ORDINANCE NO.2007-069

Adopted by the Sacramento City Council

August 28, 2007

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND CAPITOL STATION 65 LLC FOR THE TOWNSHIP 9 PROJECT ENCOMPASSING PROPERTY LOCATED NORTH OF RICHARDS BOULEVARD BETWEEN 5TH AND 7TH STREETS IN THE RICHARDS BOULEVARD AREA PLAN (APN: ALL OR PORTIONS OF 001-0020-003, -019, -034, -041, -044, -045, -046; 001-0200-012, -013, -034 (P06-047))

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

SECTION 1.

This Ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement (Agreement), by and between the City of Sacramento and Capitol Station 65 LLC (Landowner) for the Township 9 Project (Project) which encompasses the property as described in the Agreement, a copy of which is attached hereto.

SECTION 2.

On August 28, 2007, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 18.16.080, and received and considered evidence concerning the Township 9 Project and the term of this Agreement.

SECTION 3.

The City Council finds:

1. The Agreement is consistent with the City General Plan and the goals, policies, standards and objectives of the applicable specific or community plan.

2. Development of the Project should be encouraged in order to meet important economic, social, environmental and planning goals of the applicable specific or community plan.

3. The Project would be unlikely to proceed in the manner proposed in the absence of the Agreement.
4. The Landowner will incur substantial costs in order to provide public improvements, facilities and/or services that will benefit the general public.

5. The Landowner will participate in all programs established and/or required under the General Plan and the applicable specific or community plan, comply with all of the provisions in the resolutions approving the Project (including the Mitigation Monitoring Plan), and has agreed to the financial participation required under the applicable financing plan and its development fee and assessment district implementation measures, all of which will accrue to the benefit of the public.

6. The Landowner has made commitments to develop the Project with a high standard of quality and has agreed to comply with all applicable land use and development regulations as specified in the Agreement.

SECTION 4.

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

Table of Contents:
Exhibit A – Development Agreement

Adopted by the City of Sacramento City Council on August 28, 2007 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo
Mayor Heather Fargo

Attest:

for Dawn Bullwinkel
Shirley Concolino, City Clerk

Passed for Publication August 9, 2007
Published August 21, 2007
Effective September 27, 2007

No Fee Required: Recording benefits the City of Sacramento, a government entity.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

for

TOWNSHIP 9
Project No. P-06047

Between CITY OF SACRAMENTO

And

CAPITOL STATION 65 LLC

August 21, 2007

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

TOWNSHIP 9
DEVELOPMENT AGREEMENT

Table of Contents

RECITALS

A. Development Agreement/California Government Code 1
B. Property (Subject to Agreement) 1
C. City Council Actions 1
D. City/Landowner Objective 2
E. Landowners Commitment 2
F. Landowner's Objective and Agreement 2
G. Procedural Ordinance for Development Agreement 2
H. Development Conditions and Financing Plan 2
I. Agreement Voluntary 3
J. Agreement Authority 3
K. Procedural Requirements Completed 3
L. City Council Review and Approval 3

I. DEFINITIONS 3

II. TERMS AND CONDITIONS OF AGREEMENT 12

1. Property Description and Binding Covenants 12
2. Interests of Landowner 12
3. Term 12
4. Assignment 12
5. Development of the Property 13
   - A. Permitted Uses and Development Standards 13
   - B. Discretionary Approvals 13
   - C. Development Timing 13
   - D. Special Conditions 14
   - E. Land Use and Development Regulations 14

(1) Regulations Applicable on Effective Date 14
(2) Priority of Enactment 14
(3) Future Changes in Regulations (Inconsistent) 14
(4) Future Changes in Regulations (Consistent) 15
(5) Mandated State or Federal Laws 15
(6) Effect on Agreement 15
(7) Limit of Authority 15
(8) Construction Standards and Permits 15
(9) Sequence of Development 16
(10) City Modifications after Effective Date 16
F. City Review of Applications 16
G. Extension of Entitlements 16
H. Allocation Procedures 17
(1) Allocation 17
(2) Dispute Resolution 17
6. Fees, Charges, Assessments and Taxes 18
A. City Fees 18
B. Implementation of the Finance Plan 18
C. Landowner's Waivers 18
7. Reconfiguration of Parcels 19
8. Infrastructure 19
A. Construction by City 19
B. Construction by Landowner 19
C. Infrastructure Financing Proceedings 19
(1) Landowner Initiated Proceedings 19
(2) Proceedings Initiated by City 21
(3) Maintenance Districts 21
D. Reimbursement to Landowner 21
(1) From Financing Proceeds 21
(2) Reimbursement From Others Benefited 22
9. Landowner Obligations 22
A. Transfer of Land to City 22
B. Development Timing 23
10. Litigation/Indemnification 23

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

A. Challenge to Agreement or Entitlement 23
B. Indemnification 25

11. Effect of Subsequent Laws 25
A. Laws of Other Agencies 25
B. Passed by City 26
12. Enforced Delay; Extension of Times of Performance 26
13. Legal Actions; Applicable Law; Attorney Fees 26
A. Legal Actions 26
B. Applicable Law 27
C. Attorney Fees 27
14. Amendment of Agreement 27
15. Implementation 27
16. City's Good Faith in Processing 28
17. Default, Remedies, Termination 28
A. General Provisions 28
(1) Landowner Default 28
(2) City Default 28
(3) Successors in Interest 28
B. Cure of Default 29
C. Remedies After Expiration of Cure Period 29
(1) Institution of Legal Proceedings 29
(2) Notice of Intent to Terminate Agreement 29
18. Annual Review 29
A. General Provisions 29
B. Scope of Review 30
C. Proceedings 30
D. Failure of Compliance 30
19. Termination Upon Completion of Development 30
A. General Provisions 30
B. Multi-family and Single Family Residential Projects 31
C. Effect of Termination on Landowner Obligations 31
20. No Joint Venture, Partnership, or Other Relationship 31
21. Notices 31

