SB 610/221 requirements.
- **Grading Permit and Stockpile Permit.** The City regulates land disturbances, landfill, soil storage, pollution, and erosion and sedimentation resulting from construction activities. Prior to any earth disturbing activities, the project applicant will be required to obtain a permit from the City per the City's grading ordinance

(Sacramento City Code, Chapter 15.88). All grading must be done in compliance with the conditions of grading approval.

- **Limited Discharge to the Combined or Separated Sewer System.** Groundwater discharges to the Combined or separated sewers must be regulated and monitored by the Department of Utilities (DOU) (City Council Resolution #92-439). Limited Discharges are short groundwater discharges of 7-days duration or less and must be approved through DOU by acceptance letter.
- **Discretionary approvals from State Parks.** State Parks has discretionary authority associated with removal of rail spurs and related improvements that may be undertaken to develop the pedestrian tunnel.
- **Dewatering and Other Low-Threat Discharges to Surface Waters Permit.** Construction activities may involve short term dewatering during construction and discharge of groundwater to the City's CSS. If the discharge is part of a groundwater cleanup or contains excessive contaminants, Central Valley Regional Water Quality Control Board approval will be required.
- **Hazardous Materials Environmental Oversight.** Any environmental problems relating to hazardous materials detected on the project site may require oversight by the appropriate governmental agency (e.g., Department of Toxic Substances Control, County Division of Environmental Health Services).
- **Authority to construct and permit to operate.** The authority to construct and permit to operate is a document issued by Sacramento Metropolitan Air Quality Management District granting permission to build and then to operate equipment that will meet air quality standards. An authority to construct and permit to operate may be required for the Re-Use Alternative. Any business must obtain an authority to construct and permit to operate before installing or operating new equipment or processes that may release or control air pollutants to ensure that all AQMD rules and regulations are considered.

V. BACKGROUND

A number of comments on the Draft EIR expressed a preference for the Re-Use Alternative as compared to the Project. (See, e.g., FEIR, vol. 2, p. 4-32 ["we strongly support...incorporate[ing] the Wholesale Produce Building and Farmers Market and Market Club building into a community center, a year-round produce stand and an open air market".]) The City has carefully considered these comments. After review of the originally proposed Project, the Re-Use Alternative and all supporting documents relating to the Project, the City has selected the Re-Use Alternative as its preferred alternative. These findings will therefore refer to the Re-Use Alternative as the Project.

VI. ENVIRONMENTAL REVIEW PROCESS

In accordance with section 15082 of the CEQA Guidelines, the City released a Notice of Preparation (NOP) on May 5, 2010. The City circulated the NOP to public, local, state, and federal agencies, and other interested parties for a 30-day review period to solicit comments on the Project. The City also held a public scoping meeting on May 19, 2010.

Concerns raised in response to the NOP were considered during preparation of the DEIR.

The City published the DEIR for review by the public, local agencies, state agencies, federal agencies, and other interested parties on December 29, 2010 for a 48-day review period to solicit comments on the DEIR. This period satisfied the requirement for the public review period as set forth in Section 15105 of the CEQA Guidelines. The City received 12 comments during the comment period, and one comment following the close of the comment period. Volume 2 of the FEIR includes responses to all 13 comments.

In April of 2011, the City published the FEIR for the Project. The FEIR includes comments received on the DEIR, responses to significant environmental issues raised in the comments, and revisions to the text of the DEIR. The comments in the FEIR and the DEIR as revised by the FEIR constitute the EIR for the Project (the revised DEIR is contained in Volume 1 of the Final EIR; the responses to comments on the DEIR are contained in Volume 2 of the Final EIR). The City has complied with CEQA Guidelines section 15088(b) by making its proposed response to comments from public agencies available to the respective agency at least ten (10) days prior to certification of the EIR.

On July 14, the City prepared an Errata to the FEIR to address a revision to Mitigation Measure 5.6-2(b). The proposed change is equivalent or more effective than the mitigation measure that would be revised. This change would not result in new significant effects that have not been identified and evaluated in the EIR and would not require the need to recirculate the EIR under CEQA Section 15088.5.

VII. RECORD OF PROCEEDINGS

For the purposes of CEQA, and the findings herein set forth, the administrative record for the Project consists of those items listed in Public Resources Code section 21167.6, subdivision (e). The record of proceedings for the City's decision on the Project consists of the following documents, at a minimum, which are incorporated by reference and made part of the record supporting these findings:

- The NOP and all other public notices issued by the City in conjunction with the Project;
- The DEIR, FEIR, and mitigation monitoring and reporting program (MMRP) for the Project, technical appendices, and all documents relied upon or incorporated by reference;
- All comments and correspondence submitted by agencies or members of the public during the 48-day comment period on the DEIR, in addition to all other timely comments on the DEIR;
- The Planning Commission staff report, minutes of the Planning Commission public hearing, and the record of decision of the Planning Commission relating to the EIR and action on the Project;

- City Council staff report; minutes of the City Council public hearing; all ordinances, resolutions, and findings adopted by the City in connection with the Project; and all documents cited or referred to therein and all analyses and summaries submitted therewith;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the City, consultants to the City, or responsible or trustee agencies with respect to the City's compliance with the requirements of CEQA and with respect to the City's action on the Project;
- All documents submitted to the City by other public agencies or members of the public in connection with the Project, up through the close of the City Council public hearing on the project;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the City in connection with the Project;
- Any documentary or other evidence submitted to the City at such information sessions, public meetings and public hearings;
- The Development Agreement negotiated between the City and project applicant;
- The City's 2030 General Plan and Master EIR and all updates and related environmental analyses;
- Matters of common knowledge to the City, including, but not limited to Federal, State, and local laws and regulations;
- The City's Municipal Code;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

Pursuant to Guidelines section 15091(e), the administrative record of these proceedings is located at, and may be obtained from, the City's Community Development Department at 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811. The custodian of these documents and other materials is Tom Buford, Senior Planner.

VIII. FINDINGS REQUIRED UNDER CEQA

Public Resources Code section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]" The same statute provides that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of Projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects." Section 21002 goes on to provide that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof."

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before

approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a Project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR. The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines, § 15091.) Public Resources Code section 21061.1 defines “feasible” to mean “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors.” CEQA Guidelines section 15364 adds another factor: “legal” considerations. (See also *Citizens of Goleta Valley v. Bd. of Supervisors* (“*Goleta II*”) (1990) 52 Cal.3d 553, 565.)

The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) Moreover, “‘feasibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*Id.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

For purposes of these findings (including the table described below), the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level. These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Assn. v. City Council* (1978) 83 Cal.App.3d 515, 519-521, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question less than significant.

Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is “avoid[ed] or substantially lessen[ed],” these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant. Moreover, although section 15091, read literally, does not require findings to address environmental effects that an EIR identifies as merely “potentially significant,” these findings will nevertheless fully account for all such effects identified in the Final EIR.

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines, § 15091, subd. (a), (b).)

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons why the agency found that the project's "benefits" rendered "acceptable" its "unavoidable adverse environmental effects." (CEQA Guidelines, §§ 15093, 15043, subd. (b); see also Pub. Resources Code, § 21081, subd. (b).) The California Supreme Court has stated, "[t]he wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (*Goleta II, supra*, 52 Cal.3d at p. 576.) The City Council concurs with the conclusion in the EIR for the Northwest Land Park project that the project would not create any significant and unavoidable impacts; thus, no Statement of Overriding Considerations is required.

IX. LEGAL EFFECT OF FINDINGS

These findings constitute the City's best efforts to set forth the evidentiary and policy bases for its decision to approve the project in a manner consistent with the requirements of CEQA. To the extent that these findings conclude that various mitigation measures outlined in the Final EIR are feasible and have not been modified, superseded or withdrawn, the City hereby binds itself to implement these measures. These findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect when the City adopts a resolution approving the project.

X. MITIGATION MONITORING AND REPORTING PROGRAM

A Mitigation Monitoring and Reporting Program has been prepared for the Project, and is being approved by the City Council by the same Resolution that has adopted these findings. The City will use the Mitigation Monitoring and Reporting Program to track compliance with Project mitigation measures. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The Final Mitigation Monitoring and Reporting Program is attached to and incorporated into the environmental document approval resolution and is approved in conjunction with certification of the EIR and adoption of these Findings of Fact.

XI. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

The Draft EIR identified a number of potentially significant environmental effects (or impacts) that the Project will cause or contribute to. All of these significant effects can

be substantially lessened by the adoption of feasible mitigation measures. Therefore, a statement of overriding considerations is not required. In other words, the City need not consider whether overriding economic, social, and other considerations outweigh the significant, unavoidable effects of the Project, because the Project simply will not create any significant unavoidable effects.

A. Table of Impacts, Mitigation Measures and CEQA Findings

The City Council's findings with respect to the Project's significant effects and mitigation measures are set forth in the table attached to these findings. The findings set forth in the table are hereby incorporated by reference. This table does not attempt to describe the full analysis of each environmental impact contained in the Final EIR. Instead, the table provides a summary description of each impact, describes the applicable mitigation measures identified in the Draft or Final EIR and adopted by the City Council, and states the City Council's findings on the significance of each impact after imposition of the adopted mitigation measures. A full explanation of these environmental findings and conclusions can be found in the Draft and Final EIRs, and these findings hereby incorporate by reference the discussion and analysis in those documents supporting the Final EIR's determinations regarding mitigation measures and the Project's impacts and mitigation measures designed to address those impacts. In making these findings, the City Council ratifies, adopts, and incorporates into these findings the analysis and explanation in the Draft and Final EIRs, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of the Draft and Final EIRs relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

The City Council has adopted all of the mitigation measures identified in the table. Some of the measures identified in the table are also within the jurisdiction and control of other agencies. To the extent any of the mitigation measures are within the jurisdiction of other agencies, the City Council finds those agencies can and should implement those measures within their jurisdiction and control.

XII. GROWTH INDUCEMENT

CEQA requires a discussion of the ways in which a project could be growth inducing. CEQA also requires a discussion of ways in which a project may remove obstacles to growth, as well as ways in which a project may set a precedent for future growth. CEQA Guidelines Section 15126.2, subdivision (d), identifies a project as growth inducing if it fosters economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. New employees from commercial and industrial development and new population from residential development represent direct forms of growth. These direct forms of growth have a secondary effect of expanding the size of local markets and inducing additional economic activity in the area. Examples of development that would indirectly facilitate

or accommodate growth include the installation of new roadways or the construction or expansion of water delivery/treatment facilities.

