REIMBURSEMENT/CREDIT AGREEMENT

RELATING TO DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS FOR HAMPTON PARK

This Reimbursement/Credit Agreement Relating to Design and Construction of Park Improvements for Hampton Park (this "Agreement") is entered into on May 29, 2007, by and between the **CITY OF SACRAMENTO,** a charter municipal corporation ("City"), and **WOODSIDE HAMPTON STATION, INC.**, a California Corporation ("Developer"), with respect to the following facts:

RECITALS

A. Developer owns the real property described in **Exhibit A**, attached hereto, and incorporated herein by this reference ("**Property**").

B. The portion of the Property described in **Exhibit B**, attached hereto and incorporated herein by this reference, ("**Park Site**"), is intended for dedication or has been dedicated for use as a community or neighborhood park serving the Property (the "**Park**").

C. Development of the Property is subject to the payment of a Park Development Impact Fee ("**Park Development Fee**") in accordance with the City of Sacramento Code, Title 18, Chapter 18.44 ("Fee Ordinance"). The Park Development Fee Nexus Study (approved by Resolution No. 99-474 on August 17, 1999) as amended or supplemented, identifies the park facilities and improvements needed. The purpose is to provide funds necessary to design, construct, and install park facilities required to meet the needs of and address the impacts caused by new development.

D. The Fee Ordinance authorizes credits and reimbursements applicable to Park Development Fees owed (1) by landowners who have advanced funds for the construction of park facilities that otherwise would be paid from the revenue of the Park Development Fee, and (2) by landowners who constructed park facilities that otherwise would be paid for from the revenue of the Park Development Fee.

E. Developer desires to develop the Park Site by constructing park improvements, including, at a minimum, the park improvements specified in **Exhibit C**, attached hereto and incorporated herein by this reference ("**Project" or "Project Improvements**"). The Project Improvements specified in **Exhibit C** do not include any improvements Developer is required to install under any provisions of the City's Subdivision Ordinance (Sacramento City Code, Title 16).

F. Development of the Park Site will require various design services, which will be performed by either Developer or City as shown on the Park Development Task Allocation in **Exhibit D**, attached hereto and incorporated herein by this reference. The Project will be constructed pursuant to plans and specifications approved by the City and the actual costs of construction of the Project are to be the result of a bidding process approved by City as provided herein. The total cost of the Project design and construction subject to reimbursements and/or credits as provided herein shall not exceed the budget amount specified in **Exhibit E**, attached hereto and incorporated herein by this reference, ("**Park Development Budget**").

G. Subject to the credits against and reimbursements from the Park Development Fee as provided herein, in addition to reimbursement from other funding sources identified herein, if any, Developer is willing to perform the design services assigned to Developer in **Exhibit D**, if any, and construct the Project, and to fund the costs of Project design and construction activities allocated to Developer ("**Project Costs,**" as defined herein). Project Costs shall mean and include costs related to all contracts for the construction of the Project, including change orders, and costs associated with all other contracts for professional and other services necessary, in the City's judgment, to implement and complete construction, together with all planning and design costs and right of way or other acquisition costs, if any, associated with the Project. Project Costs also shall include, but not be limited to, the engineering estimates and the Project elements included therein, construction inspection fees, and whichever of the following costs or fees, if any, may be applicable: environmental documentation (whether prepared by outside consultants or City staff), City project administration, plan check and inspection fees, biological studies and Habitat Conservation Fees.

H. The Project is eligible for and the City agrees to provide credits against and reimbursement from the Park Development Fee for Developer's actual Project Costs, in accordance with the Fee Ordinance and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, City and Developer hereby agree as follows:

ARTICLE I
DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS

1.0 Recitals Incorporated. The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

1.1 **Design and Construction.** Developer will design and construct the Project in accordance with the terms of this Agreement and convey the completed Park along with all interest in real property necessary for the operation, maintenance, repair, and ownership thereof by City. The interest in real property to be conveyed shall be a fee interest in the land and the improvements and any and all access easements necessary for the operation, maintenance, and repair of the Park. Developer shall complete the construction of the Project Improvements to the Park Site commonly known as **"Hampton Station Park" (approx. 2.36 acres)** no later than **December 31, 2008**; or within twelve (12) months of the date the City approves the construction documents, whichever is later ("Completion Date").

1.2 **Design; Final Budget.** The design-related services that may be performed either by Developer or City as specified in **Exhibit D** include Design Development, Construction Document Preparation, Bid Document Preparation and environmental review. The Developer's selection of a landscape architect(s) to perform design services that are assigned to Developer in **Exhibit D**, shall be subject to approval by the Landscape Architecture Section, ("**LAS**") of the City, Department of Parks and Recreation ("**Department**"). If assigned to Developer in **Exhibit D**, Developer shall perform the various Project design-related services in accordance with the following:

1.2.1 **Design Development.** Developer shall prepare conceptual plans for the Project, which shall include a Park site survey, a proposed park master plan and Project description illustrating the park development and all improvements at full build-out, a proposed first phase development plan and Project description illustrating the Project Improvements to be constructed within the budget amounts specified in **Exhibit E**, construction cost estimates for both the park master plan and the first phase development and estimated construction time lines for the first phase development. Developer shall provide copies of the conceptual plans to the LAS for its review and approval. The City agrees to use its best efforts and due diligence to review and approve such conceptual plans, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.2 **Construction Document Preparation.** After LAS has given its written approval of the conceptual plans under subsection 1.2.1, Developer shall prepare and submit to the LAS construction plans and specifications for the first phase development, including updated construction cost estimates and construction time lines. At a minimum, Developer shall submit such plans and specifications to the LAS at the **35, 75, and 100-percent** phases of completion. The City agrees to use its best efforts and due diligence to review and approve such construction plans and specifications, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.3 Bid Document Preparation. After LAS has given its written approval of the construction plans and specifications under subsection 1.2.2, Developer shall prepare and submit to the LAS bid documents for the Project, based upon the City approved construction plans and specifications. The City agrees to use its best efforts and due diligence to review and approve such bid documents, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner. The City's approval shall not be unreasonably withheld or conditioned.

1.2.4 Environmental Review. A consultant retained by City and/or by City staff shall prepare the environmental documentation required for development of the Park site as provided herein. If directed by City, and in accordance with all applicable legal requirements, Developer shall prepare such environmental documentation, subject to review and approval by the City in its sole discretion. The Developer's selection of a consultant(s) for this purpose shall be subject to approval by the LAS and the City's Environmental Affairs Division. The Completion Date set forth in this Agreement is based upon an assumption that no further environmental documentation will be needed for the Project. If additional environmental documentation is determined by the City to be needed, then the Completion date shall be extended to account for the time needed to complete the necessary environmental documentation and associated environmental approvals.

1.2.5 LAS Approval. LAS approval shall be evidenced by signed approval by the Senior Landscape Architect on the subject document. LAS may withhold approval of any document until Developer has obtained any and all required approvals from other City departments or other public entities or utilities. The review and approval of various documents by the LAS and/or the City, as described above, also may include public noticing, review, comment, and/or approval of such documents, as deemed necessary or appropriate by City. If any or all of the Project design services are assigned to City in **Exhibit D**, the references herein to LAS approval of the conceptual plans, construction plans and specifications and bid documents shall refer, as applicable, to the conceptual plans, construction plans and specifications and/or bid documents prepared for Developer's use by City.

1.2.6 Final Budget. Before approval of the bid documents by City, City and Developer shall review the Project budget set forth in **Exhibit E** and shall establish a final budget for design and construction ("**Final Budget**"). City and Developer anticipate that the construction plans and specifications will include all of the Project Improvements described in **Exhibit C**, but Developer shall not be obligated to construct improvements or incur Project Costs that, in the aggregate, exceed the amount of the Final Budget. The Final Budget shall include all Project Costs, including a reasonable contingency amount, shall identify the source of funding, and shall not, in the aggregate, exceed the sum of: (i) the park development amount allocable to the Park Site on a per-acre basis under the City of Sacramento Park Development Impact Fee program (the "**Fee Program**"); and (ii) such additional funds, if any, as the City or Developer, in their discretion, may be willing to contribute toward development of the Park Site.

1.3 Contract Award. After LAS has given its written approval of the bid documents, Developer shall solicit competitive bids for construction of the Project in accordance with the City approved bid documents. Developer shall issue a request for competitive bids to all landscape contractors included on the current master list used by LAS for similar projects, in addition to any other contractors identified by Developer. Developer shall not request bids from fewer than three (3) contractors. Bids shall be sealed, and shall be opened in the presence of an LAS representative. Developer shall provide LAS with copies of all bids received, after which LAS shall have ten (10) working days to review the bids and the Developer's proposed selection of the successful bidder, and to either approve or disapprove the Developer's proposed selection. LAS approval shall not be unreasonably withheld. If fewer than three (3) bids are received, or the LAS determines that the bid(s) are too high, LAS may instruct Developer to modify the Project Improvements and/or re-bid the Project in accordance with the foregoing procedures or as otherwise directed by City. If the LAS notifies Developer of the need to modify the Project Improvements, the LAS shall provide Developer with an opportunity to review and comment on any direction by the City to modify the Project Improvements and City shall give such comments fair consideration. When satisfied with the bid, LAS shall give written notice to Developer to proceed with award of the contract, incorporating modifications required by the LAS hereunder, if any. If it is necessary to re-bid the Project, then the Completion Date shall be extended in an amount equal to the number of days consumed by having to re-bid the Project. In addition, if it is necessary to modify the Project Improvements, then the Completion Date shall be extended in an amount equal to the number of days needed to modify the Project Improvements and having such modified Project Improvements approved by City.

1.4 Construction. Developer covenants that the Project will be constructed in compliance with all approved plans and specifications, bid documents, modifications thereto required by City in accordance with this Agreement, and applicable technical specifications in the City Public Works Construction Standard Specifications and Improvement Standards in effect when the City approves the bid documents as provided herein (collectively, "**Project Plans**"), subject to change orders issued in accordance with the provisions of Section 1.7 below.

1.4.1 Representatives. Developer shall provide a site construction superintendent ("**Site Superintendent**") and the City shall provide a City project manager who will serve as their respective points of contact with respect to such construction. The designated Site Superintendent and City Project Manager are identified on **Exhibit F**, attached hereto and incorporated herein by this reference. The designations may be changed by written notice from either party.

a. The Site Superintendent will be on-site as necessary and will generally be available by telephone or otherwise at all reasonable times. The Site Superintendent shall have complete authority over Developer's construction contractors and subcontractors, with authority to order stoppage of work and minor changes to the work in order to comply with the Project Plans.

b. The City Project Manager shall have complete authority over the City's construction inspectors, with authority to determine whether the work complies with the Project Plans. The City Project Manager also shall have authority to order minor design changes to meet unanticipated field conditions, provided that the same are consistent with the Project Plans, and subject to the provisions of Section 1.4.5 below.