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

22. Severability 32
23. Recording 33
24. Reimbursement to City 33
25. Provisions Relating to Lenders 33
A. Lender Rights and Obligations 33
(1) Prior to Lender Possession 33
(2) Lender in Possession 33
B. Notice of Landowner's Default Hereunder 34
C. Lender's Right to Cure 34
D. Other Notices Given by City 34
26. Estoppel Certificate 35
27. Construction 35
28. Counterparts 35
29. Time 35
30. Limitation of Actions 35
31. No Third Parties Benefited 35
32. Effect of Agreement Upon Title to Property 35
33. Covenant of Good Faith 35
34. Exhibits 36
35. Entire Agreement 36
Execution Page for City and Landowner 37
Execution Page for Lender 38

LIST OF EXHIBITS

Exhibit "A" Legal Description of Property 39
Exhibit "B" Project Development Plan 40
Exhibit "C" Project Entitlements 41
Exhibit "D" Final Environmental Impact Report and Mitigation Measures 42
Exhibit "E" Inclusionary Housing Plan 43
Exhibit "F" Financing Plan 44
Exhibit "G" Protest Waiver Provisions 45
Exhibit "H" Map and Summary Listing of Land Dedications and Reservations 48

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

	and Public Facilities to be Constructed by Landowner	
Exhibit "I"	Irrevocable Offer of Dedication Agreement Form	49
Exhibit "J"	Reservation Agreement Form	50
Exhibit "K"	Assignment and Assumption Agreement Form	55
Exhibit "L"	Design Guidelines	61
Exhibit "M"	Special Conditions	62
Exhibit "N"	Land Acquisition Program	84

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SACRAMENTO
AND
CAPITOL STATION 65 LLC

This Development Agreement (hereinafter "Agreement") is made and entered into this 21 day of August, 2007, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY") and CAPITOL STATION 65 LLC (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party" as the context requires.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted section 65864 et seq. of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the property.

B. LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the CITY. The Property consists of lands designated as Assessor Parcels Nos. 001-0020-003, -019, -034, -036, -041, -044, -045, -046, 001-0200-012, -013, AND -034. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, Community Plan, the Richards Boulevard Area Plan (RBAP) and the Zoning Ordinance as they exist on the Effective Date and as amended by the Project approvals, including the Planned Unit Development (PUD) designation.

C. The City Planning Commission and the City Council have duly noticed public hearings on July 26, 2007 (Planning Commission), August 9, 2007 (Planning Commission) and August 21, 2007 (City Council). The PUD Design Guidelines and Schematic Plan were also reviewed by the Preservation Commission and the Design Commission, At the Planning Commission and City Council hearings, public testimony was heard and received and staff reports were reviewed for the following entitlements for the proposed Township 9 Project as more specifically set out in Exhibit C:

- Development Agreement
- Rezone

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

- Planned Unit Development Design Guidelines
- Planned Unit Development Schematic Plan
- Tentative Map
- Richards Boulevard Special Planning District Amendment
- Facility Element of the Richards Boulevard Area Plan Amendment

The City Council at a duly noticed public hearing approved the Township 9 Project with the above described entitlements and certified the Environmental Impact Report (EIR) and adopted the Findings of Fact for the proposed Project. The Council also adopted Mitigation Measures and Statement of Overriding Considerations for the Project and a Mitigation Monitoring Plan (MMP), attached hereto as Exhibits D-1 and D-2. The Project is referenced throughout this Agreement as "Project" or "Township 9."

3. D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code section 65865 et seq. in order to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan, Community Plan and the RBAP.

4. E. The coordinated and orderly development of the Property, and LANDOWNER's commitment to the implementation of the Project, are essential to the proper implementation of the General Plan, Community Plan and the RBAP.

5. F. LANDOWNER desires to facilitate implementation of the General Plan, Community Plan, the RBAP and the Project, and LANDOWNER therefore agrees to develop the Property in a manner consistent with the policies therein, and the Special Conditions, provided that LANDOWNER is assured that no subsequent changes in the General Plan, Central City Plan, the RBAP, the Zoning Ordinance, or the PUD that are initiated by CITY or an entity other than LANDOWNER shall apply to the Property during the term of this Agreement, except as otherwise provided in this Agreement.

6. G. The City Council adopted the Procedural Ordinance by which CITY will, inter alia, consider, adopt, amend and subsequently review the development agreements by and between CITY and a given landowner.

7. H. Development of the Property, in accordance with the conditions of this Development Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan, Community Plan and the RBAP. At the same time, it will assure that LANDOWNER is committed to funding its appropriate share of the cost of Infrastructure and other facilities which are the subject of the Railyards/Richard Boulevard Area Finance Plan, and that the funding for acquisition and construction of those facilities will be available to CITY as and when required under the Infrastructure phasing program.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

The Parties acknowledge that the Finance Plan may be amended and the application of the amended Finance Plan to the LANDOWNER is discussed herein.

8. I. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan, Community Plan, the RBAP and the Finance Plan, including the amendments to the Finance Plan, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, the RBAP, and the Finance Plan and in consideration of the agreements and undertakings of LANDOWNER hereunder.

J. The authority for this Agreement is contained in the City Charter of CITY, the Procedural Ordinance, other applicable CITY ordinances, resolutions and procedures and Government Code section 65864 et seq.

K. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all requirements set forth in the Procedural Ordinance for the adoption of this Agreement by the City Council.

L. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, the RBAP, the Finance Plan, and all other applicable CITY ordinances, rules and regulations. The implementation of this Agreement is in the best interest of CITY and the health, safety and welfare of its residents. The environmental impacts of the development contemplated herein were adequately considered in the environmental documentation prepared by CITY and adoption of the ordinance and approval of this Agreement complies in all respects with the California Environmental Quality Act.

AGREEMENT

NOW, THEREFORE, in further consideration of the above recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and covenants of the parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I
DEFINITIONS

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

common and ordinary meaning. The word "shall" is always mandatory.

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

1. Defined Terms

9. **1.1 Adopting Ordinance**: the ordinance pursuant to which the City Council approves this Agreement.

10. **1.2 Allocation Procedures**: those procedures set forth in Section 5.H of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions of them, comprising the Property.

11. **1.3 Annual Review**: the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNER and Assignee(s) with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in Section 17 of this Agreement.