Elimination of Obstacles to Growth

The project would be developed in an area that contains established land uses and supporting infrastructure (e.g., roads, water distribution, wastewater and drainage collection, and energy distribution). The City's 2030 General Plan includes redevelopment of this area of the City, which could intensify the uses relative to those now existing on the site. The existing infrastructure capacity could be an obstacle to this growth. Construction of the proposed project would tie into existing infrastructure, and would not require substantial modification and/or replacement of existing infrastructure in the project vicinity that would provide additional capacity to increase growth beyond that anticipated in the City's planning process.

An established transportation network exists in the project area that offers local and regional access to the project site. The existing roadways adjoining the site - Broadway, 5th Street, and McClatchy Way - all provide access to the project site. On-site circulation would be facilitated by construction of internal streets. No improvements to streets adjacent to the project site would be required in order to serve the increased population generated by the proposed project.

Water service to the project site would be provided by existing 8-inch mains in 3rd Street and existing water lines in 5th Street. A new 12-inch water line would be constructed with the project replacing an existing 8-inch main. This new 12-inch main would not increase the total capacity in the area, but would provide connections for the project in place of tapping the existing 42-inch main line.

Sanitary sewer from the project site would be conveyed to the existing 60-inch combined system lines in 5th Street. No new water or sewer mains other than those required to serve the project site would be constructed. Development of on-site water and sewer infrastructure to serve the project would not be sized to support any other development in the area.

Electricity and natural gas transmission infrastructure presently exists on and in the vicinity of the project site. Development of the project would necessitate the construction of an on-site distribution system to convey this energy to uses on the site.

None of the infrastructure improvements that would occur as part of the project would eliminate existing obstacles to growth, and the project would not induce growth beyond the levels anticipated in the City's 2030 General Plan.

Economic Effects

Increased future employment generated by resident and employee spending ultimately results in physical development of space to accommodate those employees. It is the characteristics of this physical space and its specific location that will determine the type

and magnitude of environmental impacts of this additional economic activity. Although the economic effect can be predicted, the actual environmental implications of this type of economic growth are too speculative to predict or evaluate, since they can be spread throughout the Sacramento metropolitan region and beyond. The indirect and induced employment from residences and commercial space within the proposed project would not be substantial in the context of the existing population and local economy.

Impacts of Induced Growth

Based on current estimates, the proposed project would increase the population within the city by approximately 1,900 residents. While growth in the Upper Land Park area of the city is an intended consequence of the proposed project, growth induced directly and indirectly by the proposed project could affect the greater Sacramento area. Potential impacts associated with induced growth in the area could include traffic congestion; air quality deterioration; loss of habitat and wildlife; impacts on utilities and services, such as fire and police protection, water, recycled water, wastewater, solid waste, energy, and natural gas; and increased demand for housing.

Specifically, an increase in population-growth-induced housing demand in the greater Sacramento region could cause significant environmental effects, as new residential development would require governmental services, such as schools, libraries, and parks. Indirect and induced employment and population growth would further contribute to the loss of open space because it would encourage conversion to urban uses for housing and infrastructure.

While the proposed project would contribute to direct, indirect, and induced growth in the area, the physical effects of that growth would likely be negligible. (FEIR, vol. 1, pp. 6-3 to 6-5.)

XIII. SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL EFFECTS

Section 15126.2(c) of the CEQA Guidelines requires a discussion of any significant irreversible environmental changes that would be caused by the proposed project. Section 15126.2(c) states:

Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible, since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also, irreversible damage can result from environmental accidents associated with the project. Irrecoverable commitments of resources should be evaluated to assure that such current consumption is justified.

Generally, a project would result in significant irreversible environmental changes if:

- the primary and secondary impacts would generally commit future generations to similar uses;
- the project would involve uses in which irreversible damage could result from any potential environmental accidents associated with the project;
- the project would involve a large commitment of nonrenewable resources; or
- the proposed consumption of resources is not justified (e.g., the project involves the wasteful use of energy).

Development of the proposed project would result in the continued commitment of the project site to urban development, thereby precluding any other uses within the project site for the lifespan of the project. Restoration of the site to a less developed condition would not be feasible, or practical, given the degree of disturbance, the urbanization of the area, location, and the level of capital investment.

The CEQA Guidelines also require a discussion of the potential for irreversible environmental damage caused by an accident associated with the project. While the project would result in the use, transport, storage, and disposal of some hazardous wastes, all future activities would be required to comply with applicable state and federal laws related to the use, storage, and disposal of hazardous materials, which significantly reduces the likelihood and severity of accidents that could result in irreversible environmental damage. Because the project site would be committed to residential and commercial uses, hazardous materials used would be generally confined to household hazardous materials such as cleaners, solvents, and pesticides.

The most notable significant irreversible impacts are increased generation of pollutants and the short-term commitment of non-renewable and/or slowly renewable natural and energy resources, such as water resources during both construction activities and project operation.

Resources that would be permanently and continually consumed once the project is completed include water, electricity, natural gas, and fossil fuels; however, the amount and rate of consumption of these resources would not result in the unnecessary, inefficient, or wasteful use of resources. Compliance with applicable building codes, mitigation measures identified for the project, planning policies contained in the 2030 General Plan, and standard conservation features would ensure that natural resources are used efficiently. It is likely that new technologies or systems will emerge in the future, or will become more cost-effective or user-friendly, to further reduce the reliance upon nonrenewable natural resources. Nonetheless, construction activities and project operation would result in the irreversible commitment of nonrenewable energy resources, primarily in the form of fossil fuels (including fuel oil), natural gas (heating), and gasoline/diesel for automobiles and construction equipment. (FEIR, vol. 1, pp. 6-1 to 6-3.)

XIV.

MITIGATION MEASURES/PROJECT ALTERNATIVES PROPOSED BY COMMENTERS

Some DEIR commenters suggested additional mitigation measures and/or modifications to the measures recommended in the Draft EIR. Some commenters advocated on behalf of the Re-Use Alternative analyzed in the Draft and Final EIR. In considering specific recommendations from commenters, the City has been cognizant of its legal obligation under CEQA to substantially lessen or avoid significant environmental effects to the extent feasible. In considering commenters' suggested changes or additions to the mitigation measures as set forth in the Draft and Final EIR, the City, in determining whether to accept such suggestions, either in whole or in part, has considered the following factors, among others: (i) whether the suggestion relates to an environmental impact that can already be mitigated to less than significant levels by proposed mitigation measures in the Draft EIR; (ii) whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace; (iii) whether the proposed language is sufficiently clear as to be easily understood by those who will implement the mitigation as finally adopted; (iv) whether the language might be too inflexible to allow for pragmatic implementation; (v) whether the suggestions are feasible from an economic, technical, legal, or other standpoint; and (vi) whether the proposed language is consistent with the Project objectives.

As is often evident from the specific responses given to specific suggestions, City staff and consultants spent substantial effort considering and weighing proposed mitigation language, and in many instances adopted much of what a commenter suggested. In some instances, the City revised mitigation measures in accordance with the comments. In other instances, the City developed alternative language addressing the same issue that was of concern to a commenter. In no instance, however, did the City fail to take seriously a suggestion made by a commenter or fail to appreciate the sincere effort that went into the formulation of suggestions. In fact, the City Council has adopted the commenter's suggestions to consider the Re-Use Alternative as the project. For purposes of these findings, the Re-Use Alternative is the "project" the City Council will consider adopting.

With respect to mitigation measures or alternatives proposed by commenters, the City adopts the following findings:

1. Several commenters suggested that the City adopt the Re-Use Alternative rather than the originally proposed project. Commenters cited, as an example, the following reason for this preferred alternative: "vibrant and desirable commercial and community uses such as these would not only keep the history of the area alive, it would give the development a true sense of place." (FEIR, vol. 2, p. 4-32.)

The City has carefully considered these comments and agrees that the Re-Use Alternative is superior to the proposed project due to its adaptive reuse of existing structures and incorporation of the project site's history into the

project design. In addition, the EIR determined the Re-Use Alternative was environmentally superior to the originally proposed project. The City Council adopts the Re-Use Alternative as the Project.

2. Some commenters urged the City to adopt mitigation measures to ensure the project design features included in the project's PUD Guidelines are implemented and greenhouse gas reductions are achieved. (See, e.g., FEIR, vol. 2, pp. 4-33; 4-48; 4-75.)

In response to these comments, the City added mitigation measure 5.4-1:

5.4-1 The following PUD Guidelines shall be incorporated into project design, as verified by City staff during design review:

- Choice of Mobility – The applicant shall allow for multiple modes of transportation including private automobiles, bicycles, and pedestrian mobility.
- Street Connectivity – The streets shall be designed on a modified grid with multiple connections to the surrounding roadway network.
- Pedestrian and Bicycle Connectivity – The applicant shall provide sidewalks on both sides along all streets, and a defined multi-use trail network. The applicant shall develop private pathways that provide pedestrian linkages within individual blocks and between community uses.
- Safe Environment – Streets shall be designed to be safe in terms of traffic mobility, diversity in users, and crime prevention. Climate Appropriate Plants – Trees, shrubs, and grasses shall be conducive to the Northern California environment in terms of water use, drought tolerance, maintenance, and durability. Synthetic Turf should be used for active play areas and small gathering lawns.
- Low Maintenance & Cost Effectiveness – Landscape material including trees, plants, turf, and hardscape should require minimal maintenance as compared to other varieties and material choices. Synthetic turf shall be used to the extent possible in lieu of natural turf and grasses. Materials should be cost effective to lessen the initial expenditure, periodic replacement, and long-term maintenance. Turf may be synthetic to lessen irrigation demands and long term maintenance.
- Standard Streetscape – The plantings along streets and the community trails shall consist mainly of species that at maturity will act as large canopy shade trees and colorful understory plantings. Nothing in this section shall be construed to require an initial planting larger than a 24" box tree.