1.4.2 Commencement and Completion of Project. Subject to the provisions of Sections 1.2.4, 1.2.5, 1.3, 1.4.5 and 8.5 of this Agreement, including without limitation, the effect of inclement weather on Developer's ability to commence or proceed with construction, Developer shall commence the construction of the Project within three (3) months, or such longer time period as may be specified by the LAS, after the final approval of the bid documents by the LAS and thereafter shall diligently work to complete such construction in a timely and efficient manner by or before the Completion Date. If the Developer fails to commence and/or work to complete the Project as required herein, and fails to remedy such delay within thirty (30) days after a written notice thereof from City to Developer (subject to the provisions of Section 8.5 below), City in its discretion may (i) direct Developer to take action necessary to accelerate the Project to remedy the delay, and the Developer's acceleration costs, if any, shall not be subject to reimbursement or credit hereunder, or (ii) direct Developer to stop working on the Project so that the City may seek other means to complete construction of the Project, in which case any costs incurred by Developer, its contractors or subcontractors after receiving such direction from City shall not be subject to reimbursement or credit hereunder. If Developer is directed to stop working on the Project, Developer shall take any and all actions necessary to convey to and vest in City full, complete, and clear title in the Project, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access.

1.4.3 Inspection. Developer covenants that City, and any other public entities or public utilities to whom any portion of the Project will be conveyed, will be permitted to inspect the Project and shall have access to the Project for this purpose at all times. City agrees to make inspectors available for inspection of the Project during such construction within not more than forty-eight (48) hours after request therefore from Developer (Sundays excepted). Should a City inspector find any nonconformance or noncompliance with the Project Plans, the Inspector shall notify the City Project Manager and the Site Superintendent of such nonconformance or noncompliance, and the City Project Manager and the Site Superintendent shall jointly determine the nature of the corrective action to be taken. If the City Project Manager and the Site Superintendent are unable to agree upon the corrective action to be taken, the City Project Manager shall have authority to make such determination, with Developer having a right of appeal to the City Manager or his designee.

1.4.4 Prevailing Wages. Developer's contractors and subcontractors shall pay all workers on the Project not less than the general prevailing rate of wages for such workers' craft or trade, as determined by the Director of the Department of

Industrial Relations at the time that Developer requests bids for the Project (pursuant to Labor Code Section 1773). Copies of certified payroll shall be provided to City, on a monthly basis, as a prerequisite of Final Completion (defined below in Section 2.1.2).

1.4.5 Unforeseen Cost Increase. If Developer encounters unknown and unforeseen site conditions after commencement of Project construction that will increase the Project Costs beyond the Final Budget, and neither party voluntarily agrees to bear such cost increase, then the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget. In this latter event, Developer and the LAS shall meet and confer in an attempt to agree upon the requisite modifications. If the parties are unable to agree, the LAS shall have the final authority to make such determination and identify Project modifications that shall bring the Project Costs within the Final Budget. The Completion Date shall be extended for a period of time equal to the number of days consumed in making modifications to the Project Improvements in order to bring the Project Costs back within the Final Budget.

1.5 Performance, Labor and Material Bonds. Developer covenants to comply with any and all applicable State and/or City performance and payment bonding requirements with respect to the construction of the Project. If permitted by State law, Developer may satisfy the obligation to post bonds with an assignment to the City of the contractor's bond or bonds or through the posting of bonds, letters of credit or other security instruments acceptable to City, in accordance with applicable City requirements; provided, however, that all such bonds, letters of credit, or other security instruments must meet all requirements that would apply for security to be posted by a contractor, quantitatively and qualitatively, if City and not Developer was contracting to construct the Project. On Final Completion (defined below in Section 2.1.2), the amount of the bond or letter of credit may be reduced, as authorized by Section 4.5.5 to reflect the remaining value of the maintenance work to be performed by Developer during the one (1)-year warranty period.

1.6 Insurance. Prior to the commencement of construction work on the Park Improvements, Developer shall furnish to City a certificate or certificates substantiating the fact that it has taken out the insurance hereinafter set forth for the period covered by this Agreement with an insurance carrier acceptable to City in a form satisfactory to City. Each certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after City shall have received notification of such cancellation or reduction by registered mail.

The minimum insurance coverage shall be as follows: Public liability and property damage insurance which includes, but is not limited to, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, and underground hazards shall be in the amount of not less than a combined single limit one million dollars for one or more persons injured and property damage in each occurrence. The public liability and property damage insurance shall also name City as an additional insured. This insurance shall directly protect City as well

as Developer and its agents. The insurer shall assume the defense of City, its officers, employees and agents from suits, actions, damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of said Project by Developer or its subcontractors. The insurance policy shall expressly state that the above terms are in effect.

If Developer fails to maintain such insurance, City may take out insurance to cover damages of the above mentioned classes for which City might be held liable on account of Developer failing to pay such damages, and recover the amount of the premiums for such insurance from Developer or retain such amount from any monies due Developer under this Agreement. Failure of City to obtain such insurance shall in no way relieve Developer from any of its responsibilities under this Agreement.

1.7 Contracts and Change Orders. Developer shall be responsible for entering into all contracts and any change orders required for the construction of the Project, provided however Developer shall not be required to enter into any change orders that would increase the Project Costs beyond the Final Budget, unless an increase in the Final Budget is approved by the City as provided in this Section 1.7. All change orders shall require approval of the LAS, which shall not be unreasonably delayed, conditioned, or withheld, except as provided as follows. In the event a change order alters the Project Improvements and would increase the Project Costs beyond the Final Budget the Project Improvements shall be modified in order to bring the Project Costs back within the Final Budget as provided in Section 1.4.5 herein. In the event the City finds in its sole discretion that the Project Improvements cannot be modified such that the Project Costs fall within the Final Budget, then City, at City's sole discretion, may disapprove of the change order or may approve an increase in the Project Costs, the Park Development Fee and Park Development Budget shall be amended to reflect the increase in such costs, and the Final Budget shall be increased by such amount and all such increased costs shall be eligible for credit and reimbursement hereunder.

1.7.1 Required Change Orders. Developer shall make changes that are necessary after the construction contract is awarded in order to comply with the Project Plans. Developer shall pay for all such changes, and the cost thereof shall be included in the Project Costs provided that the cost of the Project is not increased beyond the Final Budget.

1.7.2 Requested Change Orders. Developer shall make discretionary changes in the construction of the Project in accordance with the provisions of this section. As used herein, "discretionary change" means a change that is not required by the Project Plans but is requested by City after the construction contract is awarded to augment or modify the Project Improvements identified in the Project Plans.

When a discretionary change is requested by City, Developer shall provide City a written cost estimate for the change within ten (10) days following Developer's receipt of City's written request for such estimate. Upon receiving such estimate, City shall direct Developer whether to proceed with the change, and

Developer shall make such change as directed by City, so long as City agrees to pay Developer for such discretionary change from sources described in section 3.1 below (if the change would not increase the cost of the Project beyond the Final Budget) or other identified funding sources. Notwithstanding the foregoing, Developer shall not be obligated to make discretionary changes requested by City if the change would result in an unreasonable delay to completion of the Project or would extend the time for completion beyond the Completion Date.

1.8 Liquidated Damages. The actual fact of the occurrence of damages and the actual amount of damages that City would suffer if a Park is not completed by the Completion Date, are dependent upon many circumstances and conditions which could prevail in various combinations, and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which City would suffer in the event of delay include loss of the use of the Park and, in addition, staff and supervision costs; and the loss suffered by the public within the City by reasons of the delay in the completion of the Park to serve the public by the Completion Date, subject to Sections 1.4.2 and 8.5 herein. Accordingly, the parties hereto agree, and by execution of this Agreement, Developer understands, has ascertained, and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by the failure of Developer to complete the Park within the times specified in this Agreement. The amount of the liquidated damages to be paid by Developer to City for failure to complete the Park by the date specified herein (as extended under Sections 1.4.2 or 8.5 herein, or other applicable provisions of this Agreement or law) will be $200.00 for each calendar day, continuing to the time at which the Park is physically completed. Such amount is the actual cash value agreed upon as the loss to City resulting from Developer's default. In the event Developer shall become liable for liquidated damages, City shall have the right to demand and receive from Developer liquidated damages as provided herein once liability of Developer under this section is finally determined under the provisions of Section 8.4

ARTICLE 2.
CITY ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.0 Completion. When Developer believes the Project is complete, Developer shall provide written notice of completion to the City, requesting a walk-thorough inspection. Developer may not submit a notice of completion unless and until the turf specified in the construction specifications has been established. It shall be the responsibility of the Developer to provide the written notice of completion within such time prior to the Completion Date as reasonably estimated by the Developer, upon consultation with City, to allow for the Final Inspection (defined below) and any corrective punch list work to be completed by or before the Completion Date. Within ten (10) business days following the date of receipt of Developer's written notice of completion, the City shall conduct a final inspection of the Project ("**Final Inspection**"). The Project shall be inspected by representatives of the City. At the Final Inspection, Developer shall demonstrate to City the operation of any system included as part of the

Project, and instruct City personnel in the operation, adjustment, and maintenance of any equipment or systems included in the Project.

2.1 **Final Inspection**. If, during the Final Inspection, City determines that the Project has not been completed in accordance with the Project Plans, the City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer within ten (10) business days following the Final Inspection. If the City delivers such punch list to Developer within said ten (10) business day period, then Developer shall undertake to repair such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from the City and within ten (10) business days following such written notice from Developer, the City shall conduct another Final Inspection. If the City determines that the punch list work is complete, the City shall immediately deliver a certificate of final completion to Developer. If the City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section 2.1 until the successful completion of the punch list work. If the City fails to conduct such Final Inspection within ten (10) business days after receiving the Developer's written request for a Final Inspection, or if the City fails to deliver a punch list to Developer within ten (10) business days after conducting such Final Inspection, then the Developer will be deemed to have successfully completed the Final Inspection. Notwithstanding the foregoing, there shall not be a successful Final Inspection unless and until the City reasonably determines that the turf specified in the construction specifications has been established as evaluated under customary trade standards.

2.1.1 **Punch List Items**. Within ten (10) business days after the successful completion of the punch list work, if any, or upon a successful Final Inspection, Developer shall provide City with a Mylar copy of "as-built" record drawings with certification by a licensed civil engineer in the State of California as to accuracy and completeness. Developer's submission of complete, updated as-builts shall be a prerequisite to Final Completion.

2.1.2. **Final Completion**. Final Completion shall be deemed to occur after a successful Final Inspection, the delivery of the documents and information required under Sections 1.4.4 and 2.1.1, and upon the City's acceptance of the Project (as evidenced by a written statement or letter to that effect signed by or on behalf of City), which shall occur within thirty (30) days after Developer successfully completes a Final Inspection ("**Final Completion**"). The City's acceptance of the Park and the Project Improvements shall not be unreasonably withheld, delayed, or conditioned. Upon Final Completion, the Park and all Project Improvements shall automatically become the property of City. Developer shall take any and all actions necessary to convey and vest full, complete, and clear title in the Park, and all of the underlying real property interests (easement and/or fee) including those necessary for maintenance and access, to City on or before Final Completion. City will not formally accept the Park unless and until such title has been conveyed to City.

2.1.3 Park Maintenance. Developer shall maintain the Project Improvements at Developer's expense during the one (1)-year warranty period specified in Section 2.4, and City agrees to grant Developer, or its agents, any necessary right of entry permits or licenses for such maintenance work. Thereafter, City shall be responsible for all Park maintenance. For purposes of this Section 2.1.3, "park maintenance" does not include capital repairs or restoration necessitated by vandalism or acts of God.