12. **1.4 Assessment**: a special assessment levied on real property within the Richards Boulevard Area Plan area, for the purpose of financing Infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.

13. **1.5 Assessment District Policy Manual**: the document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.

14. **1.6 Assignee**: a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit K.

15. **1.7 Assignment**: the sale or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement.

16. **1.8 Assumption Agreement**: the agreement prescribed in Exhibit K, whereby an Assignee undertakes to perform all obligations, and other terms and conditions of this Agreement, as a condition of release of the Assignee's predecessor in interest from the responsibility for performance of such obligations and other terms and conditions, with respect to the portion of the Property assigned to the Assignee.

17.

18. **1.9 Building Permit**: a permit issued pursuant to Title 15 of the City Code that allows for construction of improvements on the Property as specified in the permit.

19. **1.10 CEQA:** the California Environmental Quality Act (CEQA), as set forth at California Public Resources Code, Division 13, commencing at Section 21000 (CEQA Act), and the CEQA Guidelines as set forth in Title 14 of the California Code of Regulations commencing at Section 15000 (CEQA Guidelines), and as the CEQA Act and CEQA Guidelines are amended from time to time.

20. **1.11 City**: the City of Sacramento.

21.

22. **1.12 City Code**: the Sacramento Municipal Code as adopted by the City Council, as said Code may be amended from time to time, and the provisions of the Sacramento City Charter as it may apply to the provisions of the Sacramento Municipal Code and this Agreement, as said Charter may be amended by a vote of the electorate from time to time.

23. **1.13 City Council**: the Council of the City of Sacramento.

1.14 Community Plan: the Sacramento Central City Plan as adopted by the City Council in 1980 and updated in 1994, as said plan may be amended from time to time.

1.15 Days: as used in this Agreement, "days" shall mean calendar days.

24. **1.16 Dedication**: the transfer of real property, or a defined interest therein, to CITY, free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, and at no cost to CITY, as specifically set forth in the RBAP, Finance Plan, Project Entitlements, or Special Conditions. Exhibit I provides the form of the Dedication Agreement if the irrevocable offer of dedication is not otherwise set out in a tentative or final subdivision map.

25. **1.17 Deed of Trust**: a real property security device whereby the debtor (trustor) conveys title to real property to a trustee as security for a debt owed to the creditor (beneficiary).

26.

27. **1.18 Design Guidelines**: the architectural and site design standards that are applicable to Development of the Property for the Project as set out in the Township 9

Planned Unit Development Design Guidelines ("Township 9 Design Standards") dated August 3, 2007, as approved by the City Council as referenced in the Project Entitlements, which is set forth in Exhibit L. The Design Guidelines also incorporate by reference a portion of the Central City Urban Design Plan design standards; to the extent that the same subject matter regarding a specific design standard is not included in the Township 9 Design Guidelines, then the applicable requirement in the Central City Urban Design Plan shall apply to the Project. As of the Effective Date of this Agreement, the Central City Urban Design Plan is in draft form. The Parties agree that the adopted version of the Central City Urban Design Plan, and as it may be amended in the future, will be applicable to the Project to the limited extent as described in this Section 1.18.

28. **1.19 Default**: a failure of performance, or unreasonable delay in performance, by either Party to this Agreement, of any of its terms, conditions, obligations or covenants as described in Section 17 of this Agreement. Default shall include, but not be limited to failure to comply with all provisions of the Finance Plan and/or failure to pay any fee, tax or assessment enacted pursuant to that Plan provided that such failure is considered a default under Section 17 of this Agreement.

29. **1.20 Development**: the use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements and Building Permits for the Project.

30. **1.21 Development Agreement or "Agreement"**: this Agreement.

1.22 Development Fee: all fees now or in the future collected by the CITY from LANDOWNER for Development of the Property for the funding of Public Facilities, provided nothing herein shall preclude CITY from collecting fees lawfully imposed by another public agency having jurisdiction which CITY is required or authorized to collect pursuant to State law or local ordinance.

31. **1.23 Development Plan**: LANDOWNER's plan for development of the Property, as set forth in Exhibit B. The Development Plan shall be deemed to be development consistent with the PUD Schematic Plan, the Project Entitlements (Exhibit C) and Design Guidelines (Exhibit L), the Land Use and Development Regulations, and where applicable changes in the Land Use and Development Regulations subject to the provisions contained in Section 5.H.(1).

32.

33. **1.24 Discretionary Approvals**: a decision that requires exercise of judgment and deliberation.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

34. **1.25 Effective Date**: the date on which the Adopting Ordinance became effective.

1.26 Final Environmental Impact Report: the report prepared for the Project in accordance with CEQA that was certified by the City Council by resolution as described in Exhibit D-1.

1.27 Finance or Financing Plan: the Railyards/Richards Boulevard Area Infrastructure Financing Plan dated September 17, 1997, which was prepared to implement the Facility Element of the Richards Boulevard Area Plan and the Railyards Specific Plan adopted on December 13, 1994 and as said plan may be amended from time to time.

35. **1.28 General Plan**: the General Plan of the City of Sacramento, as adopted by the City Council on January 19, 1988, as said plan may be amended from time to time.

36.

37. **1.29 Inclusionary Housing Ordinance**: the Mixed Income Housing Ordinance as set out in Title 17, Chapter 17.190 of the City Code. The Project is exempt from compliance with this ordinance.

38. **1.30 Infrastructure**: all public facilities and improvements needed to serve urban development, as identified in the RBAP, as amended by the Project Entitlements, and the Finance Plan, or in subdivision maps, parcel maps, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street and freeway improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.

39. **1.31 Irrevocable Offer of Dedication**: an unconditional and irrevocable offer by LANDOWNER to transfer real property to CITY or a Public Agency, in the form specified in Exhibit I.

1.32 Land Acquisition Fee: the fee and reimbursement program, which is an integral part of the Financing Plan, and which is designed to equalize the cost of the Public Facilities among the various landowners within the area specified in the Financing Plan.

1.33 Land Acquisition Program: the program which may become an integral part of the implementation of the Financing Plan, as amended, provides a means for transfer to, or acquisition by, CITY of lands within the Community Plan and/or RBAP area which are designated to be held publicly, either at no cost by Dedication or to be acquired by Reservation as specified in the Land Acquisition Program, as more particularly described in Exhibit N.