- Alternative Local Streetscape - Landscaping along internal local streets shall be more lush and generous in plant coverage including primarily canopy shade trees to create a dynamic streetscape.
- Stormwater Management – The project will redevelop with smaller residential buildings interlaced within green courtyards, large central park and meandering greenbelt, and utilizing decorative permeable materials for private driveways and courts. The pervious to impervious ratio for Phase 1 (40% permeable to 60% Impermeable) will be used as a minimum guideline for the build-out of the entire site through Phase 4.
- Water Efficiency – All project landscaping shall be climate appropriate for the area and irrigated with moisture sensor driven systems to provide drought tolerance and maximum efficiency of water use in irrigation. Synthetic turf shall be used, to the greatest extent possible, for private grassed areas within the development.
- Vegetation & Forestation – Vegetation and tree planting plans shall be designed to provide shading for streets, hardscape surfaces, buildings, and recreation areas during summer months. In contrast, said plans shall include landscape varieties that lose their leaves during winter months to promote passive sunlight within the community, thus reducing energy use relating to heating and lighting.
- Air Quality – The project proposes that all buildings, units, and facilities, indoors and out, are free of devices designated to facilitate the combustion of wood or wood products to eliminate emissions generally associated with traditional fireplaces.
- Reuse and Recycling - The project shall re-use at least 50% of the salvageable materials in the existing improvements on-site, as measured by weight. This can take the form of re-use of entire structures, re-use or repurposing of significant elements, such as beams or trusses, and recycling materials within the new project such as grinding paving and asphalt for use as base material at the site. These activities will increase the sustainability of the site through reduced waste materials from demolition, reduced need for new materials on-site, and reduction of the ancillary transportation impacts from off-haul and delivery of materials to the site. Additionally, the project will evaluate brick, wood, metal, and masonry materials from the demolition to be re-manufactured into a “heritage” line of finishes to be offered as upgrades to the units. As an example, wood timbers would be converted into flooring material to provide the character and

cache of “distressed” lumber underfoot. These efforts will increase the amount of on-site materials reused sustainably within the project.

- Efficient Floor Plans - The Northwest Land Park community will be developed with compact efficient floor plans. In addition the majority of units will share wall/floor space, and thus thermal mass, with at least one other unit.
- Insulation – Building shall be designed with a high-efficiency thermal shell for the units with exterior walls at or above R25 for walls and R40 for ceilings.
- Climatization – Residential buildings shall use small high efficiency heating and cooling units.
- Lighting - Buildings shall use a LED or fluorescent lighting system throughout the units, allowing for energy efficient lighting.
- Exterior Lighting – Exterior HOA maintained lighting, including pathway lights, accent/landscaping lights, motor-court lights, and private street lights shall use LED lighting technologies.
- Water Heaters - The project shall provide high efficiency tank-less hot water heaters to provide for the most energy efficient delivery of hot water. Nothing in this provision shall preclude installation of high efficiency alternative energy source hot water heating and storage units.
- Electrical vehicle accommodations – The project shall incorporate 110v electrical outlets in the garage units such that they are readily accessible for use with electric vehicles.
- Renewable Energy Commitment - The project shall incorporate a 400 KW renewable energy system to reduce the amount of energy purchased by the Project. The 400 KW renewable energy will be incorporated over the life of the project such that a minimum of 100 KW will be incorporated into phase 1 with an aggregate total of 100 KWs per phase through the buildout of phase 4. The 400 KW system will result in an annual reduction of 730,000 kWh of purchased electricity at full project buildout. This is equivalent to the emissions from electrical consumption of approximately 188 dwelling units. The renewable energy system may include solar, wind, fuel cells, or other new technology that becomes available over the implementation of the project. The following are the commitments already made by the project to foster this renewable commitment:
 - Photovoltaic Design - The project shall be planned to orient at least 40% of the roof area of a minimum of 50% of the buildings to the

west, south or southwest so that photovoltaic panels and collector systems can provide maximum benefit when installed. The project shall work with the local utility and, through an aggressive sales program, encourage and provide solar systems and/or alternative energy systems as an option.

- Solar Orientation – The majority of the project’s buildings shall be designed to orient the roof tops with strong solar capture opportunities for photovoltaic panels throughout the community. The orientation of at least 40% of the roof area of at least 50% of the buildings shall be west, southwest, or south.
- Solar Energy – As indicated in the AQMP (measure M28), the NWLP Project has committed to the implementation of a solar energy system that will offset a minimum of 2.5% of the residential needs of the project.

XV. FINDINGS REGARDING RECIRCULATION OF THE DRAFT EIR

The City Council adopts the following findings with respect to whether to recirculate the DEIR. Under section 15088.5 of the CEQA Guidelines, recirculation of an EIR is required when “significant new information” is added to the EIR after public notice is given of the availability of the Draft EIR for public review but prior to certification of the Final EIR. The term “information” can include changes in the project or environmental setting, as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it.
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(CEQA Guidelines, § 15088.5.)

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. The above standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132.) “Recirculation was intended to be an exception, rather than the general rule.” (*Ibid.*)

The City Council recognizes that the Final EIR contains additions, clarifications, modifications, and other changes to the Draft EIR. As noted above, several comments on the Draft EIR either expressly or impliedly sought changes to proposed mitigation measures identified in the Draft EIR as well as additional mitigation measures. Commenters also urged the City to adopt the Re-Use Alternative. As explained in the Final EIR (Text Revisions), some of the suggestions were found to be appropriate and feasible and were adopted in the Final EIR, including the City’s consideration of the Re-Use Alternative as the preferred alternative. Where changes have been made to mitigation measures, these changes do not change the significance of any conclusions presented in the Draft EIR. The City’s decision to adopt the Re-Use Alternative as compared to the originally proposed project similarly does not change the significance of any conclusions presented in the EIR. The Re-Use Alternative was analyzed in the Draft EIR; any potential environmental impacts were disclosed and mitigation measures were imposed where appropriate.

CEQA case law emphasizes that “[t]he CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; see also *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 168, fn. 11.) “CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.’ [Citation.] In short, a project must be open for public discussion and subject to agency modification during the CEQA process.” (*Concerned Citizens of Costa Mesa, Inc. v. 33rd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 936.) Here, the changes made to mitigation measures and the determination to adopt the Re-Use Alternative are exactly the kind of project improvements that the case law recognizes as legitimate and proper.

The changes to the mitigation measures described in the Volume 2 of the Final EIR supplement or clarify the existing language. Thus, none of these changes involves “significant new information” triggering recirculation because the changes to the mitigation measures did not result in any new significant environmental effects, any

substantial increase in the severity of any previously identified significant effects, or otherwise trigger recirculation. Instead, the modifications were either environmentally benign or environmentally neutral, and thus represent the kinds of changes that commonly occur as the environmental review process works towards its conclusion. Under such circumstances, the City finds that recirculation of the EIR is not required.

XVI. PROJECT ALTERNATIVES

A. BASIS FOR ALTERNATIVES

CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where significant environmental impacts will not occur.

As is evident from the text of the EIR and the attached table describing the disposition of the significant effects of the Project, all significant effects of the Project have been at least substantially lessened, if not fully avoided, by the adoption of feasible mitigation measures. There are no impacts that remain as significant and unavoidable and which cannot be substantially lessened. Thus, as a legal matter, the City Council need not consider whether any alternative is environmentally superior. Nevertheless, as discussed throughout these findings, the City Council has elected to consider adopting the Re-use Alternative as the Project, which the FEIR identifies as the environmentally superior alternative. (FEIR, Vol. 1, p. 7-14 [“other than the No Project/No Development Alternative, the environmentally superior alternative would be the Adaptive Re-Use Alternative”].)

Project alternatives are developed to reduce or eliminate the significant or potentially significant adverse environmental effects identified as a result of the proposed project, while still meeting most if not all of the basic project objectives. Relying on the Master EIR for the 2030 General Plan as addressing cumulative effects, growth-inducing effects, and irreversible effects on the environment, the FEIR identified no additional significant effects that were not addressed as significant in the Master EIR. Mitigation measures have been identified for any project-specific effects that were identified as significant, reducing such effects to a less-than-significant level. Notwithstanding the absence of significant and unavoidable effects, for informational purposes the FEIR included an analysis of alternatives to the project that could be developed consistent with the existing 2030 General Plan designations, as well as an alternative that considers no new development of the site. The selection of alternatives also considered the applicant’s project objectives. (See FEIR, vol. 1, pp. 7-1 to 7-2.)

B. ALTERNATIVES CONSIDERED AND DISMISSED FROM FURTHER CONSIDERATION

As noted above, the project as proposed would not result in impacts that could not be reduced to less than significant, so the alternatives discussed in the EIR were developed to provide a comparative analysis of the manner in which the project site could be developed consistent with the 2030 General Plan designations for the site. The City considered a number of alternatives to the proposed project, but certain alternatives were rejected from further consideration. The following alternatives were considered but rejected from further analysis for the reasons discussed below.

- **Off-Site Alternative.** The off-site alternative was rejected from further consideration because the project applicant does not control any off-site properties that could accommodate the project, and due to the infill nature of the project, the potential locations are developed with urban uses. Because the existing land uses on the project site do not conform to the current land use designations, it is likely that the project site would be developed in the future. Consequently, the on-site impacts avoided by an off-site alternative would likely occur in the future and would be in addition to those of construction and operation of the project at an off-site location.
- **Reduced Footprint Alternative.** Reducing the footprint of the project would reduce the ground disturbance effects of the project. A reduced footprint alternative would result in the elimination of some, or perhaps all of the existing uses on the site to accommodate the project. Because the project site is currently committed to uses that differ from the underlying 2030 General Plan land use designations, it is likely that the portion of the site not developed now would be developed at some point in the future. Therefore, a reduced footprint alternative would likely lead to eventual full development of the site, eliminating any potential environmental benefit of the alternative.
- **Reduced Intensity Alternative.** The 2030 General Plan land use designations on the project site allow a minimum of 33 dwelling units per acre (DU/acre) and a maximum of 110 DU/acre. The project anticipates development of the site at an overall density of approximately 38-40 dwelling units per acre, which is already at the lower end of the allowable density under the 2030 General Plan. Development at 33 DU/acre would not result in a substantial reduction in effects compared to the proposed project. A reduction in density below the 33 DU/acre minimum density, though it could result in a reduction of impacts compared to the proposed project, would not be consistent with vision of the site expressed in the 2030 General Plan and would be inconsistent with the City's efforts to encourage infill development.
- **Maximum Allowable Density Alternative.** The maximum allowable density on the project site is 110 DU/acre. While such a development would be consistent with the 2030 General Plan, it would result in impacts that substantially exceed those of the proposed project and could result in impacts that are significant and unavoidable.

(FEIR, vol. 1, p. 7-2.)

C. ALTERNATIVES CONSIDERED IN THE EIR

Although any number of alternatives could be designed that could be consistent with the 2030 General Plan and the project objectives for the proposed project, the DEIR and FEIR evaluated the No Project Alternative and two other scenarios that are consistent with the 2030 General Plan designations. These alternatives are briefly described below.