2.2 Release of Liens. Upon Final Completion, Developer shall provide, in form satisfactory to the City, evidence that all of the costs of the Project have been fully paid, including any and all lien claims. Upon request of the City, Developer shall provide lien releases under California Civil Code Section 3262(d) to assure that payment of any outstanding claims of the Developer's contractors, subcontractors, and suppliers have been paid.

2.3 Indemnification.

2.3.1 Indemnification by Developer. Subject to the provisions of this Section 2.3, Developer agrees and covenants to, and shall fully indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "**Claims**") arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of the Project by any of the following: Developer, any of Developer's engineers, architects, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer, or any of Developer's engineers, architects, contractors or subcontractors. Provided, however, that Developer shall not be liable hereunder to indemnify, defend or hold harmless City and its elective and appointive boards, commissions, officers, employees and agents against Claims alleging sole negligence, active negligence or willful misconduct of City in its functions of design review, approval, construction inspection or other acts or omissions of City in connection with the Project; provided further, that nothing in this Agreement shall be construed as a waiver by City of any immunity or defense it may have relating to any such Claim, including without limitation immunity or defenses relating to design review and/or approval and/or construction inspection. With respect to the acts or omissions of the authorized agents of Developer's engineers, architects, contractors or subcontractors, Developer's obligations under this subsection 2.3.1 shall be limited to the acts or omissions of such agents who, under applicable principles of agency: (i) also constituted authorized agent(s) of Developer with respect to the Project; and (ii) were acting within the course and scope of such agency.

2.3.2. Indemnification Regarding Hazardous Substances. Developer further agrees and covenants to, and shall fully indemnify, defend and hold harmless

City, and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment to the extent arising from any use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined in **Exhibit G,** attached hereto and incorporated herein by this reference, by any person or entity (except persons or entities acting on City's behalf or under City's control), occurring on or at any time prior to the date the Project and the associated real property interests are conveyed to City as provided in this Agreement. The foregoing indemnification obligation shall not apply to the incorporation of building materials as part of the Project, provided such incorporation is performed in accordance with applicable laws and is not in violation of Environmental Laws in effect at the time of such incorporation.

2.3.3 Duration of Indemnification Obligations. The indemnification and hold harmless agreement made by Developer in Section 2.3.1, above, with respect to the Project, and/or each part thereof constructed by Developer, shall expire on the date which is one year after Final Completion ("**Expiration Date**"), provided that Section 2.3.1 shall not expire and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to the Expiration Date, or which relate to (directly or indirectly) any such Claims. The indemnification and hold harmless agreement made by Developer in Section 2.3.2 shall survive the termination of this Agreement until the date which is two years after the Final Completion of the Project. Section 2.3.2 shall not expire, however, and shall remain in effect with respect to any Claims which are made, initiated, claimed, filed or assessed at any time prior to such date, or which relate to (directly or indirectly) any such Claims. The provisions of this Section 2.3.3 shall apply only with respect to the indemnification and hold harmless provisions of this Agreement, and shall not affect the liability, if any, which Developer might have under applicable law to the extent Developer, is a contaminator of the Developer Property. The provisions of this section 2.3.3 shall not apply to Claims relating to acts or omissions occurring during the performance of Developer's maintenance obligations, pursuant to Section 2.1 above.

2.3.4. Additional Provisions Regarding Indemnification Obligations.

(a) City does not, and shall not be deemed to, waive any rights against Developer which it may have by reason of the aforesaid indemnity and hold harmless agreements because of any insurance coverage provided pursuant to Section 1.6; and

(b) except as may otherwise be specifically and expressly provided in subsection 2.3.1 relating to Claims based upon allegations of sole or active negligence on the part of City, the aforesaid indemnity and hold harmless agreements shall not be limited or waived in any way based upon the fact that City has or shall have prepared, supplied, or approved of plans and/or specifications for the Project, or has or shall have inspected or failed to inspect construction of the Project; and

(c) the scope of the aforesaid indemnity and hold harmless agreements is to be construed broadly and liberally to provide the maximum coverage for City in accordance with their terms but only to the extent allowed pursuant to Civil Code section 2782; and

(d) no specific term or word contained in this section shall be construed as a limitation on the scope of the indemnification and defense rights and obligations of the parties unless specifically so provided; and

(e) Developer shall include or cause to be included the following language, or other language approved in writing by the City, in all contracts or agreements relating to the Project with any architect, engineer or contractor (who all are identified as the "Contractor" in the following language), provided however, such indemnity may be limited if required by the provisions of Civil Code section 2782:

> Contractor agrees and covenants to, and shall, fully indemnify, defend and hold harmless the City of Sacramento and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims or judgments arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of that portion of the Project designed or constructed by Contractor or any of Contractor's architects, engineers, subcontractors, or any other person or entity employed by or acting on behalf of or as an authorized agent for Contractor, or any of Contractor's architects, engineers or subcontractors.

2.3.5 **Waiver by Developer**. In addition to Developer's obligations to indemnify, hold harmless and defend City as set forth above, Developer, its assigns, transferees and successors, hereby waives and releases any and all claims of whatever sort or nature that may arise against City or its officers, employees and agents, in connection with Developer's design and/or construction of the Project.

2.3.6 **Unknown Claims**. This waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties hereto expressly acknowledge

that this Agreement is intended to release and extinguish, without limitation, all claims as described in this Section 2.3 which the parties do not know or suspect to exist. The provisions of this Section 2.3 shall survive termination of this Agreement.

2.3.7 Indemnification by City. City further agrees and covenants to, and shall fully indemnify, defend and hold harmless Developer, and its officers, employees and agents, from and against any and all Claims arising by reason of any death, bodily injury, personal injury, property damage or damage to the environment (i) to the extent arising from any City use, storage, treatment, transportation, release or disposal, on, about or around the portion of the Developer Property on which the Project or the easements which are required to be or which are transferred to City shall be located, of any Hazardous Substances, as defined above, by any person or entity (except persons or entities acting on Developer's behalf or under Developer's control), occurring on or at any time after the date the Project, and the said easements are conveyed to City as provided in this Agreement; (ii) arising from any act (including but not limited to those covered by subsection (i) immediately above) on the part of City or its agents or employees in the use and operation of the Project; or (iii) occurring on or at any time arising from any entry upon the Developer Property by City, its agents, employees or contractors, pursuant to the provisions of Article 1 of this Agreement.

2.4 Warranty. Developer hereby warrants the Project Improvements as to the materials and workmanship for one (1) year following Final Completion. The provisions contained herein shall not be deemed to limit any rights Developer has or may have to seek damages or other relief based upon any act or omission of any contractor involved in the construction or design of the Project Improvements. Notwithstanding the foregoing, Developer's warranty excludes remedy for damage or defect caused by ordinary wear and tear under normal usage, abuse, neglect, modifications not performed by Developer or its agents, vandalism, or acts of God. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Project Improvements, but the warranty contained in this Section 2.4 shall be the exclusive warranty of Developer, and all other express or implied warranties are expressly disclaimed. Should any failure of the Project Improvements or any portion thereof occur within such one (1)-year period, Developer shall promptly cause the needed repairs to be made without any expense or cost to City. Warranty work is distinguished from the twelve months of maintenance that Developer will be performing during the warranty period. City is hereby authorized to make repairs if Developer fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer with an opportunity to meet and confer regarding such warranty work and the Developer shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the warranty period. In case of emergency when delay would cause serious hazard to the public, City may make the necessary repairs without prior notice to Developer. In all cases of failure of a Project Improvement or portion thereof within the warranty period where City has taken action in accordance with this Section, Developer shall reimburse City for any and all

costs or expenses, direct and indirect, incurred by City, and City may deduct the outstanding amount from the Park Development Fee Reimbursement Amount (defined below) or reduce allowable credits after providing Developer with documentation reasonably substantiating the costs incurred by City pursuant to this Section.

ARTICLE 3.
REIMBURSEMENT FROM PARK FACILITIES ACCOUNT

3.0 **Park Development Fee Reimbursement Amount.** Developer shall be entitled to reimbursement, without interest, for the entire portion of the Project Costs actually incurred by Developer for improvements that are designated for funding by the Park Development Fees in **Exhibit E** (identified as the "**PIF**" funding source in **Exhibit E)**, not-to-exceed the budget amounts specified for the tasks performed by Developer in **Exhibit E,** as modified by the Final Budget, if applicable, (the "**Park Development Fee Reimbursement Amount**"). The amount of such reimbursement shall be subject to City's review and written approval of the Project Costs incurred by Developer, provided all Project Costs incurred by Developer that are included in the Final Budget shall be deemed approved by the City. After Final Completion, or if desired by Developer as the Project progresses, Developer shall provide copies of all contracts, change orders, certified payroll and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. The City has the right to verify whether the materials and work for which Developer requests reimbursement have been installed or performed as represented in the reimbursement request. In accordance with Section 18.44.110 of the Fee Ordinance, the Park Development Fee Reimbursement Amount, as reduced from time to time by reimbursements paid and credits taken against the Park Development Fee pursuant to this Agreement, shall be subject to adjustments for inflation calculated consistent with the provisions of Section 18.44.120 of the Fee Ordinance, but shall not otherwise accrue interest. City's approval and verification of reimbursement amounts due Developer shall not be unreasonably withheld, delayed or conditioned.

3.1 **Sources for Reimbursement.** Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, City's general or special funds, or any other funds in the hands of City or its accounts now and in the future, except as otherwise expressly provided herein. Except as otherwise expressly provided herein, City's obligation hereunder to provide reimbursement is limited to the source of funds described in section 3.1.1, below, to the extent funds are available therefrom and not otherwise committed for reimbursement by the City to others, and subject to all applicable provisions of the Fee Ordinance.

3.1.1. **Park Facilities Account**. Park Development Fees that are paid to the City pursuant to the Fee Ordinance for Development Projects located in the same City Planning Area as the Park site shall be maintained by the City in a separate special fund ("**Park Facilities Account**"), pursuant to Section 18.44.150 of the Fee Ordinance. The various City planning areas ("**City Planning Areas**") are shown in the Nexus Study (on file at the office of the City Clerk as document No. 2002-230). As used herein, the

term "Development Project" has the meaning that is provided in Section 18.44.010 of the Sacramento City Code.

3.1.2 **City Administrative Costs**. A portion of Park Development Fees paid to the City pursuant to the Fee Ordinance, up to, but not in excess of **two and one half percent (2.5%)** of the Park Development Fees, will be retained by the City to defer the City's cost to administer the Fee Program, so that such portion of the Park Development Fees will not be available for reimbursement. Park Development Fees to be paid by other developers for their Development Projects may be offset or reduced by credits in consideration of the construction of other Park Development Fee related improvements provided such improvements are identified in the Nexus Study for funding by the Park Development Fee prior to the effective date of this Agreement, which may result in no Park Development Fees being paid by such other developers until such credits are exhausted.

3.2 **Timing of Reimbursement.** Upon Developer's request, after Final Completion and City approval of the Park Development Fee Reimbursement Amount as provided in Section 3.0, and subject to the reimbursement priority described in Section 3.3, below, the City will pay Developer the amount then available in the Park Facilities Account for reimbursement up to, but not in excess of, the approved Park Development Fee Reimbursement Amount for the Project (as reduced by credits previously taken pursuant to this Agreement, if any). Thereafter, on a quarterly basis and continuing until the Park Development Fee Reimbursement Amount is reduced to zero, the City (subject to the reimbursement priority described in Section 3.3 below) will pay Developer the amount then available for reimbursement in the Park Facilities Account, up to the then outstanding Park Development Fee Reimbursement Amount.