40. **1.34 Land Use and Development Regulations**: the General Plan, the Richards Boulevard Area Plan, the Central City Community Plan, the CITY's Subdivision Map

Act Ordinance, Zoning Ordinances, Design Guidelines and the PUD, together with any other CITY ordinance or resolutions, rules, regulations and official policies as they exist on the Effective Date which govern or regulate Development in the Community Plan and/or Richards Boulevard Area Plan area which encompasses the Property.

41. **1.35 Lender**: a Person (or a successor in interest to such person) who has advanced funds to, or who is otherwise owed money by a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such note or other evidence of indebtedness is secured by a Mortgage or Deed of Trust.

42. **1.36 Mortgage**: a contract by which the mortgagor (debtor) as owner hypothecates or pledges real property, or otherwise grants a security interest therein to a Lender (mortgagee), to secure performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.

43. **1.37 Ministerial Action**: a ministerial approval or disapproval and means an action that merely requires a determination whether there has been compliance with applicable statues, ordinances, resolutions, regulations or conditions of approval.

44.

45. **1.38 Mitigation Measures**: the measures adopted by the City Council as part of the certification of the Final Environmental Impact Report which apply to Development of the Property for the Project as set out in the Mitigation Monitoring Program and as may be referenced in the Project Entitlements.

46.

47. **1.39 Mitigation Monitoring Program**: the plan for implementation of the Mitigation Measures as of the Effective Date, which is set out in Exhibit D-2 and as may be referenced in the Project Entitlements.

48. **1.40 Parties**: the City of Sacramento and Landowner.

49. **1.41 Person**: any person, firm, association, organization, partnership, business trust, corporation or company.

50.

51. **1.42 Planned Unit Development** or PUD: the establishment of development and design standards which allow for changes in the Zoning Ordinance requirements for the underlying zoning classifications to allow for better integration and design of mixed residential and commercial developments.

52. **1.43 Procedural Ordinance**: Chapter 18.16 of the City Code which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review and related matters with respect to development agreements for lands outside of the North Natomas Community Plan area (which is governed by Ordinance No. 95-

012) and that are not within the Railyards Specific Plan area (which is governed by Ordinance No. 95-063).

53.

54. **1.44 Project**: part or all of the elements set forth in LANDOWNER's Development Plan, Project Entitlements, PUD and Design Guidelines.

1.45 Project Entitlements: the plans, ordinances, resolutions, maps, plan review, permits and approvals which have been approved for the Project as of the Effective Date as set out in Exhibit C.

55. **1.46 Project Review**: CITY's actions in reviewing any project proposed by LANDOWNER with respect to the Property, including but not limited to review of all required land use entitlement applications.

56. **1.47 Property**: the real property owned by LANDOWNER, as set forth in Exhibit A.

57. **1.48 Protest Waiver**: the agreement set forth in Exhibit G executed by LANDOWNER pursuant to this Agreement, or in connection with the conditions of any required entitlement.

58. **1.49 Public Agency(ies)**: a city (other than CITY), county, special district, public utility, school district, a regional agency formed pursuant to federal or state law, joint powers agency, municipal corporation, or a non-profit corporation formed by a public entity to provide services to or charitable benefits for the public, and the City Council does not act as the governing board of that agency.

59.

60. **1.50 Public Facilities**: all Infrastructure, facilities, improvements and amenities needed to serve the Project, as identified in the General Plan, Community Plan, RBAP, and Finance Plan, or in the Development Plan, Project Entitlements, or as may otherwise be constructed or owned by, or conveyed to, CITY or Public Agency, including, without limitation: (i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) heavy and light rail and trolley lines, stations, and passenger facilities; (iii) bus rapid transit lanes and bus transfer facilities, turnouts and stops; (iv) surface and storm drainage improvements; (v) sanitary sewer improvements; (vi) water storage and transmission facilities; (vii) flood control improvements; (viii) solid waste facilities; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire stations; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv) schools and educational facilities; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork.

61.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

62. **1.51 Public Financing Mechanism**: an assessment district, a community facilities district, a fee district, or any similar financing mechanism imposed on real property or as a condition of development approval, excluding Development Fees.

63.

64. **1.52 Public Services**: all services provided by CITY and Public Agency to serve the residents and businesses located in the Property, as may be identified in the General Plan, Community Plan, RBAP, and Finance Plan, or in the Development Plan, Project Entitlements, or Special Conditions, including, without limitation, the maintenance, operation or the provision of, as the context implies: (i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) heavy and light rail and trolley transit services; (iii) bus transit services; (iv) surface and storm drainage improvements and pollution control services; (v) sanitary sewer improvements and pollution control services; (vi) water storage and transmission facilities and water services; (vii) flood control improvements; (viii) solid waste services; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire services; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv) educational services; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork.

65. **1.53 Reconfiguration**: the reconfiguration, adjustment or alteration of property lines through parcel or subdivision mapping, lot line adjustment, or lot merger, which may affect the description of LANDOWNER's Property as set out in Exhibit A.

66. **1.54 Reimbursement**: the reimbursement of monies to a Person who has advanced funds for Infrastructure or Public Facilities required for development of the Property, or who has advanced funding for Infrastructure, Public Facilities or other improvements which are required by the RBAP, the Finance Plan, or other document, and which have benefit to land beyond the Property, in accordance with a reimbursement agreement approved by CITY. Any such agreement will be limited to the portion of the funding advanced which is in excess of the allocable share of the cost of the Infrastructure, Public Facilities or improvement attributable to the Property.

67. **1.55 Reimbursable Infrastructure Costs**: those costs paid by LANDOWNER, and which are identified as reimbursable pursuant to CITY's Assessment District Policy Manual (as defined in Section I.1.5 of this Agreement).

1.56 Reservation: the transfer of real property, or a defined interest therein, to CITY or Public Agency, free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY or such Public Agency, at a purchase price set out in the Reservation Agreement, the form of which is provided as Exhibit J.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

1.57 RBAP: the Richards Boulevard Area Plan as approved by the City Council on December 13, 1994, as said plan may be amended from time to time.