- **No Project/No Development Alternative.** Section 15126.6 (e)(1) of the State CEQA Guidelines requires that a “no project alternative” be evaluated in comparison to the proposed project. The No Project/No Development Alternative is defined in this section as the continuation of the existing condition of the project site. This alternative assumes that the proposed project would not be built and there would be no new development of the site. This alternative assumes the existing buildings and uses on the site would remain.
- **Adaptive Re-Use Alternative.** As discussed throughout these findings, this alternative is being considered by the City as the preferred alternative/proposed project. This alternative is similar to the originally proposed project, but would modify Phase 2 of the originally proposed project to reuse portions of the existing brick Farmers Market building for market, restaurant, office, and neighborhood center uses. The market, restaurant, and office uses would be located on a portion of the project site designated for residential uses under the originally proposed project. The neighborhood center would be located in roughly the same location as the optional neighborhood center under the originally proposed project. This alternative would set the maximum number of dwelling units at 825, a reduction of 143 units as compared to the original project.
- **Increased Intensity Alternative.** This alternative assumes a density halfway between the minimum and maximum allowable under the General Plan: 71.5 DU/acre for a total of 2,267 residential units. While development under this alternative is denser than the originally proposed project and the Re-Use Alternative project and would result in more environmental effects than the original project and the Re-Use Alternative, this alternative is consistent with the 2030 General Plan and provides an example of what could be developed on the site.

Each of the alternatives is described in more detail, below, followed by an assessment of the alternative’s impacts relative to the proposed project.

ALTERNATIVE 1: NO PROJECT/NO DEVELOPMENT

Because the existing buildings would remain, there would be no change in the visual character of the area. There would be no impacts on biological resources as a result of construction and operation associated with redevelopment of the site. No buildings on the site would be demolished and, therefore, there would be no impacts on historical resources. There would be no potential impacts on archaeological resources resulting from construction-related earth disturbance. Project impacts related to air quality, noise, and vibration, geology and soils, hydrology, and hazardous materials would not occur under this alternative. There would be no change to operational air emissions or noise, because there would be no new development or traffic. Demand for public services and utilities would not change from uses that currently exist on the project site. There would be no transportation-related impacts under the No Project Alternative because there would be no new trips. Therefore, there would be no significant and unavoidable impacts under this alternative.

Mitigation That Would No Longer Be Required.

None of the mitigation measures identified in this FEIR would be required under the No Project/ No Development Alternative.

Significant and Unavoidable Impacts That Would No Longer Occur.

No significant and unavoidable impacts would occur under the No Project/No Development Alternative.

Relationship of the No Project/No Development Alternative to the Project Objectives.

The No Project/No Development Alternative would not achieve any of the project objectives. Moreover, the alternative is not consistent with the General Plan.

(FEIR, vol. 1, pp. 7-4 to 7-5.)

ALTERNATIVE 2: ADAPTIVE RE-USE ALTERNATIVE

As discussed throughout these findings, the applicant and City Staff recommend that the City Council consider the Re-Use Alternative as the preferred alternative/project.

This Alternative would modify Phase 2 of the originally proposed project to reuse portions of the existing brick Farmers Market building. A major portion of the existing brick building would be retained and rehabilitated for contemporary use with interior space totaling approximately 22,350 square feet. The interior space would include 6,300 square feet for office space, which could include conference/meeting rooms for uses such as homeowner's association meetings; 2,200 square feet for restaurant uses; and 13,850 square feet as a market. The portion of the building proposed for the office, restaurant, and market uses begins at the existing Market Club and extends east to 5th Street.

The 13,850-square-foot portion of the existing brick building would be renovated to house a year-round market with occasional street festival intended to serve as a focal point for Northwest Land Park. This portion of the building could be adapted to provide interior semi-permanent retail booths for produce, specialty foods, crafts, and regional and ethnic meals. The existing large exterior covered docks that extend along the existing brick Farmers Market building could house seasonal booths and provide all-weather outdoor spaces for gathering and picnicking. The proposed Festival Way (a private street) could be blocked off and programmed for short-term street fairs, art festivals, and other community gatherings with booths and venues spanning the entire block from 5th Street to the park. While the existing brick Farmers Market building is not considered an historical resource pursuant to CEQA, adaptive re-use of the building could provide contextual character, represent sustainable re-use practices, and create community oriented gathering spaces. Rehabilitation of the building would follow all applicable City standards, as modified by the adopted Northwest Land Park PUD Guidelines, and be fully permitted both for rehabilitation and for the ultimate uses.

The approximately 11,000-square-foot bow-truss warehouse structure would be renovated to serve as a neighborhood center. The warehouse building is located within the area designated in the originally proposed project as the centrally-located park and is proximate to the area considered for the optional neighborhood center under the originally proposed project. Under this Alternative, the building would include the uses described in the EIR for the optional neighborhood center.

Under this Alternative, the residential area (planned for 24 units) south of Festival Way in Phase 2 of the originally proposed project would no longer be used for residential purposes. The 13,850 square feet of retail market, 2,200 square feet of restaurant, and 6,300 square feet of office uses proposed under this Alternative are of a higher intensity than the 24 residential units proposed as part of the original project. In order to maintain the balance and feel of the neighborhood, the maximum number of dwelling units under this alternative would be set at 825, a reduction of 143 units compared to the proposed project as originally studied in the EIR. In addition, because the area south of Festival Way in Phase 2 would consist of a private street festival/market and would house predominantly semi-permanent and transient retail uses, including produce, prepared food, specialty food, and arts and crafts booths, the amount of square footage dedicated to retail uses would increase from none under the original project to approximately 13,850 square feet under this alternative. Park uses would be the same as the originally proposed project under this alternative. Under this alternative, there would be a slight reduction in the amount of open space to provide community connectivity, because Setzer Run would be narrowed to an eight-foot-wide multi-use trail incorporated as the northern walk of the enhanced Festival Way through to 5th Street.

Suggested hours of operation for restaurant and retail market uses under this alternative would be 10:00 a.m. to 8:00 p.m. weekdays, 8:00 a.m. to 8:00 p.m. Saturdays, and 9:00 a.m. to 6:00 p.m. Sundays. CC&Rs would be adopted to include hours of operation and other measures to reduce potential effects from crowds and

noise. Parking for uses under this alternative would be provided consistent with City regulations, as modified by the adopted Northwest Land Park PUD Guidelines.

Comparative Environmental Effects

The Adaptive Re-Use Alternative would result in a reduction in residential units compared to the originally proposed project and re-use of some onsite buildings, which could shorten construction time and thereby reduce the overall construction-related air pollutant emissions compared to the originally proposed project. However, it is anticipated that the intensity of daily construction activities would be similar to the original project and, with compliance with applicable Sacramento Metropolitan Air Quality Management District (SMAQMD) guidelines, this alternative would not exceed thresholds. Operational air pollutant emissions for this alternative would be less than the original project's and would be below the SMAQMD's oxides of nitrogen (NO_x) and reactive organic gases (ROG) thresholds without the implementation of the air quality management plan (AQMP). With the implementation of the AQMP, NO_x and ROG emissions would be further reduced. This alternative would reduce traffic compared to the originally proposed project and, therefore, would reduce carbon monoxide (CO) emissions further below the regulatory threshold. Because the Adaptive Re-Use Alternative would place residential receptors within 500 feet of the adjacent freeway, this alternative, as with the original project, would need to implement Mitigation Measure 5.1-2. Implementation of all of the project features and mitigation measures required for the originally proposed project would result in less than significant impacts for criteria pollutants and toxic air contaminants (TAC) for the Adaptive Re-Use Alternative.

Because the Adaptive Re-Use Alternative would develop the same area as the original project, and would also be required to comply with the City Ordinances that protect trees, this alternative would result in the same less-than-significant impact on protected trees. Similarly, because the ground disturbance under this alternative would be the same as the original project, the potential for discovery of previously undiscovered significant archaeological resources and human remains would be the same as the originally proposed project. Mitigation Measure 5.3-2 would also be required for this alternative to reduce potential effects due to the potential discovery of previously undocumented archaeological resources and human remains.

The Adaptive Re-Use Alternative, like the originally proposed project, would result in a net increase of greenhouse gas (GHG) emissions on the project site due to the replacement of existing uses. However, the Adaptive Re-Use Alternative would result in less GHG emissions than the original project. Further, with the incorporation of the project design features, the Adaptive Reuse Alternative would reduce emissions by more than 34 percent (nearly 5 percent greater reduction than the originally proposed project) and would be in compliance with the AB 32 reduction requirements. Therefore, as with the original project, the incremental contribution of GHG emissions would have a less-than-significant impact.

Historical uses on the site have resulted in areas of contaminated soil and groundwater, which are currently the subject of remediation with oversight from agencies such as the

Sacramento County Environmental Management Department and Department of Toxic Substance Control. It is assumed that the remediation efforts on the site would continue regardless of the project to be developed, consequently, effects related to hazardous materials would be the same for this alternative as the original project.

Because the Adaptive Re-Use Alternative would result in fewer residential units than the originally proposed project, this alternative would generate a reduced demand for parks compared to the originally proposed project and its impact on parks would be less than that of the originally proposed project. Sacramento City Code requires that new residential projects dedicate land, pay in-lieu fees, or otherwise contribute a fair share to the acquisition and development of parks or recreation facilities to meet the service level goals. Therefore, like the originally proposed project, this alternative would require the acquisition of additional parkland, but would also be required to comply with the City Code to ensure that adequate parkland is provided.

The Adaptive Re-Use Alternative would generate the demand for fewer fire fighters and police officers than the original project, because there would be fewer residential units under this alternative. Like the originally proposed project, payment of development fees would ensure adequate service would be provided. Because this alternative would result in fewer residential units, it would also generate fewer students who would attend local schools. Similar to the original project, however, payment of required school impact fees would ensure impacts related to the generation of additional students under this alternative would be less than significant.

The Adaptive Re-Use Alternative would generate approximately 471 fewer total trips than the originally proposed project; this alternative would also result in fewer AM and PM peak hour trips (28 and 30 fewer peak-hour trips, respectively) than the original project. Therefore, traffic impacts of this alternative would be less than the project as originally proposed. The Adaptive Re-Use Alternative would include an open air market (neighborhood-oriented produce stand), including the redevelopment of the Farmers Market and Market Club building. The market is intended to complement the Northwest Land Park community as a civic gathering place that attracts many of its patrons from the immediately surrounding area. Approximately 50-60 parking stalls should be accommodated on the festival street to serve the adjacent open air market; however when street closures occur for periodic events, no on-site parking would be available. For the purposes of the open air market, parking along surrounding streets may be used to satisfy the parking demand. The market would be exempt from any on-site parking requirements

Because this alternative would generate less traffic than the original project, the traffic-generated noise would be less. Noise from Interstate 5 (I-5) would result in a similar impact on this alternative and Mitigation Measures 5.6-1 and 5.6-2 would also be required under this alternative to reduce noise impacts from I-5. This alternative would result in a similar amount of development as the original project, so construction noise under this alternative would be similar to that of the originally proposed project and

would not exceed established noise standards. Construction-related vibration would also be similar to the original project and would also be less than significant.