3.3 **Priority for Reimbursement.** The timing of reimbursement from the Park Facilities Account will be subject to the priorities and principles set forth below:

3.3.1 **Use of Funds by City**. The expenditure of funds within the Park Facilities Account by City as authorized by section 18.44.160 of the Sacramento City Code, other than reimbursements, will have superior priority to Developer's right to reimbursement under this Agreement.

3.3.2 **Other Reimbursement Agreements.** Other agreements entered into by the City to provide reimbursements for the design and construction of park improvements designated in the Nexus Study for funding by the Park Development Fee and located in the same City Planning Area as the Park Site, will have superior priority to reimbursement over Developer's right to reimbursement under this Agreement, subject to adjustment in such priority pursuant to the terms of such other agreements.

3.3.3 **Adjustment of Priority**. If the Developer fails to commence and/or work to complete the Project as required by this Agreement, and fails to remedy such delay within thirty (30) days after receiving written notice of such delay from City, section 1.4.2, above, authorizes the City to direct Developer either to accelerate the

Project to remedy the delay or to stop working on the Project. In addition to these actions, if the Developer fails to remedy such delay within thirty (30) days after receiving such written notice from City, City may elect to adjust the priority for reimbursement to occur after full reimbursement to any other developers who have then entered into similar reimbursement/credit agreements subsequent to this Agreement for the design and construction of park improvements that are designated in the Nexus Study for funding by the Park Development Fee and that are located in the same City Planning Area as the Park site. The intent of this paragraph is to encourage the timely commencement and completion of the Project. City acknowledges that any such adjustment shall not affect Developer's right to take credits against Park Development Fees as provided herein.

3.4 **Agreements with Other Developers.** To protect such reimbursement to Developer, City agrees that any and all subsequent credit/reimbursement agreements involving reimbursements from the Park Development Fees paid to the City for Development Projects located in the same City Planning Area as the Park site will include the following terms:

3.4.1 The credit/reimbursement amount under other agreements shall be based on the actual costs incurred by the developer for the improvements, as reviewed and approved by the City, and the contract(s) for such work shall be awarded based on a competitive bid process analogous to the process specified herein; and

3.4.2. Such agreements shall require payment of the developer's fair share of the City's costs to administer the Fee Program, up to, but not in excess of, two and one half percent (2.5%) of the Park Development Fee then in effect.

3.4.3. Reimbursements under agreements from the Park Facilities Account shall be subject to the priorities and principles set forth in Section 3.3, above.

3.5 **Allocation of Reimbursements.** If and to the extent Developer assigns its right to reimbursements and credits under this Agreement in accordance with the provisions of Article 5 below, City's reimbursements to Developer and such approved assignees shall be made in proportion to the outstanding portions of the Park Development Fee Reimbursement Amount then held by Developer and such assignees thereof approved by the City pursuant to Article 5.

ARTICLE 4.
PARK DEVELOPMENT FEE CREDITS

4.0 **Funding City's Costs.** For purposes of this Article 4, "Developer" shall mean Woodside Hampton Station, Inc. so long as Woodside Hampton Station, Inc. is the party incurring the costs of developing the park site. The estimated costs to be incurred by City in the construction of the onsite improvements to **Hampton Station** are shown on **Exhibit E-1**, attached hereto and incorporated herein by this reference. Within 30 days following the delivery to Developer of a fully executed original of this

Agreement, Developer shall comply with the requirements set forth in either section 4.1 or section 4.2.

4.1 Cash Deposit For Entire Project. Developer shall deposit with City the sum of **$839,581** less any park development impact fees (PIF) already paid, as prepaid Park Development Fees. Developer may immediately use these Prepaid Park Development Fees as credits ("Park Development Fee Credits") against the Park Development Fee that would otherwise be payable by Developer with the issuance of a building permit for any residential or commercial development project located in the same City Planning Area as the Park Site until such Prepaid Park Development Fee amount is exhausted through the use of such credits and any reimbursement hereunder. The cash deposit made pursuant to this section 4.1 will satisfy the bonding requirements under Section 1.5.

4.2 Letter of Credit For Entire Project. As an alternative to paying a cash deposit pursuant to section 4.1, Developer may provide a letter of credit in favor of the City in the sum of **$839,581**, less any park development impact fees (PIF) already paid, in lieu of prepaid Park Development Fees. This may be done with the delivery to City of an Irrevocable Standby Letter of Credit issued by a banking institution approved by the City Treasurer's Office and on a form approved by the City Attorney's Office, in accordance with the conditions in Section 4.5. As authorized by City Council Resolution No. 2002-591, the City shall immediately credit the Developers Prepaid Park Development Fee account for the full amount of the face value of the letter of credit, but not in any event in an amount in excess of the amount of the total construction funds available for the park improvements shown in **Exhibit E**. Pursuant to Section 4.5, Developer may immediately use these Prepaid Park Development Fees as credits against the Park Development Fee that would otherwise be payable by Developer with the issuance of a building permit for any residential or commercial development project located in the until such Prepaid Park Development Fee amount is exhausted through the use of such credits and any reimbursement hereunder. With the issuance of each building permit, the Developer will be entitled to a credit in the full amount identified on **Exhibit E-1** as the "Calculation of Fee Credit Amount", to be applied toward payment of the Park Development Fee required for each dwelling unit in such development project. The two and one-half percent (2.5%) City Administration Fee will be paid to the City prior to the issuance of each building permit to fund the costs incurred by the City in the administration of the Park Development Fee Program. The letter of credit made pursuant to this section 4.2 will satisfy the bonding requirements under Section 1.5. Developer may only terminate the letter of credit with the consent of the City.

4.3 Reduction of Prepaid Park Development Fee Deposit. Park Development Fees may be paid for the Property by third party builders in conjunction with single-family and multi-family building permits issued in advance of the execution of this Agreement. Developer shall be entitled to reduce the amount of the prepaid Park Development Fee deposit identified in sections 4.1 in an amount equal to the sum paid by said third party builders, less City's two and one half percent (2.5%) Administration Fee, which amount shall be calculated by City within fifteen (15) days following

Fee, which amount shall be calculated by City within fifteen (15) days following execution of this Reimbursement/Credit Agreement. In the event payments by third party builders equal or exceed the Prepaid Park Development Fee deposit identified in sections 4.1, then Developer shall not be obligated to deposit Prepaid Park Development Fees pursuant to Sections 4.1 and 4.2.

4.4 **Fee Deferral.** In the event the City adopts a Fee Deferral Plan, which provides for deferral of the Park Development Fee and in the event that Developer elects to participate in such Fee Deferral Plan, Developer's Park Development Fee Credit shall be applied against the Park Development Fee then in effect in accordance with the foregoing provisions to determine the net outstanding fee. The fee deferral shall then be applied against the net outstanding fee to determine the annual installments of principal and interest to be paid pursuant to such Fee Deferral Plan.

4.5 **Advance Issuance of Park Development Fee Credits.** As an alternative to the advance issuance of Park Development Fee Credits under Section 4.1, Developer shall be entitled to Park Development Fee Credits before full completion of the Project and actual formal City acceptance of the Project if all of the following conditions are satisfied:

4.5.1 **Letter of Credit.** Developer provides City with an irrevocable letter of credit in an amount that is no less that $_____ as security for Developer's performance under this Agreement ("Letter of Credit").

(a) The Letter of Credit must be in a form acceptable to the City Attorney's Office, in that office's sole discretion, and, by its express terms, must be unconditional and absolutely free of defenses on the part of Developer and the financial institution that issues it. The financial institution that issues the Letter of Credit must be a commercial bank lawfully operating within the United States and acceptable to the City Treasurer's Office, in that office's sole discretion.

(b) The Letter of Credit shall not be subject to expiration, or shall by its express terms not be subject to expiration without written notice to the City given not less than thirty (30) days prior to the date of expiration. The Letter of Credit must provide that City may draw upon it by presenting one or more site drafts, each accompanied by a signed-and-dated demand letter worded substantially as follows:

The [title] of the City of Sacramento, demand payment of the sum of _____ U.S. Dollars ($_____) representing a partial/full draw upon the amount of your Irrevocable Letter of Credit No. _____. This sum represents

payment due to the City under the reimbursement-and-credit agreement between [Developer's name] and the city that is dated _____, 20__, and designated by the City as Agreement No. _____.

(c) While this Agreement is in effect, Developer must replace the Letter of Credit (and any replacement of Letter of Credit) at least **five (5) working days** before its expiration date. The replacement Letter of Credit must be identical to the Letter of Credit being replaced, except that it must have an expiration date that is no sooner than **12 months** following the expiration date of the Letter of Credit being replaced.

4.5.2 **Issuance of Fee Credits**. Developer must make a written request for issuance of Park Development Fee Credits in accordance with this Section 4.5. City will determine, in its sole discretion, the amount of Park Development Fee Credits that may be issued in response to the written request. City will issue Park Development Fee Credits to Developers in an amount equal to the Park Development Fee Credits allowable under this Agreement and City's policies and procedures for issuance of the credits. Total Park Development Fee Credits issued under this Section 4.5 may not exceed the amount of the Letter of Credit delivered by Developer.

4.5.3 **Repayment**. If City issues Park Development Fee Credits to Developer that, in the aggregate, exceed the total amount that may be issued in accordance with this Agreement and City's policies and procedures for issuance of the credits, then Developer agrees to repay City the full amount of the excess within **15 days** after receiving City's written demand. Similarly, if the final calculation of Park Development Fee Credit amounts under this Agreement results in City having issued Park Development Fee Credit to Developer in excess of those provided for this Agreement, then Developer agrees to repay City the full amount of the excess within **15 days** after receiving City's written demand.

4.5.4 **Drawing Upon the Letter of Credit**. City may draw on the Letter of Credit as follows:

(a) If Developer fails to complete construction of the Project as required by this Agreement, then the City will have the absolute right to draw upon the Letter of Credit in an amount City determines, in its sole discretion, to be necessary to complete the Project.

(b) If repayment is due under Section 4.5.3 and Developer does not repay City within the time specified in Section 4.5.3, then City will be entitled to draw against the Letter of Credit in an amount equal to the repayment amount then due. A draw under this Section 4.5.4(b) will be a partial draw under the Letter of Credit and will leave the balance of the Letter of Credit intact.

(c) If Developer fails to provide City with a replacement Letter of Credit within the time specified in Section 4.5.1(c), then City will be entitled to draw against the Letter of Credit in an amount equal to the total amount of Park Development Fee Credits that Developer has received under this Agreement as of the time of the draw. If City makes a draw under this Section 4.5.4(c), then—

(1) City will hold the amount drawn, with no obligation to pay Developer interest, until (A) City determines that Developer cannot or will not complete the Project as required by this Agreement (in which event City may use the amount drawn to complete the Project) or (B) Developer completes the Project in full and City formally accepts the Project (in which event City will return the amount drawn to Landowner); and

(2) City will not be obligated to issue additional Park Development Fee Credits under this Agreement unless and until (A) Developer completes the Project in full and City formally accepts the Project or (B) Developer furnishes City with a replacement Letter of Credit that complies with Section 4.5.1, above.

4.5.5 <u>Release of Letter of Credit</u>.