68. **1.58 Special Conditions**: those conditions, terms and requirements specified in Exhibit M.

69. **1.59 Special Permit**: any discretionary permit required pursuant to the Land Use and Development Regulations, and issued by CITY for development of the Property, upon proper application therefor by LANDOWNER.

70.

71. **1.60 Subdivision Ordinance**: the Subdivision Ordinance of the City of Sacramento which is set out in Title 16 of the City Code, and as said ordinance may be amended in the future from time to time.

72.

1.61 Subdivision Map Act: the provisions of Divisions 2 and 3 of the Government Code commencing at Section 66410.

73. **1.62 Term**: the length of this Agreement in terms of time, as specified in Section II.3, or as that time may be extended pursuant to any applicable provision of this Agreement.

74. **1.63 Transfer**: an assignment.

75. **1.64 Transferee**: an assignee.

76.

77. **1.65 Vested Right**: a property right conferred by this Agreement, pursuant to Government Code Section 65865.4, to develop the Property for the Project that may not be cancelled or revoked by CITY after the Effective Date, except as expressly provided in this Agreement.

78. **1.66 Zoning**: the division of the City of Sacramento into districts, and the application of zoning regulations thereto, which include (without limitation) regulation of the height or bulk of buildings (structural and architectural design) and the use to which the land and buildings within prescribed districts may be put, all as specified in the Zoning Ordinance.

79. **1.67 Zoning Ordinance**: the Comprehensive Zoning Ordinance of the City of Sacramento, which is set out in Title 17 of the City Code, and as said ordinance may be amended in the future from time to time.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

II
TERMS AND CONDITIONS OF AGREEMENT

1. **Property Description and Binding Covenants**. The Property is that certain real property owned by LANDOWNER and described in Exhibit "A." The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the parties and, subject to Section II.4 below, to their successors-in-interest.

2. **Interests of Landowner**. LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including Lender, have executed and are bound by this Agreement.

3. **Term**. The term of this Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years thereafter, unless it is sooner terminated or modified by the mutual consent of the parties.

80. 4. **Assignment**. LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided, however, that LANDOWNER shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to CITY an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve LANDOWNER of the obligations expressly assumed only if (a) LANDOWNER is not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNER has provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNER's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "K" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment.

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

5. **Development of the Property**.

A. **Permitted Uses and Development Standards**. Subject to compliance with the Special Conditions set forth in Exhibit M and the Mitigation Measures set forth in Exhibit D, any reserved Discretionary approvals specified in this Agreement, and all other terms and conditions of this Agreement, LANDOWNER may develop the Property for the Project in accordance with and subject to the terms and conditions of the Project Entitlements based on the Land Use and Development Regulations in effect on the Effective Date ("Vested Rights"). Specifically, the permitted uses, density or intensity of use, height or size of buildings and provisions for Reservation and Dedication of land for public purposes shall be as set forth in the PUD, Design Guidelines, and tentative map and as reflected in the Development Plan and Project Entitlements.

The parties acknowledge that as the Property develops and final maps are recorded and Building Permits are approved, the actual densities realized for some of the parcels may be less than the planned densities set forth in the PUD and Development Plan (the "Planned Densities"). CITY and LANDOWNER acknowledge and agree that LANDOWNER may reduce Planned Densities below the maximum number authorized by the Project Entitlements, at LANDOWNER's discretion, subject only to the minimum density provisions contained within the Land Use and Development Regulations and subject to any appropriate conditions imposed by CITY processing of subsequent entitlement applications.

B. **Discretionary Approvals**. Development of the Property is subject to all required Discretionary Approvals as set out in the Land Use and Development Regulations. In reviewing and approving applications for special permits and other Discretionary Approvals, CITY may exercise its independent judgment and may attach such conditions and requirements as are consistent with the policies, goals, standards and objectives of the General Plan, the Community Plan, RBAP and related Land Use and Development Regulations, and as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such reserved Discretionary Approvals. Should the City Council amend the Finance Plan in effect as of the Effective Date, the amended Finance Plan shall apply to Landowner as described in Section II.6.B of this Agreement.

C. **Development Timing**. This Agreement contains no requirement that LANDOWNER must initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the

Property in accordance with LANDOWNER's own schedule. No future modification of the City Code or any ordinance or regulation which limits the rate of development over time shall be applicable to the Property. However, nothing herein shall be construed to relieve LANDOWNER from any condition regarding timing, with the exception of development phasing, in any permit or subdivision map approval or to excuse the timely completion of any act which is required to be completed within a time period set by any applicable code or permit provisions, or in the Mitigation Measures (Exhibit D) or Special Conditions (Exhibit M).

D. **Special Conditions**. Development of the Property shall be subject to the Special Conditions, as specified in Exhibit M.

E. **Land Use and Development Regulations**.

(1) Subject to the Special Conditions specified in Exhibit M, development of the Property shall be subject to the Land Use and Development Regulations applicable to such development on the Effective Date, as modified by the Project Entitlements.

(2) Priority of Enactment. In the event of conflict between the terms of this Agreement, the Land Use and Development Regulations and the Project Entitlements, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) the General Plan, Community Plan and RBAP as they may be amended as part of the approval of the Project Entitlements; (b) the PUD and Design Guidelines adopted for the Project; (c) the Development Agreement; and (d) the Land Use and Development Regulations, other than the General Plan, Community Plan and the RBAP.

(3) Except as otherwise provided in this Agreement, to the extent any future changes in Land Use and Development Regulations adopted by CITY purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, including subsection II.5.A above regarding the LANDOWNER's Vested Rights, the terms and conditions of this Agreement shall prevail, unless (i) the changes are to the benefit of LANDOWNER and LANDOWNER notifies CITY of its desire to comply with the changed Land Use and Development Regulations and/or (ii) the Parties or their successors in interest mutually agree to amend or modify this Agreement in accordance with the provisions for modification hereinafter set forth.

(4) To the extent that any future changes in the Land Use and Development Regulations adopted by CITY are applicable to the Property and are not

inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Agreement, such future changes shall be applicable to the Property.