As discussed above, much of the development under this alternative would be the same as the original project, with the difference being development of non-residential uses along the proposed Festival Way. Potential effects related to glare, therefore, would be similar to those of the project as first proposed. To ensure that glare from reflective surfaces on building materials would not negatively affect the surrounding area, Mitigation Measure 5.10-1 would also be required under this alternative. Impacts related to glare would be the same as the originally proposed project. As with the original project, the Adaptive Re-Use Alternative would alter the character of the development on the site. However, because any development on the site would be required to comply with the General Plan policies that guide development patterns and streetscape improvements within the City, the new development would be consistent with the urban character as envisioned in the General Plan. Thus, development of the site under the Adaptive Re-Use Alternative would not be considered an adverse change.

The original project would generate water demand of approximately 166.1 acre-feet per year (AFY). The Adaptive Re-Use Alternative would result in development with 143 fewer residential units and 24,850 square feet of non-residential uses. Using the demand factors used for the originally proposed project and assuming a commercial demand rate for all the additional non-residential uses under this alternative, the Adaptive Re-Use Alternative would generate demand for 154.4 AFY. The impact on water supplies would, therefore, be less than that of the project as originally proposed and it would also be less than significant.

Wastewater generation under the Adaptive Re-Use Alternative would also be less than the originally proposed project. The total average dry weather flow from the Adaptive Re-Use Alternative would be approximately 31,700 gallons per day less than the original project. Therefore, the impact due to wastewater generation of the Adaptive Re-Use Alternative would be less than the originally proposed project and would also be less than significant.

Significant and Unavoidable Impacts That Would No Longer Occur

No significant and unavoidable impacts would occur under the Adaptive Re-Use Alternative.

Relationship of the Adaptive Re-Use Alternative to the Project Objectives

The Adaptive Re-Use Alternative would be consistent with the project objectives. This alternative would develop a medium-density urban residential and mixed-use neighborhood within the existing Land Park neighborhood and the Downtown/Central City Sacramento urban center. Like the originally proposed project the Adaptive Re-Use Alternative's design would promote walking to services, biking, and transit use and include public parks and open space to provide recreational opportunities for

neighborhood residents. The site is in proximity to the major employment centers of downtown Sacramento, which would help reduce overall commuter traffic volumes. This alternative would also incorporate plans to recycle as much material as possible during the demolition and construction phases of the project. The residential and non-residential uses in this alternative would complement the existing established Land Park neighborhood.

The City Council finds that the Re-Use Alternative is a feasible alternative to the originally proposed project. In accordance with CEQA's mandate, and pursuant to the CEQA Guidelines, the City Council hereby adopts the Re-Use Alternative as the Project.

ALTERNATIVE 3: INCREASED INTENSITY ALTERNATIVE

The Increased Intensity Alternative assumes that the residential density on the project site would be in the middle of the range allowed by the Urban Neighborhood Medium Density General Plan Designation on the site. The Urban Neighborhood Medium Density designation allows between 33 and 110 residential units per acre, so the middle range density would be 71.5 units per acre. At this density, the Increased Intensity Alternative would include 1,372 residential units (71.5 units on 19.2 acres). Therefore, this alternative would include 404 more residential units than the originally proposed project and 547 more than the Re-Use Alternative/proposed Project. It is assumed that the non-residential component of this alternative would be the same as the original project and Re-Use Alternative.

Comparative Environmental Effects

The Increased Intensity Alternative would result in an increase in dwelling units compared to the original project and Re-Use Alternative, which could lengthen the construction time and thereby increase the overall construction-related air pollutant emissions comparatively. It is anticipated, however, that the intensity of daily construction activities would be similar to the original project and Re-Use Alternative and, with compliance with applicable SMAQMD guidelines, construction under this alternative would not exceed thresholds. Because this alternative would include more residential units and, therefore, generate more traffic, operational air pollutant emissions for this alternative would be more than the proposed project and the Re-Use Alternative and could exceed SMAQMD's NO_x and ROG thresholds even with implementation of the AQMP. This alternative would increase traffic compared to the originally proposed project and the Re-Use Alternative and, therefore, would increase CO emissions compared to both the original project and proposed Re-Use Alternative. However, this alternative would not result in intersection volume of more than 31,600 vehicles per hour; contribute traffic to locations where horizontal or vertical mixing of air would be substantially limited; or change the mix of vehicle types at the affected intersection to that substantially different from the County average. Therefore, this alternative would not exceed the regulatory threshold for CO. Because the Increased Intensity Alternative would place residential receptors within 500 feet of the adjacent freeway, this alternative, as with the original and proposed project, would need to implement

Mitigation Measure 5.1-2. Implementation of all of the project features and mitigation measures required for the original and proposed projects would result in less than significant impacts for criteria pollutants and TAC for the Increased Intensity Alternative.

Because the Increased Intensity Alternative would develop the same area as the proposed project, and would also be required to comply with the City Ordinances that protect trees, this alternative would result in the same less-than-significant impact on protected trees. Similarly, because the ground disturbance under this alternative would be the same as the original and proposed project, the potential for discovery of previously undiscovered significant archaeological resources and human remains would be the same as the originally proposed project and the Re-Use Alternative project. Mitigation Measure 5.3-2 would also be required for this alternative to reduce potential effects due to the potential discovery of previously undocumented archaeological resources and human remains.

The Increased Intensity Alternative, like the originally proposed project and Re-Use Alternative, would result in a net increase of greenhouse gas (GHG) emissions on the project site due to the replacement of existing uses. However, the Increased Intensity Alternative would result in more GHG emissions than the original and proposed project. With the incorporation of the project design features, the Increased Intensity Alternative would substantially reduce emissions and would be in compliance with the AB 32 reduction requirements. Therefore, as with the original project and the proposed Re-Use Alternative project, the incremental contribution of GHG emissions would have a less-than-significant impact.

Historical uses on the site have resulted in areas of contaminated soil and groundwater, which are currently the subject of remediation with oversight from agencies such as the Sacramento County Environmental Management Department and Department of Toxic Substance Control. It is assumed that the remediation efforts on the site would continue regardless of the project to be developed, consequently, effects related to hazardous materials would be the same for this alternative as the original project and the Re-Use Alternative.

Because Increased Intensity Alternative would result in more residential units than the originally proposed project and the proposed Re-Use Alternative project, this Increased Intensity Alternative would generate greater demand for parks than the original and proposed projects and its impact on parks would be increased comparatively. Sacramento City Code requires that new residential projects dedicate land, pay in-lieu fees, or otherwise contribute a fair share to the acquisition and development of parks or recreation facilities to meet the service level goals. Therefore, like the original and proposed projects, this alternative would require the acquisition of additional parkland, but would also be required to comply with the City Code to ensure that adequate parkland is provided.

The Increased Intensity Alternative would generate the demand for more fire fighters and police officers than the originally proposed project and the Re-Use Alternative,

because there would be more residential units under this alternative. Like the original and proposed projects, payment of development fees would ensure adequate service would be provided. Because this alternative would result in more residential units, it would generate more students who would attend local schools. Similar to the original project and Re-Use Alternative, however, payment of required school impact fees would ensure impacts related to the generation of additional students under this alternative would be less than significant.

Because the Increased Intensity Alternative includes approximately 40 percent more residential units than the original project and 65% more residential units than the proposed Re-Use Alternative, it would generate more traffic than the proposed project. Therefore, traffic impacts of this alternative would be greater than both the original and proposed project. A detailed traffic analysis would be required to define impacts and develop mitigation measures to reduce impacts if this alternative were adopted.

Because the Increased Intensity Alternative would generate more traffic than the original project and the Re-Use Alternative, the traffic-generated noise would be greater. Noise from I-5 would result in a similar impact on residential uses under this alternative and Mitigation Measures 5.6-1 and 5.6-2 would also be required under this alternative to reduce noise impacts from I-5. This alternative would result more development than the original and proposed projects, which may increase the duration of construction, but construction noise would be similar to that of the original project and proposed Re-Use Alternative and would not exceed established noise standards. Construction-related vibration would also be similar and would also be less than significant.

The Increased Intensity Alternative would include residential uses, which is the same type of use as the original project and Re-Use Alternative. Therefore, potential effects related to glare would be similar. To ensure that glare from reflective surfaces on building materials would not negatively affect the surrounding area, Mitigation Measure 5.10-1 would also be required under this alternative. With implementation of the mitigation, impacts related to glare would be the same as the original and Re-Use Alternative projects. As with the original and proposed project, the Increased Intensity Alternative would alter the character of the development on the site. However, because any development on the site would be required to comply with the General Plan policies that guide development patterns and streetscape improvements within the City, the new development would be consistent with the urban character as envisioned in the General Plan. Thus, development of the site under the Increased Intensity Alternative would not be considered an adverse change.

The originally proposed project would generate water demand of approximately 166.1 acre-feet per year (AFY). The Re-Use Alternative would generate water demand of approximately 154.4 AFY. The Increased Intensity Alternative would result in development with 404 more residential units than the original project and 547 more than the Re-Use Alternative. Using the demand factors used for the originally proposed project under this alternative, the Increased Intensity Alternative would generate demand for 226.8 AFY or approximately 60 AFY more than the original project and 72

AFY more than the Re-Use Alternative. However, the demand generated by this alternative would not exceed the diversion amount specified for the City; therefore, the impact on water supplies would be less than significant, although it would be greater than the originally proposed project and proposed Re-Use Alternative project.

Wastewater generation under the Increased Intensity Alternative would also be greater than the original project and Re-Use Alternative. The total average dry weather flow from the Increased Intensity Alternative would be approximately 94,000 gallons per day more than the originally proposed project and 125,700 gallons per day more than the Re-Use Alternative. Therefore, the impact due to wastewater generation of the Increased Intensity Alternative would be greater than the originally proposed project and proposed Re-Use Alternative project. Nonetheless, wastewater generated under this alternative would not exceed the capacity of the wastewater treatment plant and the impact would also be less than significant.

Significant and Unavoidable Impacts That Would No Longer Occur

The Increased Intensity Alternative would not reduce impacts relative to the originally proposed project or proposed Re-Use Alternative project and could result in air emissions that exceed SMAQMD's thresholds for NO_x and ROG.

Relationship of the Increased Intensity Alternative to the Project Objectives

The Increased Intensity Alternative would be consistent with the project objectives. This alternative would develop a medium-density urban residential and mixed-use neighborhood within the existing Land Park neighborhood and the Downtown/Central City Sacramento urban center. Like the originally proposed project and Re-Use Alternative, the Increased Intensity Alternative's design would promote walking to services, biking, and transit use and include public parks and open space to provide recreational opportunities for neighborhood residents. The site is in proximity to the major employment centers of downtown Sacramento, which would help reduce overall commuter traffic volumes. It is assumed that this alternative would also incorporate plans to recycle as much material as possible during the demolition and construction phases of the project. The uses in this alternative would complement the existing established Land Park neighborhood.