(a) The Letter of Credit shall not be released or reduced until the Developer completes the Project in full and the City formally accepts the Project. To the extent that a portion of the Letter of Credit secures the provision of future park maintenance, the Letter of Credit shall not be released until a new Letter of Credit, acceptable in all respects by the City at its sole discretion, is provided to City by Developer in the dollar amount specified for maintenance in the park construction budget. The maintenance Letter of Credit shall not be released until such time as the maintenance obligation has been fully satisfied, as determined by the City in its sole discretion.

(b) If a Letter of Credit is provided to cover an obligation to construct multiple parks, as each park is formally accepted by the City, a replacement Letter of Credit may be provided in an amount that reflects the still-pending obligations for construction and maintenance. Upon the acceptance of the replacement Letter of Credit by the City, with such acceptance being at the City's sole discretion, the original Letter of Credit shall be returned to the Developer.

ARTICLE 5.
ASSIGNMENTS OF REIMBURSEMENTS AND CREDITS

5.0 Assignment Permitted. Developer may assign the rights under this Agreement to receive reimbursements from the Park Facilities Account, and take Park Development Fee Credits against the Park Development Fee to be assessed against any Development Projects in the same City Planning Area as the Park Site, to any person or entity, subject to and in accordance with the terms of this Article. All assignments of the right to Park Development Fee Credits and reimbursements pursuant to this Article shall be subject to City's prior written consent, which consent shall not be unreasonably withheld or delayed. Developer acknowledges and agrees that City shall have the discretion to deny an assignment of rights to Park Development Fee Credits and reimbursements under this Agreement on the basis of excessive fractionalization of the available credits and reimbursements, provided City shall not deny an otherwise qualified assignment that represents at least ten percent (10%) of Developer's reimbursement and credit rights. In addition, City shall be entitled to calculate and assess as a condition of its consent of any such assignment, a reasonable fee for the review, approval, and administration thereof.

5.1 Required Assumption by Assignee. In addition to the approval of the City, any assignment shall be subject to an express written assumption by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement with respect to the application and interpretation of the Park Development Fee Credit and fee reimbursement provisions, including without limitation, the obligation to pay the portion of the Park Development Fee required to cover the City's cost of administration of the Fee Program, notwithstanding the existence of any such right to Park Development Fee Credits and reimbursements. The assignment agreement shall contain a provision where under Developer and the assignee agree to fully and completely indemnify and defend City from any liability relating to the assignment of rights.

5.2 Disputes Between Developer and Assignee. Developer and any assignee thereof acknowledge and agree that in the event of any dispute between Developer and/or any assignee and/or the City regarding the legal ownership of the rights to Park Development Fee Credits and reimbursements hereunder, City may withhold any cash reimbursement and may disallow the use of any Park Development

Fee Credits unless and until either (i) all parties to the dispute have executed an agreement in a form acceptable to the City Attorney specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing parties the legal ownership of such rights and the manner in which such rights will be exercised.

5.3 City Policy and Procedure. Developer, for itself and its successors in interest to the Property, acknowledges that the reimbursement and credit rights hereunder do not run with the Property and that generally applicable City policies and procedures relating to assignment of Park Development Fee Credits and reimbursements, as such policies and procedures may be adopted or amended from time to time, shall apply to Developer and its successors in interest to the Property, provided however in the event any subsequently adopted policy or procedure is inconsistent with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. City agrees that it shall not give any reimbursements or Park Development Fee Credits to any subsequent purchaser or encumbrancer of any portion of the Property unless such subsequent purchaser or encumbrancer has a separate, written assignment of these reimbursements or credits from Developer (or a previously approved assignee thereof), which written assignment has been approved by the City in accordance with the provisions of this Article 5.

ARTICLE 6.
REIMBURSEMENT FROM OTHER FUNDING SOURCES

6.0 Additional Reimbursement. If **Exhibit E** identifies improvements to be funded by a funding source or sources other than the Park Facilities Account, Developer shall be entitled to reimbursement, without interest, for the entire portion of the Project Costs actually incurred by Developer for such improvements, not-to-exceed the budget amounts specified for the tasks performed by Developer in **Exhibit E,** as modified by the Final Budget, if applicable. The amount of such reimbursement shall be subject to City review and written approval of the Project Costs incurred by Developer. After construction is completed, Developer shall provide copies of all contracts, change orders and invoices for the costs of the work and such other documentation as may be requested by City to verify the Project Costs incurred by Developer. The calculation of the current estimated amount(s) for such reimbursement, if applicable, is shown on **Exhibit E.**

6.1 Total Reimbursement/Credit Amount. In no event shall the total amount of reimbursement(s) and/or Park Development Fee Credits provided from any funding sources identified in this Agreement or any other public financing mechanism exceed the total amount of the Project Costs actually incurred by Developer and approved in writing by City.

ARTICLE 7.
UNFUNDED IMPROVEMENTS

7.0 **Additional Reimbursement for Unfunded Add Alternates.** If Developer elects in its discretion to construct park improvements that are neither designated for funding by the Park Development Fee, nor subject to reimbursement from other funding sources pursuant to the provisions of Article 6, above, and that are identified as "**Unfunded Add Alternates**" in **Exhibit E**, the costs incurred by Developer for the construction or installation of the Unfunded Add Alternates shall not be included in the Park Development Fee Reimbursement Amount and shall not be subject to reimbursement or credit under this Agreement. However, if, in the future, the Sacramento City Council approves an increase in the Park Development Fee to add a specified incremental amount to provide additional funding for all or any portion of specified Unfunded Add Alternates constructed or installed by Developer, then the Developer shall be entitled to an additional cash reimbursement for costs actually incurred to construct or install such Unfunded Add Alternates from future Park Development Fees collected from Development Projects located in such area as may be specified by the City Council, up to the maximum amount specifically authorized in the Park Development Fee increase approved by the Sacramento City Council. Developer shall only be entitled to such additional reimbursement to the extent that said incremental amount actually has been collected by City. Any such additional reimbursement shall be subject to Developer's receipt of written approval from the LAS to proceed with construction of the Unfunded Add Alternates as specified in **Exhibit E,** and City's review and written approval of the costs actually incurred by Developer for such Unfunded Add Alternates. Developer shall provide copies of all contracts, change orders, and invoices for such costs and such other documentation as may be requested by City. Developer shall not be entitled to any additional reimbursement under this Section 7.0 for any costs for which Developer obtains reimbursement and/or credit from any public financing mechanism or other funding source not identified in this Agreement. Developer's right to additional reimbursement hereunder shall expire sixty (60) months after the date that this Agreement has been executed by both parties.

ARTICLE 8.
MISCELLANEOUS

8.0 **Entire Agreement.** This Agreement represents the entire agreement of the parties relating to the subjects covered by this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof.

8.1 **Attorneys' Fees.** The prevailing party in any proceedings, judicial or otherwise, brought to enforce the terms of this Agreement, shall be entitled to reasonable attorney fees and costs in prosecuting or defending such proceedings.

8.2 **Notices.** Any demand upon or notice required or permitted to be given

by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective (a) on personal delivery, (b) on the second business day after mailing by certified or registered United States Mail, return receipt requested or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the party at the address shown below:

If to City:	City Manager New City Hall, 5th floor 915 I Street Sacramento, CA 95814
If to Developer:	Woodside Hampton Station, Inc. Attention: Brian Cutting, Project Manager 111 Woodmere Drive, Suite 190 Folsom, CA 95630

8.3 Effective Date. This Agreement shall become effective on the date all the parties have executed it.

8.4 Mediation and Arbitration.

8.4.1 Any dispute or controversy between all or a portion of the parties to this Agreement relating to the interpretation and enforcement of their rights and obligations under this Agreement shall be resolved solely by mediation and arbitration in accordance with the provisions of this Section. The mediation and arbitration procedures shall be commenced by any party to this Agreement serving a Notice of Dispute ("**Notice**") on the parties pursuant to Section 8.3. The Notice generally shall describe the nature of the dispute and specify the date of its mailing. The Notice shall require each party to notify the party serving the Notice of its intention to participate in the mediation and arbitration procedures within five (5) days of the date of mailing of the Notice. For purposes of this Section only, the party serving the Notice and all other parties indicating an intention to participate in the mediation and arbitration procedures shall be referred to herein as the "**Disputing Parties,**" and shall be the only parties entitled to participate in said procedures.

8.4.2 With respect to any dispute or controversy between Disputing Parties that is to be resolved by mediation and arbitration as provided in the foregoing subsection, the Disputing Parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. Within fifteen (15) days of the mailing of the Notice, the party serving the Notice shall attempt to employ the services of a third person ("**Mediator**") mutually acceptable to the Disputing Parties to conduct such mediation. The cost of the Mediator shall be borne equally by the Disputing Parties. The mediation shall take place within ten (10) days of the

appointment of such Mediator. If the Disputing Parties are unable to agree on such Mediator, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute shall be referred to arbitration in accordance with the following subsections.

8.4.3 Any dispute or controversy between Disputing Parties that is to be resolved by arbitration as provided in the foregoing subsections shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held and conducted in Sacramento, California before one (1) arbitrator who shall be selected by mutual agreement of the parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after referral to arbitration, then such arbitrator shall be appointed by the Presiding Judge of the Superior Court of Sacramento County as soon as practicable.

8.4.4 The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however, to the following:

a. Any referral to arbitration shall be barred after the date that institution of legal or equitable proceedings based on the subject controversy or dispute would be barred by the applicable statute of limitations.

b. The arbitrator appointed must be a former or retired judge or an attorney with at least ten (10) years experience in real property, commercial, and municipal law.

c. The Disputing Parties mutually may elect to have all proceedings involving the Disputing Parties reported by a certified shorthand court reporter and written transcripts of the proceedings prepared and made available to the Disputing Parties. If fewer than all of the Disputing Parties desire the use of a court reporter and preparation of written transcripts, then the issue of whether or not to retain a court reporter shall be submitted to the arbitrator who, in his or her sole discretion, shall determine whether such use and preparation is necessary or beneficial to the proceedings and the interests of all Disputing Parties in resolving the dispute.

d. The arbitrator shall prepare in writing and provide to the Disputing Parties factual findings and the reasons on which the decision of the arbitrator is based.

e. The matter shall be heard by the arbitrator and the final decision by the arbitrator must be made within ninety (90) days from the date of the appointment of the arbitrator. The arbitration hearing date shall be established by the arbitrator, which date must be within such period of time that the arbitrator, in his or her sole discretion, determines to be sufficient to meet the foregoing time constraints.

f. The prevailing party shall be awarded reasonable attorney's fees and costs incurred in connection with the arbitration, unless the arbitrator for good cause determines otherwise.

g. Costs and fees of the arbitrator and court reporter, if any, shall be borne equally by the Disputing Parties. The cost of preparing any transcript of the proceedings shall be the responsibility of the Disputing Party or Parties requesting such preparation.

h. The award or decision of the arbitrator shall be final and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

i. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, commencing with Section 1282 and including Section 1283.05, and successor statutes, permitting, among other things, expanded discovery proceedings shall be applicable to all disputes that are arbitrated under this Section.

NOTICE: BY INITIALING IN THE SPACE BELOW, EXCEPT AS PROVIDED ABOVE, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

City's Initials: _____ Developer's Initials: JB

8.5 Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought, rain, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within

thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted for the period of the enforced delay, or for such longer period as may be mutually agreed upon.