(5) Nothing in this Agreement shall preclude the application to the Property of changes in the Land Use and Development Regulations, the terms of which are specifically mandated by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the Effective Date of this Agreement or action by any governmental jurisdiction other than CITY prevent or preclude compliance with one or more provisions of this Agreement or require changes in permits, maps or plans approved hereunder by CITY, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.

(6) To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including CITY, required by federal or state agencies or actions of CITY taken in good faith in order to prevent adverse impacts upon CITY by state or federal actions) have the effect of preventing, delaying or modifying development of the RBAP area or any area therein including the Property, CITY shall not in any manner be liable for such prevention, delay or modification of said development. Such actions may include, but are not limited to, flood plain or wetlands designations and actions of CITY or regional agencies as a result thereof and the imposition of air quality measures or sanctions and actions of CITY or regional and local agencies as a result thereof. In such a situation, CITY's actions shall not be arbitrary or capricious, and the parties shall meet and endeavor to achieve solutions which preserve the integrity of the RBAP, while to the extent feasible allow development of the Property in the manner contemplated by this Agreement.

(7) Nothing herein shall be construed to limit the authority of CITY to enact amendments to the Land Use and Development Regulations, or enact other ordinances or resolutions, except that such amendments, ordinances and resolutions shall not limit LANDOWNER's Vested Rights as referenced in Section II.5.A, above, unless otherwise expressly provided herein.

(8) Building codes, ordinances and regulations relating to construction standards or permits shall apply as of the time of grant of each applicable Building Permit or grading permit.

(9) No modification of CITY's ordinances, resolutions, policies, rules or regulations adopted after the Effective Date, which purport to limit the rate of

development over time or to govern the sequence of development of land within the RBAP area, shall apply to the Property. The provisions of this subsection apply to modifications adopted or imposed by the City Council, or through the initiative or referendum process; provided, however, nothing in this subsection shall limit the ability of CITY to act in accordance with the provisions of subsections II.5.E(4) - (8) of this Agreement.

(10) Any and all references in this Agreement to documents "as they are amended from time to time" (or other similar language) shall not be construed to mean that LANDOWNER is subject to the conditions, policies and or requirements of the revised document except as expressly provided herein. LANDOWNER is obligated to comply with the conditions, policies and requirements contained in the Land Use and Development Regulations as of the Effective Date of this Agreement, with CITY Development Fees and the Financing Plan as described in Section II.6.A and B and the Special Conditions, changes to the Land Use and Development Regulations as described in the provisions of subsections II.5.E(4) - (7), and changes to the Building Code as described in subsection II.5.E(8).

F. **CITY Review of Applications**. Consistent with the standards set forth in Section II.16 of this Agreement, nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law, and to impose conditions in compliance with the Mitigation Measures, subsequent CEQA review of an application, the Land Use and Development Regulations, and the Subdivision Map Act.

G. **Extension of Entitlements**. Pursuant to Government Code section 66452.6 all vesting tentative subdivision maps, master parcel tentative maps, parcel maps, subdivision tentative maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a minimum term equal to the full term of this Agreement, or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements in effect at the time of approval. The provisions of Section II.26 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this subsection. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

H. **Allocation Procedures**. Procedures for allocating the uses or densities approved for the Property among the various parcels and/or portions thereof, and for resolution of any disputes regarding such allocations, shall be as follows:

(1) **Allocation**. Unless otherwise identified in the Development Plan, which is attached as Exhibit B to this Agreement or the Project Entitlements, which is attached as Exhibit C to this Agreement, the allocation of building square footage shall be as identified in subsequent entitlements for the Property, including but not limited to parcel maps, subdivision maps, and any amendments to the PUD, Development Plan and Design Guidelines which may have been approved by the Parties. The appropriate entitlement to address the allocation of building square footage by parcel shall be determined by CITY in accordance with this Agreement. Allocations for residential development shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances. The Parties agree that the Project Entitlements represents the maximum amount of residential units and commercial and office square footages the LANDOWNER could develop on the Property and that LANDOWNER has the right but not the obligation to construct the described Project, as referenced in subsection II.5.A. The Parties further agree that LANDOWNER is entitled to transfer densities among parcels within the Project provided that the total number of units/square footage is not exceeded as specified in the Project Entitlements, subject to CITY review and approval of applications as set out in Section II.5.F. The Parties further agree that, should LANDOWNER choose to construct the Project at a lower density consistent with the PUD and Zoning Ordinance, or with the Land Use and Development Regulations, such decision is within the sole discretion of LANDOWNER.

(2) **Dispute Resolution**. Where a dispute exists between LANDOWNER and any successor or successors in interest with respect to any matter involving allocation of residential units or building square footage for or on the Property, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY be a party to such dispute, or to the dispute resolution procedures. All of the provisions of this Agreement relating to indemnification and defense of CITY, and payment of CITY costs, shall apply to all disputes relating directly or indirectly to allocation.

6. **Fees, Charges, Assessments and Taxes**.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

A. **City Fees**. All applications for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, mitigation fees and other development fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

B. **Implementation of the Finance Plan**. The Finance Plan establishes a method for financing of required Infrastructure and Public Facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land encompassed by the Finance Plan pays for its share of the cost of such Infrastructure and Public Facilities. The Finance Plan also recognizes that there is a regional cost associated with certain portions of Infrastructure and Public Facilities, and that that share will ultimately have to be paid from other sources, even though developers within the area, including LANDOWNER, acknowledge that they may have to participate in funding regional costs on a fair share basis. LANDOWNER shall participate in the Finance Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof. Without limiting the foregoing, applications for special permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the Finance Plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the Finance Plan, and performance of all obligations imposed thereby, with the following exception:

The Parties acknowledge that it is likely that the Finance Plan in effect as of the Effective Date may be amended. Should the City Council approve amendments to the Finance Plan, the LANDOWNER shall comply with the amended Finance Plan and shall pay the fees imposed by the amended Finance Plan as described in the Special Conditions.