Environmentally Superior Alternative

The environmentally superior alternative would be the No Project/No Development Alternative because it would not result in new impacts on the project site. However, the No Project/No Development Alternative does not achieve any of the project's objectives. CEQA Guidelines Section 15126.6(e)(2) states that when the No Project/No Development Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives. The Increased Intensity Alternative would result in effects that are greater than those of the proposed project, so it would not be considered environmentally superior.

From the alternatives evaluated in the EIR, other than the No Project/No Development Alternative, the environmentally superior alternative would be the Adaptive Re-Use Alternative. As described above, the Adaptive Re-Use Alternative would reduce the project area population compared to the originally proposed project, so it would reduce population-related impacts. The Adaptive Re-Use Alternative would reduce the severity of impacts on air quality, global climate change, public services, noise and vibration, transportation, and utilities.

The City Council finds that the Re-Use Alternative is a feasible and environmentally superior alternative to the originally proposed project. The City Council hereby adopts the Re-Use Alternative as the Project.

**NORTHWEST LAND PARK PROJECT
SACRAMENTO, CALIFORNIA
TABLE A TO CEQA FINDINGS**

TABLE OF IMPACTS, MITIGATION MEASURES AND CEQA FINDINGS

Environmental Impact (Significance Before Mitigation)	Mitigation Measures	Level of Significance After Mitigation	Findings of Fact
AIR QUALITY			
5.1-1 Implementation of the Re-Use Alternative could conflict with or obstruct implementation of the Sacramento area air quality plans. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.1-2 Implementation of the Re-Use Alternative could result in construction activities that would increase NO _x levels above 85 pounds per day. (PS)	5.1-2 a) In order to ensure that emissions of NO _x do not exceed the regulatory threshold of 85 pounds per day, construction of project phases shall not be conducted concurrently nor shall any portion of construction from one phase overlap that of another phase unless the applicant demonstrates to the satisfaction of the City and SMAQMD that the threshold of 85 pounds per day will not be exceeded. Written confirmation to the file from the City's Community Development Department that confirms satisfaction with this mitigation measure and confirms SMAQMD agreement is sufficient. b) The following shall be incorporated into all construction plans for projects that estimated construction related NO _x emissions exceed 85 lbs/day: If projected construction related emissions for a project are not reduced	LS	<p><u>Finding:</u> Implementation of Mitigation Measure 5.1-2, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR.</p> <p><u>Explanation:</u> The Adaptive Re-Use Alternative would result in a reduction in residential units compared to the proposed project and re-use of some onsite buildings, which could shorten construction time and thereby reduce the overall construction-related air pollutant emissions compared to the proposed project. (FEIR, vol. 1, p. 7-7.)</p>

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Environmental Impact (Significance Before Mitigation)	Mitigation Measures	Level of Significance After Mitigation	Findings of Fact
	below the 85 lbs/ day by application of MM 5.1-2(a), then an off-site construction mitigation fee shall be applied. The construction mitigation fee shall be calculated based upon the SMAQMD's current construction mitigation fee at the time of project specific evaluation. Verification of payment of the mitigation fee shall be provided to the City prior to the issuance of any grading permit.		With the incorporation of the 2030 General Plan policies, and implementation of SMAQMD's BCECP and EECF measures, construction of the Re-Use Alternative would result in less than significant NOx emissions for each individual phase of construction. However, if construction phases overlap (i.e. Phase 1 is still ongoing when Phase 2 begins), or where two or more projects within the project area are concurrently undergoing construction activities where the sum construction emissions exceed the daily emission threshold, there is the potential for emissions to exceed the 85 pounds per day regulatory threshold. Mitigation Measure 5.1-2 (a & b) will ensure that construction emissions remain under the 85 pounds per day threshold for NOx or require mitigation fee calculated based upon SMAQMD's construction mitigation fee. As a result, implementation of Mitigation Measure 5.1-2 will reduce this potentially significant impact to a less than significant level. (FEIR, vol. 1, pp. 5.1-16 – 5.1-17.)
5.1-3 Implementation of the Re-Use Alternative could result in operational emissions that would increase either of the ozone precursors (NO _x or ROG) to above 65 pounds per day. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.1-4 Implementation of the Re-Use Alternative could result in PM ₁₀ concentrations associated with construction activities that are at a level equal to or greater than five percent of the state ambient air quality	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

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Environmental Impact (Significance Before Mitigation)	Mitigation Measures	Level of Significance After Mitigation	Findings of Fact
standard (5 µg/m ³ over 24-hrs). (LS)			
5.1-5 Implementation of the Re-Use Alternative could result in operational CO concentrations that exceed the 1-hour state ambient air quality standard of 20.0 ppm or the 8-hr state ambient standard of 9 ppm. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.1-6 Implementation of the Re-Use Alternative would result in TAC emissions that could adversely affect sensitive receptors or could be located in an area that could expose the project to TAC emissions. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
BIOLOGICAL RESOURCES			
5.2-1 Implementation of the Re-Use Alternative could result in substantial degradation of the quality of the environment or reduction of habitat or population below self-sustaining levels of special-status birds, through the loss of both nesting and foraging habitat. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.2-2 Implementation of the Re-Use Alternative could affect plant species of special concern or regulatory water or wetlands. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.2-3 Implementation of the Re-Use Alternative could result in violation of the City's Heritage Tree Ordinance (City Code 12.64.040). (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

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Environmental Impact (Significance Before Mitigation)	Mitigation Measures	Level of Significance After Mitigation	Findings of Fact
CULTURAL RESOURCES			
5.3-1 Implementation of the Re-Use Alternative could cause a substantial change in the significance of a historical resource as defined in CEQA Guidelines section 15064.5. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.3-2 Implementation of the Re-Use Alternative could cause a substantial change in the significance of an archaeological resource as defined in CEQA Guidelines section 15064.5. (PS)	5.3-2 a) In the event that any prehistoric or historic-era subsurface archaeological features or deposits, including locally darkened soil ("middens"), that could conceal cultural deposits, are discovered during construction-related earth-moving activities, all ground-disturbing activity within 100 feet of the resources shall be halted and the City of Sacramento Community Development Department shall be notified. The City shall consult with a qualified archeologist retained at the applicant's expense to assess the significance of the find. If the find is determined to be significant by the qualified archaeologist (i.e., because the find is determined to constitute either an historical resource or a unique archaeological resource), representatives of the City and the qualified archaeologist shall meet to determine the appropriate course of action, with the City making the final decision. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report shall be prepared by the qualified archaeologist according to current professional standards. If the archaeologist determines that some	LS	<u>Finding:</u> Implementation of Mitigation Measure 5.3-2, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR. <u>Explanation:</u> The project site is located within an area of high previous disturbance. No evidence of archaeological resources was identified within project site during the pedestrian survey conducted for the project. Follow-up Native American consultation conducted on July 16, 2010, resulted in the recommendation by one individual that archeological monitoring be performed for all ground disturbing activities in the project area due to the fact that areas within the vicinity of the Sacramento River are known to be potentially rich in cultural resources. The individual further asked if there are any inadvertent discoveries that the appropriate agencies be informed and a Native

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	<p>or all of the affected property qualifies as a Native American Cultural Place, including a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9) or a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historical Resources pursuant to Public Resources Code § 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code § 5097.993), the archaeologist shall recommend to the City potentially feasible mitigation measures that would preserve the integrity of the site or minimize impacts on it, including any or a combination of the following:</p> <ul style="list-style-type: none"> • Avoidance, preservation, and/or enhancement of all or a portion of the Native American Cultural Place as open space or habitat, with a conservation easement dedicated to the most interested and appropriate tribal organization. If such an organization is willing to accept and maintain such an easement, or alternatively, a cultural resource organization that holds conservation easements; • An agreement with any such tribal or cultural resource organization to maintain the confidentiality of the location of the site so as to minimize the danger of vandalism to the site or other damage to its integrity; or 		<p>American monitor be retained if the type of discovery warranted such an action. Given the extent of previous disturbance that has occurred on the project site for the construction of existing commercial and industrial uses and the negative results of the records search and pedestrian archaeological survey, the potential for impacts on significant intact archaeological resources appears to be low and a construction-monitoring program is not recommended. However, previous disturbance and the lack of previously recorded archaeological resources and the lack of surface indications does not preclude the possibility that significant subsurface cultural resources could be discovered during project construction. Mitigation Measure 5.3-2 requires the performance of professionally accepted and legally compliant procedures for the discovery of previously undocumented significant archaeological resources and human remains. Implementation of this measure would reduce this potentially significant impact to a less than significant level. (FEIR, vol. 1, p. 5.3-23.)</p>

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	<ul style="list-style-type: none"> • Other measures, short of full or partial avoidance or preservation, intended to minimize impacts on the Native American Cultural Place consistent with land use assumptions and the proposed design and footprint of the development project for which the requested grading permit has been approved. • After receiving such recommendations, the City shall assess the feasibility of the recommendations and impose the most protective mitigation feasible in light of land use assumptions and the proposed design and footprint of the development project. The City shall, in reaching conclusions with respect to these recommendations, consult with both the project applicant and the most appropriate and interested tribal organization. <p>b) If human remains are discovered at any project construction sites during any phase of construction, all ground-disturbing activity within 50 feet of the remains shall be halted immediately, and the City of Sacramento Community Development Department and the County coroner shall be notified immediately. If the remains are determined by the County coroner to be Native American, the Native American Heritage Commission (NAHC) shall be notified within 24 hours, and the guidelines of the NAHC shall be adhered to in the treatment and disposition of the</p>		

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	remains. The project applicant shall also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. As necessary, the archaeologist may provide professional assistance to the Most Likely Descendant, including the excavation and removal of the human remains. The City shall be responsible for approval of recommended mitigation as it deems appropriate, taking account of the provisions of state law, as set forth in CEQA Guidelines section 15064.5(e) and Public Resources Code section 5097.98. The project applicant shall implement approved mitigation, to be verified by the City, before the resumption of ground-disturbing activities within 50 feet of where the remains were discovered.		
5.3-3 Implementation of the Re-Use Alternative could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. (PS)	5.3-3 Should paleontological resources be identified at any project construction sites during any phase of construction, the construction manager shall cease operation at the site of the discovery and immediately notify the City of Sacramento Community Development Department. The project applicant shall retain a qualified paleontologist to provide an evaluation of the find and to prescribe mitigation measures to reduce impacts to a less-than-significant level. In considering any suggested mitigation proposed by the consulting paleontologist, the Community Development Department shall determine whether avoidance is necessary and feasible	LS	<p><u>Finding:</u> Implementation of Mitigation Measure 5.3-3, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR.</p> <p><u>Explanation:</u> The City of Sacramento and</p>