8.6 Fee Ordinance. The parties rights and obligations hereunder shall at all times be governed by and subordinate to the provisions of the Fee Ordinance in effect on the date that this Agreement is approved and executed by both parties.

8.7 City Attorney Preparation Fees. Developer shall pay to City the sum of one thousand five hundred dollars ($1,500.00), representing the costs associated with the City Attorney's services in negotiating and drafting this Agreement.

8.8 Exhibits. All exhibits attached hereto are hereby incorporated by reference herein.

8.9 Relationship Between Parties. Developer and the City agree that (a) the relationship between them is, is intended to be and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private developer as to Developer and a public agency as to the City and (b) no party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other party or any of its affiliates and no party intends to ever assume such status.

8.10 No Third Party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity, which is not a party hereto, and the parties hereto expressly disclaim any such third-party benefit.

8.11 Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

8.12 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

8.13 Satisfaction of Conditions. City agrees that upon the execution of this Agreement and upon Developer's compliance with the terms and conditions herein, any general or specific tentative map conditions for the Property requiring construction of the Project covered by this Agreement shall be deemed satisfied.

8.14 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

8.15 **Authority to Bind**. Each person signing this Agreement warrants that it is authorized to bind its respective Party on whose behalf they sign.

8.16 **Construction**. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine, feminine and neuter shall include the others. Without limitation, any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the relevant class. Unless otherwise indicated, all references to sections and subsections are to this Agreement. If the day on which any party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on, or the time for performance shall be extended to, the next succeeding business day.

8.17 **Time is of the Essence**. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

CITY OF SACRAMENTO,

By: _____
Ray Kerridge
City Manager

Dated:

WOODSIDE HAMPTON STATION, INC.,

By _____
Name: James Galovan
Title: Authorized Agent

Dated: 5-17-2007

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Senior Deputy City Attorney

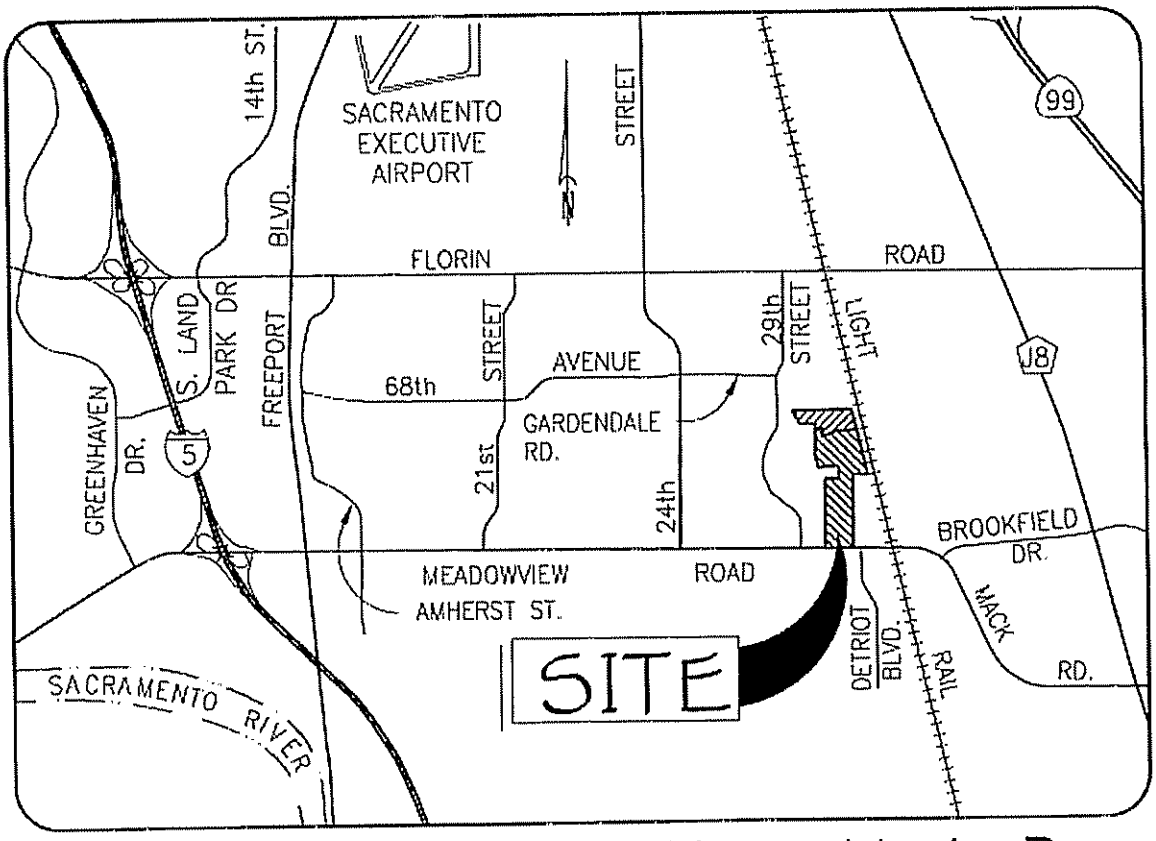
Exhibit A

WOODSIDE HAMPTON STATION
PROJECT LEGAL DESCRIPTION

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND BEING ALL OF PARCEL 2 AS SHOWN AND DESCRIBED ON THAT CERTAIN "CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY ON MARCH 14, 2007 IN BOOK 2007-03-14, AT PAGE 367, OFFICIAL RECORDS

SAID PARCEL CONTAINS 23.492 ACRES MORE OR LESS.

EXHIBIT ____



L O C A T I O N M A P

N.T.S.

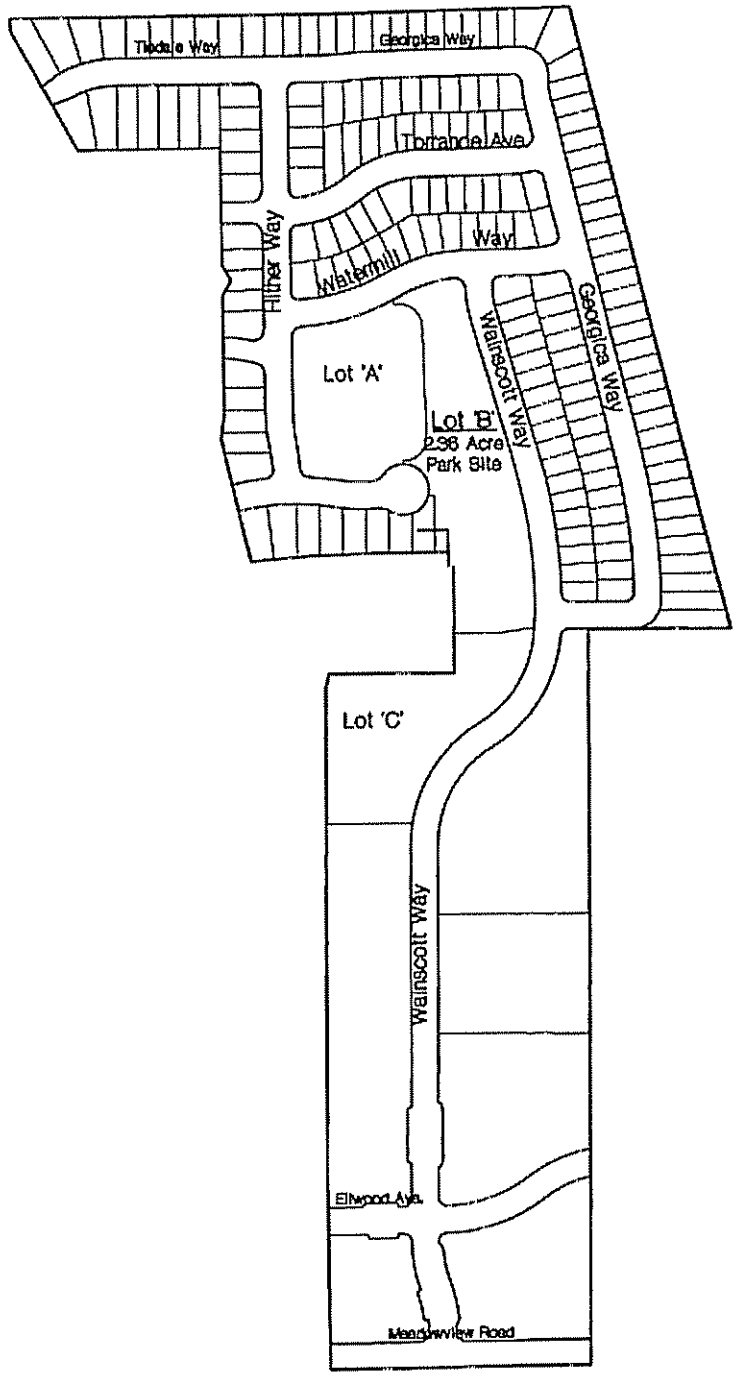
BAKER-WILLIAMS ENGINEERING GROUP Engineering / Surveying / Land Planning / Entitlement Processing / GPS Services 8020 Rutland Drive, Suite 19 – Carmichael, CA 95608 (916) 331-4100 – fax (916) 331-4400 – office@bwengineers.com	SCALE: N.T.S. JOB #: 05-11-141 DATE: Feb. 21, 2007	VICINITY MAP HAMPTON STATION UNIT NO. 1 CITY OF SACRAMENTO, CALIFORNIA

Exhibit B

LOT 'B'
PARK SITE
LEGAL DESCRIPTION

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND BEING A PORTION OF PARCEL 1 AS SHOWN AND DESCRIBED ON THAT CERTAIN "CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY ON APRIL 29, 2005, IN BOOK 2005-04-29, PAGE 2740 AND BEING ALL OF LOT 'B' AS SAID LOT IS SHOWN ON THAT SUBDIVISION MAP ENTITLED "HAMPTON STATION UNIT NO. 1", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SAID COUNTY IN BOOK _____ OF MAPS, AT PAGE _____, OFFICIAL RECORDS OF SAID COUNTY.

EXHIBIT ____



BAKER-WILLIAMS ENGINEERING GROUP Engineering / Surveying / Land Planning / Entitlement Processing / GPS Services 8020 Rutland Drive, Suite 18 • Carmichael, CA. 95008 (916) 331-4338 • fax (916) 331-4430 • office@bwengineers.com	SCALE: 1"=300' JOB #: 05-11-141 DATE: Feb. 21, 2007	PROJECT MAP HAMPTON STATION UNIT NO. 1 CITY OF SACRAMENTO, CALIFORNIA

EXHIBIT C

PROJECT IMPROVEMENTS
Hampton Park (2.36+/- acres)
To be completed by Woodside

Base Bid Improvements

1. Picnic Tables (4)
2. Benches (7)
3. Trash & Recycle Receptacles (2)
4. Drinking Fountain (1)
5. Adventure Play Structure for 5-12 year olds
6 Landscaping
7. Park Signage
8. Bicycle Rack (4)

Add Alternatives (as funding permits)

1. Sod (in place of seed for turf areas)
2. Shade structure at picnic area
3. Half basketball court
4. Tot play apparatus for 2-5 year olds
5. Lighting
6. Detention basin amenities

Notes:
The above list of "Base Improvements" is to be the minimum extent of improvements to be included. Add alternatives are desired additional improvements to be included as funding permits.