C. **LANDOWNER's Waivers**. LANDOWNER hereby agrees to the provisions of Exhibit G, which (without limitation) contains a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of development and impact fees; CITY's actions in forming assessment districts and community facilities districts, and in levying assessments and taxes pursuant thereto; and CITY's actions in implementing any provision of the Finance Plan as it may apply to the Property. As set forth in Exhibit G, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Finance Plan.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

7. **Reconfiguration of Parcels**. LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, or for master parcelization of all or part of the Property, for the purpose of reconfiguration of the Property. Such applications shall be processed and determined in accordance with the provisions of Section II.5, and all other applicable provisions of this Agreement. Where reconfiguration requires a special permit or other entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of granting the application.

81.

8. **Infrastructure**.

A. **Construction by CITY**. To the extent that funds are available to CITY pursuant to the Finance Plan, and to the extent that any required real property has been transferred to CITY or has been obtained by CITY through its power of eminent domain, which CITY agrees to utilize, where required, and subject to LANDOWNER's compliance with the terms of this Agreement and all of the terms and conditions of any entitlement applicable to the Property, CITY agrees to use its best efforts to bring about the construction of the Infrastructure required to implement the Development Plan (Exhibit B). Provided, however, that CITY's obligations hereunder shall be limited to those items of Infrastructure which, under the Finance Plan, are to be constructed by CITY or under CITY's direction and control; where Infrastructure is to be constructed by LANDOWNER, either pursuant to conditions of approval or otherwise, the provisions of this subsection shall not apply.

B. **Construction by LANDOWNER**. When required by conditions of approval, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct Infrastructure required for implementation of the Development Plan (Exhibit B) in accordance with the Project Entitlements (Exhibit C) Mitigation Measures (Exhibit D) and the Special Conditions (Exhibit M). LANDOWNER shall further comply with all required funding requirements specified in the Finance Plan.

C. **Infrastructure Financing Proceedings**.

(1) **LANDOWNER-Initiated Proceedings**. In the event that LANDOWNER desires to initiate proceedings for the formation of an assessment district, community facilities district, or other similar form of improvement financing mechanism to fund the construction of Infrastructure required by conditions of approval or otherwise, LANDOWNER shall file an application with CITY for that purpose in accordance with CITY's Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a

substitute therefor. CITY agrees to diligently process any such application, provided that such application:

(a) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application;

(b) complies with the Land Use and Development Regulations and applicable law, including but not limited to the Assessment District Policy Manual as it exists on the date of the application, except as provided for herein;

(c) is consistent with CITY's policies and procedures, except as provided for herein;

(d) provides for a value-to-lien ratio and other financial terms that are reasonably acceptable to CITY;

(e) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed; and

(f) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

Notwithstanding any other provision of this Agreement, CITY agrees that upon request made by LANDOWNER, CITY will consider making exceptions to the Assessment District Policy Manual, to allow for alternative methods of financing in-tract improvements, including but not limited to formation of assessment districts or similar financing mechanisms, where such alternatives are contemplated by the Finance Plan, including any amendments thereto. Provided, however, that CITY reserves its discretion to condition use of any such alternatives on satisfaction of performance preconditions (including but not limited to drainage capacity), and to consider underwriting considerations and criteria, together with the manner in which such alternatives further the overall implementation of the Finance Plan. Further, CITY may in its reasonable discretion deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent.

(2) Proceedings Initiated by CITY. In the event that pursuant to the Finance Plan, CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar

mechanism, is required in order to implement the Finance Plan, LANDOWNER's participation obligations set forth hereunder (including but not limited to Special Conditions (Exhibit M), in the Finance Plan, or in any condition of approval, shall apply.

(3) Maintenance Districts. LANDOWNER may, following the procedures specified in subsection II.8.C(1), above, and in accordance with the provisions of the Special Conditions (Exhibit M), request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the improvements and their maintenance are assessed for a proportionate share of the maintenance cost.

D. **Reimbursement to LANDOWNER.**

(1) **From Financing Proceeds.** Subject to the terms of the Project Entitlements (Exhibit C) and the Special Conditions (Exhibit M), where LANDOWNER has provided advance funding for public Infrastructure required by the Finance Plan or has constructed such Infrastructure under the direction and control of CITY, LANDOWNER shall be reimbursed for Reimbursable Infrastructure Costs at such time as CITY has established a permanent financing mechanism in the form of an assessment district, community facilities district, or other similar mechanism through which permanent public financing for such improvements is established. Those items qualifying as Reimbursable Infrastructure Costs shall be determined pursuant to CITY policies in existence at the time of establishment of the permanent financing mechanism. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent. Nothing in this Agreement shall authorize reimbursement of any cost which, in the opinion of CITY's bond counsel, is not permissible for purposes of establishing or retaining tax free status of any bonds issued, or contemplated to be issued by CITY.

(2) **Reimbursement From Others Benefitted.** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of improvements required for development by the Finance Plan, in excess of or beyond those required for development of the Property for the Project, or, where required by the Finance Plan (Exhibit F), Project Entitlements (Exhibit C) or the Special Conditions (Exhibit M) to make dedications, provide mitigation or incur costs in connection with public improvements or the planning of the Richards Boulevard area in

excess of or beyond those required for development of the Property for the Project, and the provisions of the preceding subsection do not apply, CITY shall utilize its best efforts to require that all other Persons benefitted by the improvements shall reimburse (through fee districts, agreements, including development agreements, conditions of approval, or otherwise) LANDOWNER for such Person's proportionate share of such costs as determined in accordance with the Finance Plan, or by CITY. For purposes of this Agreement, the term "in excess of or beyond those required for development of the Property for the Project" shall mean requirements which exceed LANDOWNER's fair proportionate share, as determined in accordance with the provisions of the Finance Plan (Exhibit F), Project Entitlements (Exhibit C), Special Conditions (Exhibit M) and any associated documents or studies.

Such reimbursement shall be subject to the limitations specified in the preceding paragraph (including those provisions relating to consideration by CITY of exceptions to its policies), relating to CITY policy and Reimbursable Infrastructure Costs. Reimbursement shall be limited to that amount which exceeds LANDOWNER's appropriate share of the cost, determined in accordance with principles established in the Finance Plan, and any associated documents or studies.

9. **LANDOWNER Obligations**.