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	in light of factors such as the nature of the find, project design, costs, land use assumptions, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.		surrounding area is not highly sensitive for these types of resources although some discoveries have been made in the past. Earth-disturbing activities in fossil-bearing soils and rock formations have the potential to damage or destroy paleontological resources that may be present below the ground surface. Therefore, any earth-disturbing activities resulting from implementation of the Re-Use Alternative could damage or destroy fossils in these rock units. While the project site is not considered sensitive for paleontological resources and the likelihood of encountering paleontological resources is very low, project-related earth-disturbing activities could affect the integrity of a paleontological site, thereby causing a substantial change in the significance of the resource. Mitigation Measures 5.3-3 requires the performance of professionally accepted and legally compliant procedures for the discovery of paleontological resources. Implementation of this mitigation measure would reduce this potentially significant impact to a less than significant level. (FEIR, vol. 1, p. 5.3-25.)
GLOBAL CLIMATE CHANGE			
5.4-1 Construction and operation of the Re-Use Alternative would generate greenhouse gas emissions that may have a significant impact on the environment. (LS)	5.4-1 The following PUD Guidelines shall be incorporated into project design, as verified by City staff during design review. <ul style="list-style-type: none"> Choice of Mobility – The applicant shall allow for multiple modes of transportation including private automobiles, bicycles, and pedestrian mobility. Street Connectivity – The streets shall be 	LS	<p><u>Finding:</u> Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)</p> <p>Implementation of Mitigation Measure 5.4-1, which has been required or incorporated into the Re-Use Alternative, will reduce this</p>

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	<p>designed on a modified grid with multiple connections to the surrounding roadway network.</p> <ul style="list-style-type: none"> • Pedestrian and Bicycle Connectivity – The applicant shall provide sidewalks on both sides along all streets, and a defined multi-use trail network. The applicant shall develop private pathways that provide pedestrian linkages within individual blocks and between community uses. • Safe Environment – Streets shall be designed to be safe in terms of traffic mobility, diversity in users, and crime prevention. Climate Appropriate Plants – Trees, shrubs, and grasses shall be conducive to the Northern California environment in terms of water use, drought tolerance, maintenance, and durability. Synthetic Turf should be used for active play areas and small gathering lawns. • Low Maintenance & Cost Effectiveness – Landscape material including trees, plants, turf, and hardscape should require minimal maintenance as compared to other varieties and material choices. Synthetic turf shall be used to the extent possible in lieu of natural turf and grasses. Materials should be cost effective to lessen the initial expenditure, periodic replacement, and long-term maintenance. Turf may be synthetic to lessen irrigation demands and long term maintenance. • Standard Streetscape – The plantings along streets and the community trails 		<p>impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR.</p> <p><u>Explanation:</u> The Adaptive Re-Use Alternative, like the proposed project, would result in a net increase of greenhouse gas (GHG) emissions on the project site due to the replacement of existing uses. However, the Adaptive Re-Use Alternative would result in less GHG emissions than the proposed project. (FEIR, vol. 1, p. 7-8 [Table 7-3].)</p> <p>Greenhouse gas emissions that could be generated by development consistent with the 2030 General Plan were identified and considered in detail in the Master EIR. The Re-Use Alternative would generate GHGs, but any contribution of the Re-Use Alternative was considered and included in the Master EIR analysis. The Re-Use Alternative is consistent with the long range planning for the urban environment in the City, which emphasizes the importance of infill development and reduction of vehicle miles traveled, and includes specific features that will reduce GHGs.</p> <p>As stated above, the Re-Use Alternative would not have any additional significant effect related to global climate change that was not addressed as a significant effect in</p>

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	<p>shall consist mainly of species that at maturity will act as large canopy shade trees and colorful understory plantings. Nothing in this section shall be construed to require an initial planting larger than a 24" box tree.</p> <ul style="list-style-type: none"> • Alternative Local Streetscape - Landscaping along internal local streets shall be more lush and generous in plant coverage including primarily canopy shade trees to create a dynamic streetscape. <p>Stormwater Management – The project will redevelop with smaller residential buildings interlaced within green courtyards, large central park and meandering greenbelt, and utilizing decorative permeable materials for private driveways and courts. The pervious to impervious ratio for Phase 1 (40% permeable to 60% Impermeable) will be used as a minimum guideline for the build-out of the entire site through Phase 4.</p> <ul style="list-style-type: none"> • Water Efficiency – All project landscaping shall be climate appropriate for the area and irrigated with moisture sensor driven systems to provide drought tolerance and maximum efficiency of water use in irrigation. Synthetic turf shall be used, to the greatest extent possible, for private grassed areas within the development. • Vegetation & Forestation – Vegetation and tree planting plans shall be designed to provide shading for streets, hardscape surfaces, buildings, and recreation areas 		<p>the Master EIR. Mitigation Measure 5.4-1 will ensure that the project design features included in the project PUD Guidelines as modified by Appendix 1 (Reuse Framework Plan) of those Guidelines are implemented and GHG reductions are achieved. With the implementation of this measure the Re-Use Alternative will have a less than significant impact from greenhouse gas emissions associated with project construction and operation. (FEIR, vol. 1, pp. 5.4-22 – 5.4-28.)</p>

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	<p>during summer months. In contrast, said plans shall include landscape varieties that lose their leaves during winter months to promote passive sunlight within the community, thus reducing energy use relating to heating and lighting.</p> <ul style="list-style-type: none"> • Air Quality – The project proposes that all buildings, units, and facilities, indoors and out, are free of devices designated to facilitate the combustion of wood or wood products to eliminate emissions generally associated with traditional fireplaces. • Reuse and Recycling - The project shall re-use at least 50% of the salvageable materials in the existing improvements on-site, as measured by weight. This can take the form of re-use of entire structures, re-use or repurposing of significant elements, such as beams or trusses, and recycling materials within the new project such as grinding paving and asphalt for use as base material at the site. These activities will increase the sustainability of the site through reduced waste materials from demolition, reduced need for new materials on-site, and reduction of the ancillary transportation impacts from off-haul and delivery of materials to the site. Additionally, the project will evaluate brick, wood, metal, and masonry materials from the demolition to be re-manufactured into a "heritage" line of finishes to be offered as upgrades to the units. As an example, wood timbers 		

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	<p>would be converted into flooring material to provide the character and cache of "distressed" lumber underfoot. These efforts will increase the amount of on-site materials reused sustainably within the project.</p> <ul style="list-style-type: none"> • Efficient Floor Plans - The Northwest Land Park community will be developed with compact efficient floor plans. In addition the majority of units will share wall/floor space, and thus thermal mass, with at least one other unit. • Insulation – Building shall be designed with a high-efficiency thermal shell for the units with exterior walls at or above R25 for walls and R40 for ceilings. • Climatization – Residential buildings shall use small high efficiency heating and cooling units. • Lighting - Buildings shall use a LED or fluorescent lighting system throughout the units, allowing for energy efficient lighting. • Exterior Lighting – Exterior HOA maintained lighting, including pathway lights, accent/landscaping lights, motor-court lights, and private street lights shall use LED lighting technologies. • Water Heaters - The project shall provide high efficiency tank-less hot water heaters to provide for the most energy efficient delivery of hot water. Nothing in this provision shall preclude installation of high efficiency alternative energy source hot water heating and storage 		

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	<p>units.</p> <ul style="list-style-type: none"> • Electrical vehicle accommodations – The project shall incorporate 110v electrical outlets in the garage units such that they are readily accessible for use with electric vehicles. • Renewable Energy Commitment - The project shall incorporate a 400 KW renewable energy system to reduce the amount of energy purchased by the Project. The 400 KW renewable energy will be incorporated over the life of the project such that a minimum of 100 KW will be incorporated into phase 1 with an aggregate total of 100 KWs per phase through the buildout of phase 4. The 400 KW system will result in an annual reduction of 730,000 kWh of purchased electricity at full project buildout. This is equivalent to the emissions from electrical consumption of approximately 188 dwelling units. The renewable energy system may include solar, wind, fuel cells, or other new technology that becomes available over the implementation of the project. The following are the commitments already made by the project to foster this renewable commitment: <ul style="list-style-type: none"> ○ Photovoltaic Design - The project shall be planned to orient at least 40% of the roof area of a minimum of 50% of the buildings to the west, south or southwest so that photovoltaic panels and collector systems can provide maximum benefit when installed. The project 		

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	<p>shall work with the local utility and, through an aggressive sales program, encourage and provide solar systems and/or alternative energy systems as an option.</p> <ul style="list-style-type: none"> ○ Solar Orientation – The majority of the project's buildings shall be designed to orient the roof tops with strong solar capture opportunities for photovoltaic panels throughout the community. The orientation of at least 40% of the roof area of at least 50% of the buildings shall be west, southwest, or south. ○ Solar Energy – As indicated in the AQMP (measure M28), the NWLP Project has committed to the implementation of a solar energy system that will offset a minimum of 2.5% of the residential needs of the project. 		
5.4-2 Construction and operation of the Re-Use Alternative may conflict with applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
HAZARDS AND HAZARDOUS MATERIALS			
5.5-1 Implementation of the Re-Use Alternative could result in the exposure of people to hazards and hazardous materials during construction activities. (PS)	5.5-1 a) No grading may occur on the parcels within Phases 2, 3 or 4 until SCEMD issues a no further action letter for Phases 2, 3 and 4, respectively. In the event a no further action letter is issued for only certain parcels within a	LS	<u>Finding:</u> Implementation of Mitigation Measure 5.5-1, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds

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	<p>Phase, grading may only occur on the parcels for which a no further action letter was issued. The applicant shall be responsible for providing written confirmation of SCEMD action prior to the issuance of a grading permit for any affected project phase.</p> <p>b) Prior to issuance of a grading permit that would include installation of underground utility trenches, the City shall ensure a groundwater management plan has been prepared by a qualified environmental professional registered in California. The plan shall be submitted to the City for review and approval.</p> <p>The groundwater management plan shall identify the locations and depths of underground utility trenches relative to known contaminated groundwater. If it is determined trenches could intercept contaminated groundwater during construction, the plan shall identify measures to be implemented to properly remove and dispose of contaminated groundwater in accordance with best management practices and City requirements. Such measures could include, but not be limited to, the use of a pump to extract the contaminated groundwater out of the trench and then store the water onsite in a sump or storage tank until properly discharged into the City sewer system per City regulations described below.</p> <p>All dewatering activities shall be subject to the requirements of the City's Department of Utilities Engineering Services Policy No. 0001 (adopted as Resolution No. 92-439 by the Sacramento City Council), which protects</p>		<p>that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR.</p> <p><u>Explanation:</u> To date, the project site owner's hazardous materials consultant has conducted numerous soil sampling and testing throughout the project site and does not anticipate finding any new hazardous substances. However, soil remediation has not been completed and would occur prior to each phase of development. Site preparation activities (e.g., grading and trenching) should not result in the exposure of construction workers and the public to known hazardous substances. While construction work is ongoing, the contractors and hazardous materials consultant will be looking for potentially unknown hazardous substances present in the soil, and will take appropriate measure to limit exposure of workers and the public as necessary.</p> <p>Because of the shallow depth to groundwater, there is the potential to encounter hazardous materials in groundwater during trenching that, if encountered, could potentially expose workers or the environment to hazardous materials. Utility trenches also have the potential to create a horizontal conduit for chemical contaminants contained in soil vapors or shallow groundwater to migrate along permeable soils that would be placed as trench backfill. Creating a horizontal conduit has the potential to cause a change</p>

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	<p>water quality by monitoring dewatering activities and ensuring that all groundwater discharges are free of contamination.</p> <p>The groundwater management plan shall also identify specific measures (e.g., design features, construction methods) to ensure underground utilities do not create a horizontal conduit for contaminant migration. The plan shall include provisions for monitoring the effectiveness of the construction methods in minimizing horizontal contaminated groundwater migration along utility trenches.</p> <p>c) Prior to site preparation (i.e., grading, clearing), the project applicant shall consult with SCEMD to determine whether there are any construction activities that could damage or otherwise interfere with use of on-site monitoring wells, specifically MW-3 for ongoing groundwater monitoring. If SCEMD determines the wells would not be affected by project activities, the project applicant shall obtain written documentation from SCEMD to that effect. If it is determined that well relocation or protective measures are necessary, the project applicant shall coordinate with SCEMD in advance of any site preparation activities during construction to identify the appropriate measures and to obtain regulatory approval of such measures. Site preparation activities that could affect the monitoring wells shall not be implemented until SCEMD has inspected any modifications and provided written notification to the City that it has reviewed and approved the protective measures.</p>		<p>in groundwater flow direction, which could shift contaminant plumes and/or concentrations that could, in turn, cause additional environmental degradation or expose people to hazardous materials.</p> <p>Site preparation activities during construction (e.g., trenching, grading, over-excavation for fill placement) have the potential to unearth and damage or destroy existing remediation monitoring wells. Such impacts although unlikely would be potentially significant if they were to occur.</p> <p>These potentially significant impacts will be reduced to a less than significant level through implementation of Mitigation Measure 5.5-1, which will (1) prohibit grading on parcels within Phases 2, 3, or 4 until SCEMD issues an NFA letter for Phases 2, 3 and 4, (2) require that all utility installation and any dewatering activities are conducted according to a City-approved groundwater management plan, and (3) require documentation from SCEMD that construction activities would not affect the operation of any of the existing on-site monitoring wells. (FEIR, vol. 1, pp. 5.5-20 – 5.5-23.)</p>

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	The City shall not issue a grading permit to the project applicant until written documentation from SCEMD is provided to the City that determines the groundwater monitoring wells would not be affected by site preparation project activities, or, if it is determined that well relocation or protective measures are necessary, SCEMD has inspected any modifications and provided written notification to the City that it has reviewed and approved the protective measures.		
5.5-2 Implementation of the Re-Use Alternative could result in the exposure of people to hazards and hazardous materials during project operation/occupancy. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
NOISE AND VIBRATION			
5.6-1 Implementation of the Re-Use Alternative could result in exterior noise levels at sensitive receptors in the project area (including those on the project site) that are above the upper value of the normally acceptable category for various land uses. (PS)	5.6-1 a) Residential structures in the project shall be designed to avoid any exterior communal/recreational areas, excluding balconies, on the third and fourth floors with direct line-of-sight to I-5. Residential structures in the project shall be designed to avoid any exterior communal/recreational areas within 200 feet (direct line-of-sight) of the existing commercial operations located immediately northeast of the project site, unless subsequent design features, which may include, but are not limited to, a masonry wall, can be incorporated into the project design to reduce	LS	<u>Finding:</u> Implementation of Mitigation Measure 5.6-1, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this potentially significant environmental effect identified in the Final EIR. <u>Explanation:</u> The Master EIR prepared for the General Plan determined that future

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	noise associated with truck operations to less than 65 dBA Leq over a 1-hour period. The applicant shall provide written confirmation from a qualified noise consultant that any such design features are effective to achieve the required reduction in noise exposure.		noise levels (predominantly roadway noise levels) could exceed exterior noise level standards as enumerated in the City's General Plan. Consistent with General Plan policy EC 3.1.11, mitigation measures 5.6-1 will mitigate this potentially significant noise impact by requiring design features to be included in the Re-Use Alternative to ensure that exterior noise levels do not exceed City standards for use types associated with the Re-Use Alternative or affected by implementation of the Re-Use Alternative. The measure will also require the project proponent provide written confirmation from a qualified noise consultant that the design features are effective to achieve the required reduction in noise exposure. (FEIR, vol. 1, pp. 5.6-18 – 5.6-21.)
5.6-2 Implementation of the Re-Use Alternative could result in residential interior noise levels of Ldn 45 dB or greater at sensitive receptors in the project area (including those on the project site). (S)	5.6-2 a) The project applicant shall design residential structures in Phases 3 and 4 of the project to provide up to a 30 dBA reduction from exterior to interior noise levels on any third and fourth floors of proposed residential structures in accordance with City standards and the requirements of CCR Title 24 Section 1207.11.2. The project applicant shall demonstrate to the City in the form of a site-specific, design-specific acoustical analysis that no residences shall be subject to interior noise levels in excess of City standards. Measures that may be incorporated into the design of residential structures within Phases 3 and 4 may include, but are not limited to: <ul style="list-style-type: none"> • The use of triple-paned or no windows 	LS	<u>Finding:</u> Implementation of Mitigation Measure 5.6-2, which has been required or incorporated into the Re-Use Alternative, will reduce this impact to a less than significant level. The City Council hereby directs that this mitigation measure be adopted. The City Council, therefore, finds that changes or alterations have been required in, or incorporated into, the Re-Use Alternative that avoid this significant environmental effect identified in the Final EIR. <u>Explanation:</u> The Master EIR determined that impacts related to residential interior noise levels as a result of implementation of the 2030 General Plan, with which the Re-

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	<p>along any western facing walls;</p> <ul style="list-style-type: none"> • Limiting buildings to two stories in height; • Increasing the setback distance between residential structures and I-5; • The use of gypsum board or other sound-insulating building material; and • Providing a uniform wall or line of structures along the western boundary of the site. <p>b) So long as existing industrial and commercial uses continue to operate, the project applicant shall design residential structures, immediately adjacent to the existing commercial operations located along 1st Avenue in Phases 2 and 4 to achieve a reduction between exterior and interior noise levels in accordance with City standards through the use of certain design-specific measures that may include, but are not limited to:</p> <ul style="list-style-type: none"> • The use of triple-paned or no windows for structure walls fronting the existing commercial operations located along 1st Avenue; • Not allowing bedrooms along the outermost structure walls of the northern and eastern boundaries of Phase 2 and the eastern boundary of Phase 4; • The use of gypsum board or other sound-insulating building material; and • Providing a uniform wall or line of structures along the boundary of the site where Phase 2 abuts the existing 		<p>Use Alternative is consistent, would be significant and unavoidable. However, the Master EIR also stipulated that new development, such as the Re-Use Alternative, could likely include design measures to ensure that future residential uses would not exceed the City's interior noise standards.</p> <p>The Re-Use Alternative would not result in the development of uses that would be considered substantial noise generators. However, residential uses would, in and of themselves, be considered sensitive receptors.</p> <p>Existing commercial activities along 1st Avenue could expose adjacent proposed sensitive receptors within the project site (Phases 2 and 4) to intermittent noise levels that could result in sleep disturbance during noise-sensitive hours. As operations associated with the loading and unloading of trucks at the nearby commercial uses would create intermittent exterior noise levels up to 75 dBA at a distance of 50 feet, as noted above, interior noise levels at the nearby residential uses could reach up to 50 dBA, assuming a minimum 25 dBA reduction from exterior to interior. Typically, for single-event or intermittent noise, 45 dBA is considered the level under which sleep disturbance would typically not occur.</p> <p>Consistent with General Plan policies EC 3.1.3 and EC 3.1.4, mitigation measures 5.6-2 will ensure that the Re-Use Alternative does not result in unacceptable interior noise levels at existing and proposed uses.</p>

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	<p>use on the south side of First Avenue and on the eastern boundary of Phase 4 where it abuts the existing use on the north side of First Avenue.</p> <p>The City shall require, through a deed restriction providing notice to purchasers that any future residents of structures adjacent to the existing commercial operations be required to acknowledge ongoing commercial activities that could result in noisy activities at the time of purchase or lease of a residential unit.</p>		(FEIR, vol. 1, pp. 5.6-21 – 5.6-23.)
5.6-3 Implementation of the Re-Use Alternative could result in construction noise levels that exceed the standards in the City of Sacramento Noise Ordinance. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.6-4 Implementation of the Re-Use Alternative could permit existing and/or planned uses in the project area to be exposed to vibration-peak particle velocities greater than 0.5 inches per second due to project construction. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.6-5 Implementation of the Re-Use Alternative could permit adjacent residential, educational, and commercial uses to be exposed to vibration peak particle velocities greater than 0.5 inches per second due to operational activities. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.6-6 Implementation of the Re-Use Alternative could permit historic buildings and archaeological sites to be exposed to vibration-peak-particle velocities greater than 0.25 inches per second due to project	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

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construction. (LS)			
PARKS AND RECREATION			
5.7-1 Implementation of the Re-Use Alternative could result in increased use of existing parks or recreational facilities or create a need for construction or expansion of recreational facilities beyond what was anticipated in the General and/or Community Plans. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
PUBLIC SERVICES			
5.8-1 Implementation of the Re-Use Alternative could result in the construction of new, or the expansion of existing facilities related to the provision of fire protection. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.8-2 Implementation of the Re-Use Alternative could result in the construction of new, or the expansion of existing, facilities related to the provision of police protection. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
5.8-3 Implementation of the Re-Use Alternative could generate additional demand for schools. (LS)	None required.	NA	Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)
TRANSPORTATION AND CIRCULATION			

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