EXHIBIT D

TASKS ALLOCATION

GENERAL:

Filled-in squares designate which party has agreed to take responsibility for the completion of each specified task.

SITE SPECIFIC:

City	Developer		
			A. DESIGN DEVELOPMENT PHASE
☐	☒	1.	Survey of Park site (inc. topo mapping and property line verification).
☒	☐	2.	Determination of park amenities (always by the City)
☐	☒	3.	Preparation of master plan illustrating entire park site at buildout
☐	☒	4.	Preparation of cost estimate for construction of park per master plan
☒	☐	5.	Public review & approval process for master plan.
☒	☐	6.	Determination of first phase improvements (always by the city)
☐	☒	7.	Development of master plan for first phase of design & construction
☒	☐	8.	Public review & approval process for first phase design.
			B. CONSTRUCTION DOCUMENT PHASE
☒	☐	1.	Environmental review and documentation
☐	☒	2.	Design development of Phase 1
☐	☒	3.	Preparation of construction documents (Phase 1 plans & specifications)
☐	☒	4.	Preparation of construction cost estimate & project timeline for Phase 1
☒	☐	5.	Public review and approval for construction documents and specifications
☐	☒	6.	Submittal and approval to Building permit (review only). Inspection not by Building Department but by Park Planning, Design & Development Division (PPDD).
			C. BID DOCUMENT PHASE
☐	☒	1.	Preparation of bid documents for construction of first phase development
☐	☒	2.	Administer bidding process
☒	☐	3.	City approval of bids and bid award
			D. CONSTRUCTION (Field Work)
☐	☒	1.	Project staking
☒	☐	2.	Inspection (always by the City)
☒	☒	3.	Construction administration (City's project manager, and Developer's site superintendent)
☐	☒	4.	Final cleanup & walkthrough (with City in attendance)
☒	☐	5.	Public opening (always by the City)
☐	☒	6.	Warranty administration
☐	☒	7.	Title insurance and transfer to City of Sacramento
☐	☒	8.	Submit labor compliance to City on a monthly basis

EXHIBIT E

Hampton Station Park
2.08 Acres
Park Development Summary
Based on Preliminary Conceptual Park Design - Subject to Change

Available Fee Revenue Funding at $4,493 per unit	x	177 Units	Project Budget =	$	795,261
Dumoy Shortfall Funding at $150,000 per acre	x	0.277 Acres	Additional Budget =	$	41,520
			Total Budget =	$	836,681
Per acre budget calculated as follows: Total Budget / Park Acreage			Per Acre Budget =	$	355,755

Design Overhead and Other "Soft Costs"							
Review Construction Docs	5.0%	41,979					
Admin & Project Management	2.9%	24,349					
Advance Planning	2.0%	16,752					
Inspection work	3.5%	29,385					
Art in Public Places (2% of total)	2.0%	16,752					
FIF Administration Fee	2.5%	20,563		$	150,285		
		City's Direct Cost to be Paid in Cash to City:		$	150,285		
Design & Construction Documents (Fair Share) *		72,360					
Building Permit (1.5% of construction budget) (Fair Share) **		5,287		$	77,647		
		Developer-Paid Soft Costs (Reimbursable)		$	77,647		
			Subtotal	$	227,932		
				Total Budget		$	836,681
			Less Design Overhead & Other "Soft Costs" Subtotal:			< $	227,932 >
				Total Construction Funds Available:		$	611,549

Park Amenities (Park Size) Paid via Fee Credits

DESCRIPTION OF WORK / MATERIALS	UNIT	QTY	UNIT PRICE		TOTAL	
Project Start Up						
1. Site Staking	SF	85,400	$	0.09	$	7,686
2. Temp. construction fence	LF	1,135	$	3.45	$	3,916
3. Erosion Control	LS	1	$	17,525.00	$	17,525
			Project Start Up Subtotal:		$	29,107
Grading & Drainage						
4. Site grading	CY	1,469	$	24.35	$	35,123
5. Fine grading, soil prep, weed abatement	SF	85,400	$	0.12	$	10,248
6. Catch basin with concrete collar in play areas	EA	9	$	1,922.27	$	17,300
7. Catch basin in planting areas	EA	2	$	1,397.00	$	2,794
8. Concrete collar around existing manhole	EA	1	$	491.00	$	491
9. Play area tot area, or swings area catch basin	EA	3	$	1,884.33	$	5,653
10. 4" PVC Drain line	LF	360	$	30.73	$	10,759
11. 6" PVC Drain line	LF	236	$	30.73	$	7,252
12. 8" PVC Drain line	LF	149	$	30.73	$	4,579
13. 10" PVC Drain line	LF	139	$	30.73	$	4,341
14. 12" PVC Drain line	LF	135	$	34.25	$	4,625
			Grading & Drainage Subtotal:		$	100,721
Electrical						
15. Conduit from controller to South Unit of Work for Future	LF	309	$	10.00	$	3,090
16. Services potential	EA	1	$	12,294.00	$	12,294
			Electrical Subtotal:		$	15,384
Concrete						
17. 10' Sidewalk	SF	6,519	$	9.31	$	60,734
18. 8' Sidewalk	SF	1,347	$	9.31	$	12,541
19. 8" Wide concrete mow strip / header	LF	241	$	10.00	$	2,410
20. 8" Wide concrete curb at play area	LF	159	$	21.43	$	3,407
21. Concrete paving at picnic area	SF	1,019	$	9.78	$	9,966
22. Concrete paving at bench pads	SF	286	$	9.78	$	2,797
23. Concrete paving at drinking fountain	SF	35	$	9.78	$	344
24. Concrete paving at bicycle rack	SF	40	$	9.78	$	390
			Concrete Subtotal:		$	112,111
Water Service						
25. 3" Meter for Irrigation System	EA	1	$	1,330.00	$	1,330
26. 3" Backflow preventer for irrigation system	EA	1	$	3,336.00	$	3,336
27. Potable water line, 1" meter, 1" backflow for drinking fou	EA	1	$	1,460.00	$	1,460
28. Accessible drinking fountain with jug filler, sump, and dis	EA	1	$	4,950.00	$	4,950
			Water Service Subtotal:		$	11,076

Irrigation					
32. Automatic irrigation system	SF	85,400	$ 0.71	$	60,634
33. Central irrigation system controller	EA	1	$ 32,553.00	$	32,553
34. Booster pump assembly	EA	1	$ 16,240.00	$	16,240
			Irrigation Subtotal:	$	109,427
Site Furnishings					
35. Adventure play area apparatus	LS	1	$ 55,826.00	$	55,826
36. Adventure play area playground fiber and geotextile fabric	CY	97	$ 46.67	$	4,527
37. Accessible ramp at play area	EA	1	$ 1,693.00	$	1,693
38. 8' Accessible picnic table at picnic area	EA	1	$ 1,695.00	$	1,695
39. 8' Picnic table at picnic area	EA	3	$ 1,713.00	$	5,139
40. 6' Bench	EA	7	$ 1,055.00	$	7,385
41. Litter receptacle	EA	2	$ 619.00	$	1,238
42. Recycle receptacle	EA	2	$ 619.00	$	1,238
43. Bicycle rack	EA	4	$ 474.00	$	1,896
			Site Furnishings Subtotal:	$	80,657
Landscape					
44. 15 Gallon trees	EA	50	$ 182.27	$	9,234
45. 5 Gallon shrubs	EA	84	$ 17.15	$	1,441
46. 1 Gallon ground cover	EA	499	$ 8.03	$	4,004
47. Hydro seed Lawn	SF	77,647	$ 0.09	$	7,006
48. Bark Mulch	SF	7,653	$ 0.49	$	3,625
			Landscape Subtotal:	$	25,300
			CONSTRUCTION COSTS ESTIMATE SUBTOTAL	$	491,845
Contingency					
49. Market Contingency	5%			$	24,592
50. Change Order Contingency	10%			$	49,184
			CONSTRUCTION COSTS ESTIMATE TOTAL	$	565,737
Add Option #1 Sod Turf Areas					
Landscape					
51. Hydro seed Lawn (credit)	SF	<77,647>	$ <7,005.23>	$	<7,006>
52. Sod Turf	SF	77,647	$ 18,000.00	$	18,000
			Landscape Subtotal:	$	10,994
Contingency					
53. Market Contingency	5%			$	550
53. Change Order Contingency	10%			$	1,099
			INCREMENTAL CONSTRUCTION COSTS ESTIMATE TOTAL	$	12,643
Add Option #2 Shade Structure					
Site Furnishings					
53. 24' square arbor	EA	1	$ 32,193.00	$	32,193
54. Stone veneer around arbor columns	EA	4	$ 1,637.84	$	6,551
			Site Furnishings Subtotal:	$	38,743
Contingency					
55. Market Contingency	5%			$	1,937
56. Change Order Contingency	10%			$	3,874
			INCREMENTAL CONSTRUCTION COSTS ESTIMATE TOTAL	$	44,555
Add Option #3 Half Court Basketball					
Concrete					
56. Concrete paving at basketball court	SF	3,420	$ 9.75	$	33,379
57. 5' Concrete walkway to basketball court	SF	25	$ 9.31	$	233
58. Colored paving coating at basketball courts	LS	1	$ 4,500.00	$	4,500
59. Line striping at basketball courts	LS	1	$ 500.00	$	500
			Concrete Subtotal:	$	38,612
Site Furnishings					
60. Basketball standard, backboard, goal, net	EA	1	$ 4,400.00	$	4,400
			Site Furnishings Subtotal:	$	4,400
Contingency					
61. Market Contingency	5%			$	2,151
62. Change Order Contingency	10%			$	4,301
			INCREMENTAL CONSTRUCTION COSTS ESTIMATE TOTAL	$	49,464
Add Option #4 Swings, Tot Lot					
Site Furnishings					
63. Tot area apparatus, swings	EA	1	$ 35,070.00	$	35,070
64. Tot area playground fiber and geotextile fabric	CY	62	$ 46.27	$	2,869
65. Swings area playground fiber and geotextile fabric	CY	68	$ 46.60	$	3,169
66. 6' Bench	EA	6	$ 1,055.00	$	6,440
67. Litter receptacle	EA	2	$ 619.00	$	1,238
68. Recycle receptacle	EA	2	$ 619.00	$	1,238
69. Accessible ramps at tot lot and swings area	EA	2	$ 1,693.00	$	3,386
			Site Furnishings Subtotal:	$	56,410
Concrete					
70. Play area, tot area, or swings area catch basin	EA	2	$ 1,884.33	$	3,769
71. 6" Wide concrete curb at tot area	LF	127	$ 21.43	$	2,722
72. 6" Wide concrete curb at swing areas	LF	134	$ 21.43	$	2,872
73. Concrete paving at bench pads	SF	340	$ 9.75	$	3,318

74. 5' Concrete walkway at tot area	SF	554	$ 9.31	$	5,151
75. 5' Concrete walkway at swings	SF	596	$ 9.31	$	5,150
			Concrete Subtotal:	$	31,041
Contingency					
76. Market Contingency	5%			$	4,323
77. Change Order Contingency	10%			$	8,646
			CONSTRUCTION COSTS ESTIMATE TOTAL	$	98,418
Add Option #5 Electrical Lighting					
Electrical					
78. Electrical system for park lights, arbor light, GFCI receptacle at	LS	1	$ 55,712.00	$	55,712
			Electrical Subtotal:	$	55,712
Contingency					
79. Market Contingency	5%			$	2,786
80. Change Order Contingency	10%			$	5,571
			CONSTRUCTION COSTS ESTIMATE TOTAL	$	64,069
Add Option #6 Detention Basin Amenities					
Electrical					
81. Metal handrail at steps	FR	1	$ 2,500.00	$	2,500
82. Portable Bantam Soccer Goals and Nets	FR	1	$ 4,550.00	$	4,550
			Electrical Subtotal:	$	7,050
Contingency					
83. Market Contingency	5%			$	353
84. Change Order Contingency	10%			$	706
			CONSTRUCTION COSTS ESTIMATE TOTAL	$	8,119
			Project Total, Including all Add Options:	$	844,004
Add Option #7 Detention Basin Landscaping (Paid by Developer)					
Project Start Up					
85. Site Staking	LS	1	$ 12,000.00	$	12,000
86. Temp. construction fence	LF	735	$ 0.65	$	478
87. Erosion Control	LS	1	$ 2,000.00	$	2,000
			Project Start Up Subtotal:	$	14,478
Grading & Drainage					
88. Fine grading, soil prep, weed abatement	SF	75,193	$ 0.25	$	18,800
			Grading & Drainage Subtotal:	$	18,800
Concrete					
89. 6" Concrete mow strip/header	LF	318	$ 11.00	$	3,498
			Concrete Subtotal:	$	3,498
Irrigation					
90. Automatic irrigation system	SF	75,093	$ 0.85	$	63,829
91. Central irrigation controller (included in park construction)	LS	-	$ -	$	-
			Irrigation Subtotal:	$	63,829
Landscape					
92. 24" Trees	EA	8	$ 225.00	$	1,800
93. 15 Gallon trees	EA	41	$ 100.00	$	4,100
94. 5 Gallon shrubs	EA	52	$ 20.00	$	1,040
95. 1 Gallon ground cover	EA	1,642	$ 6.00	$	9,852
96. Hydro seed Lawn	SF	52,617	$ 0.15	$	7,893
97. Bark Mulch	SF	22,351	$ 0.30	$	6,714
			Landscape Subtotal:	$	31,439
			DEVELOPER-BUILT FACILITIES CONSTRUCTION COSTS ESTIMATE SUBTOTAL	$	132,033

* Design & Construction Documents have been cost shared between Developer and City. City's share includes Design for the Bass Oaks Future Park Site (2.0 Acres) and the Park Site (2.36 Acres). Developer's share includes Design for the Detention Basin (1.7 Acres). City's Share = 72%. Developer's Share = 28%.

** Building Permit costs have been cost shared between Developer and Eligible Funds for Reimbursement. Eligible Funds for Reimbursement's share includes park site (2.36 Acres). Developer's share includes Detention Basin (1.7 Acres). Eligible Funds for Reimbursement's share = 58%. Developer's Share = 42%.

EXHIBIT E-1
CALCULATION OF FEE CREDIT AMOUNT
HAMPTON STATION PARK

Total Proposed Park Acreage = 2.36 Acres

Available Fee Revenue Funding at $4,493 per unit	x	177 Units	=	Project Budget =	$ 795,261
Quimby Shortfall Funding at $160,000 per acre	x	0.277 Acres	=	Additional Budget =	$ 44,320
					$ 839,581
				Per Acre Budget =	$ 355,755

Estimated Costs Incurred by City:	%			Estimated Costs Incurred by Developer:		
Review Construction Docs	5.0	$	41,979	Design & Construction Documents (Fair Share) *	$	72,360
Admin & Project Management	2.9	$	24,348	Building Permit (Fair Share) **	$	5,287
Advance Planning	2.0	$	16,792	Approved Construction Costs	$	611,649
Inspection work	3.5	$	29,385	Subtotal:	$	689,296
Art in Public Places (2% of total)	2.0	$	16,792			
PIF Administration Fee (section 3.1.2)	2.5	$	20,990			
Subtotal:	17.9%	$	150,285	→	+ $	150,285
Total Budget					$	839,581

FEE PAYMENT AMOUNT:

Developer will be required to pay the following portion of the residential park development fee prior to issuance of building permits (per dwelling unit):

Park Fee (per d.u.) x Percentage of costs incurred by City = Fee Payment Amount

Example:

Fee Payment Amount	=	$4,493	x	17.9%	=	$804.25 /	d.u.

If the amount of the residential park impact fee changes, these calculations will be revised accordingly.

FEE CREDIT AMOUNT:

The "Fee Credit Amount" (specified in section 4.1 of this agreement) shall be determined by subtracting the "Fee Payment Amount" from the Residential Park Development Fee:

Park Fee (per d.u.) - Fee Payment Amount = Fee Credit Amount

Example:

Fee Credit Amount	=	$4,493	-	$804.25	=	$3,688.75 /	d.u.

NUMBER OF PERMITS:

If Developer elects to recover 100% of costs incurred by claiming credits as provided in article 4 of this agreement, the number of building permits that must be issued (per dwelling unit) for full cost recovery can be calculated as follows:

Costs incurred by Developer / Fee Credit Amount per permit = number of permits

Example:

Number of permits	=	$ 689,296	/	$3,688.75	=	187	permits

Note: The calculations set forth above and in Exhibit E will be modified by City to reflect the Developer's actual costs approved by City in accordance with this agreement.

* Design & Construction Documents have been cost shared between Developer and City. City's share includes Design for the Buzz Oates Future Park Site (2.0 Acres) and the Park Site (2.36 Acres). Developer's share includes design for the Detention Basin (1.7 Acres). City's Share = 72%. Developer's Share = 28%

** Building Permit costs have been cost shared between Developer and Eligible Funds for Reimbursement. Eligible Funds for Reimbursement's share includes park site (2.36 Acres). Developer's share includes Detention Basin (1.7 Acres). Eligible Funds for Reimbursement's share = 58%. Developer's Share = 42%

EXHIBIT F

REPRESENTATIVES

City:

City of Sacramento
Landscape Architecture Section
915 "I" Street, 5th Floor
Sacramento, CA 95814
Front Desk: (916) 808-8529
Office Fax: (916) 808-8266

Project Manager: Dennis Day
Office Phone: (916) 808-7633

Developer:

Woodside Hampton Station, Inc.
111 Woodmere Drive, Suite 190
Folsom, CA 95630

Site Superintendent: Jon Morrison
Office Phone: (916) 608-9600
Office Fax: (916) 608-9940

EXHIBIT G
HAZARDOUS SUBSTANCES

A. No Review, Examination or Assessment. The parties acknowledge and understand that City has not conducted any review, examination or assessment to assess, identify or detect the presence of any Hazardous Substances, as defined below, on, under or around the Park Site. As between the City and Developer, any liability associated with the presence of any Hazardous Substances on, under or around the Park Site, including any interests in said property dedicated to City as provided herein, shall be governed by the indemnity provisions of this Agreement, regardless of whether any such review, examination or assessment is conducted.

B. Definitions.

(1) As used herein, the term "Hazardous Substances" means:

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant under any Environmental Law, as defined below;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFD, Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(d) Any material, waste, or substance that is

i) a petroleum or refined petroleum product,

ii) asbestos,

iii) polychlorinated biphenyl,

iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317,

v) a flammable explosive, or

vi) a radioactive material.

(2) As used herein, the term "Environmental Law" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to environmental conditions on, under, or about the detention basin site or any of the easement areas which Developer is required to and does convey to City pursuant to this Agreement, as now or may at any later time be in

effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ *9601 et seq.];* the Resource Conservation and Recovery Act of 1976 (RC RA) [42 USCS §§ *6901 et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 USCS §§ 1251 et *seq.];* the Toxic Substances Control *Act (TSCA) (15 USCS §§ 2601 et seq.];* the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 *etseq-1;* the Insecticide, Fungicide, Rodenticide Act (7 USCS §§ 136 *et seq,];* the Superfund Amendments and Reauthorization Act (42 USCS *§§ 6901 et seq.];* the Clean Air Act [42 USCS §§ 7401 *et seq.];* the Safe Drinking Water Act (42 USCS §§ 300f *et seq.];* the Solid Waste Disposal Act 142 USCS §§ 6901 *et seq.];* the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 *et seq.];* the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 *et seq.];* the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code §§ 25280 *et seq.];* the California Hazardous Substances Account Act [Health and Safety Code §§ 25100 *et seq.];* the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code §§ 24249.5 *et seq.];* the Porter-Cologne Water Quality Act [Water Code §§ 13000 *et seq.],* together with any amendments of or regulations promulgated under the statutes cited above, and any other federal, state or local law, statute, ordinance or regulation now in effect or later enacted that pertains to the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

RESOLUTION OF BOARD OF DIRECTORS
OF
WOODSIDE HAMPTON STATION, INC.
a California corporation ("Corporation")

THIS IS TO CERTIFY THAT at a meeting of the Board of Directors of Woodside Hampton Station, Inc., a California corporation (the "Corporation"), the following resolution was adopted and the same has not been modified, repealed or rescinded and is in full force and effect as of the date of this certification.

RESOLVED, that James Galovan is individually authorized on behalf of the Corporation to execute any agreements, escrow instructions, closing documents, deeds, and any other documents related to the "Hampton Station" transaction concerning property consisting of 177 paper lots located in the County of Sacramento, City of Sacramento, State of California, including but not limited to all instruments necessary to, or in connection with the processing of Tentative and Final maps, utility agreements, related permits and fees, guarantees of work performance, and the execution of applications as required by all governmental entities and to take all actions necessary or proper to effectuate the authority hereby conferred; and that any such actions heretofore taken by him on behalf of the Corporation are hereby ratified, approved, and confirmed.

CERTIFICATE OF SECRETARY

I, the undersigned, Wayne Farnsworth, Assistant Secretary of the Corporation certify that:

1. The above is a correct copy of resolution adopted by the Board of Directors of Corporation at which a quorum was present and acting throughout. These resolutions have not been revoked modified, amended, or rescinded and are still in effect.

In Witness Whereof, I have signed this Certificate on the 23rd day of May 2007.

Wayne Farnsworth

Subscribed and sworn to before me this 23rd day of May 2007, as Assistant Secretary of the Corporation listed above, on behalf of said corporation.

KAY LYNN MANGUM
NOTARY PUBLIC - STATE OF UTAH
39 E. EAGLERIDGE DR., STE 102
NORTH SALT LAKE UT 84054
My Comm. Exp. 07/29/2010

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA
} ss
COUNTY OF SACRAMENTO

On May 17, 2007 before me, Judy A. Smolich, a Notary Public in and for said County and State personally appeared Jim Galovan

☒ personally known to me or ☐ 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.

ESI1 JUDY A. SMOLICH
COMM. #1492008
Notary Public-California
SACRAMENTO COUNTY
My Comm. Exp. May 25, 2008 ESI1

WITNESS my hand and official seal.

Judy A. Smolich

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA
} ss
COUNTY OF SACRAMENTO

On May 17, 2007 before me, Judy A. Smolich, a Notary Public in and for said County and State personally appeared James Galovan

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ES11 JUDY A. SMOLICH COMM. #1492008 Notary Public-California SACRAMENTO COUNTY My Comm. Exp. May 25, 2008 ES11

WITNESS my hand and official seal.

Judy A. Smolich