A. **Transfer of Land to CITY**. As set forth elsewhere in this Agreement, LANDOWNER has agreed to transfer lands needed for Infrastructure or public facilities to CITY, or to such other public agency as is appropriate. As set forth in the Project Entitlements (Exhibit C) and the Special Conditions (Exhibit M) are the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, or to such other public agency as appropriate for development of Infrastructure and public facilities which are covered by the terms of this subsection. LANDOWNER shall also transfer the lands required for development of the light rail system to CITY or to the Sacramento Regional Transit District (RT) utilizing the Irrevocable Offer of Dedication form set forth in Exhibit I attached hereto and incorporated herein by this reference. LANDOWNER shall transfer such lands to CITY and/or RT at such time as is:

(1) required pursuant to a condition or term of any entitlement for use or development of the Property; or

(2) requested by CITY, where LANDOWNER has not applied for an entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.

In the event that, at the time of the required transfer to CITY, the location of, or the quantity of land required for the Infrastructure or public facilities has changed from that specified in the Project Entitlements (Exhibit C) or in the Special Conditions (Exhibit M) to such a significant degree or extent that the location or quantity is inconsistent with the tentative map, the RBAP or the RABP Facility Element as each document exists on the Effective Date of this Agreement, or the Finance Plan or the RABP Facility Element as it may be updated, the Parties shall meet and negotiate, and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow development of the Property for the Project in a reasonable manner, taking into account the changes in Infrastructure and public facilities. If agreement is reached between the Parties, the procedures specified herein and in the Procedural Ordinance shall apply to amendments to this Agreement. If agreement is not reached, either party shall have the right to terminate this Agreement by providing the other party sixty (60) days notice.

B. **Development Timing**. LANDOWNER shall have no obligation to initiate or commence development of any particular phase of the Property within any period of time.

10. **Litigation/Indemnification**.

A. Challenge to Agreement or Entitlements.

(1) In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including but not limited to, the proceedings taken for its approval (including the requirements of the California Environmental Quality Act B "CEQA") or any other act undertaken by the Parties hereto in furtherance of this Agreement or its terms, or any action instituted by a third party challenging the validity of any of the entitlements specified herein (including CEQA challenges), the Parties agree to cooperate in the defense of the action. In all such litigation brought to contest the validity of this Agreement or such entitlements, the following shall apply:

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

(b) In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, to join in or intervene in the action on its

own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each party shall bear its own attorney fees and costs.

(c) In the event that CITY determines to tender the defense of the action to LANDOWNER, LANDOWNER shall defend the action on its behalf and on behalf of CITY, and shall bear all attorney fees and costs associated with such defense from and after the date of the tender. Provided, however, that CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

(2) If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any entitlement issued during the term of this Agreement and pursuant to its terms, the following shall apply:

(a) If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. Provided, however, that if the litigation relates entirely, solely and exclusively to a challenge to the RBAP in general, or to the Finance Plan in general, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.

(b) CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein, and in the Procedural Ordinance, shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement by giving the other party sixty days' notice of termination.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

(c) In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously.

B. Indemnification. LANDOWNER agrees to defend and indemnify CITY, its elective and appointive boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to develop the Property, undertaken by LANDOWNER or LANDOWNER's contractors, subcontractors, agents or employees.

11. **Effect of Subsequent Laws**

A. Laws of Other Agencies.

(1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the Parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner pursuant to the Development Plan (Exhibit B).

(2) In the event that the Parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the Parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the Parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either Party shall have the right to terminate this Agreement by giving the other Party sixty (60) days' written notice of termination.

(3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, CITY shall not be required to undertake such

action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subsections II.11.A(1) and II.11.A(2) above shall apply.

B. Laws Passed by CITY.

Subject to the provisions of Section II.5 of this Agreement, CITY shall not enact any initiative, ordinance, policy, resolution, General Plan amendment or other measure that relates to the density or intensity of development on the Property, or the rate, timing or sequencing of the development or the construction on the Property on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

12. **Enforced Delay; Extension of Times of Performance**. In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, enactment of conflicting state or federal laws or regulations, new or supplementary environmental laws or regulations, litigation instituted by third parties challenging the validity of this Agreement or any of the vested entitlements described in Section II.5 of this Agreement. Upon request of either Party to the other, a written extension of time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

13. **Legal Actions to Enforce Agreement; Applicable Law; Attorney's Fees**.

A. **Legal Actions**. In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. Notwithstanding any other provision of law, or of this Agreement, in no event shall LANDOWNER or CITY, its officers, agents or employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

B. **Applicable Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of California. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY.

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

14. **Amendment of Agreement**. This Agreement may be amended from time to time only by the mutual written consent of the Parties, in accordance with the provisions of Government Code sections 65867 and 65868. In addition, all of the provisions of the Procedural Ordinance relating to the need for amendment, and the manner thereof, shall apply. Upon request of a Party, this Agreement shall be amended to include the terms and conditions of any discretionary entitlement granted with respect to the Property after the Effective Date.

15. **Implementation**. Implementation of this Agreement will require a close degree of cooperation between CITY and LANDOWNER. In addition, over time the need may arise to make non-substantive revisions to the description of the Project. The City Manager is hereby authorized to approve any and all documents, to do any and all things, and to take any and all actions that may be necessary or advisable, in his or her discretion, to implement this Agreement, including the approval of non-substantive revisions to the description of the Project. The City Attorney shall be authorized to make the determination whether a requested action may be effectuated pursuant to this Section or whether the request is of such a character to require an amendment to this Agreement pursuant to Section II.14.

82. 16. **CITY's Good Faith in Processing**. Subject to the provisions of Section II.5 hereof, and LANDOWNER's compliance with each and every term and condition of this Agreement and all of its exhibits, CITY agrees that it will accept in good faith for

processing, review, and action, all complete applications for master parcel maps, zoning, planned unit development designation, planned unit development guidelines, schematic plans, special permits, building permits, parcel maps, subdivision maps, or other entitlements for use of the Property in accordance with the General Plan, Community Plan, the RBAP and this Agreement.

CITY shall inform the LANDOWNER, upon request, of the necessary submission requirements for each application for a permit or other entitlement for use in advance, and shall review said application and shall schedule the application for expeditious review by the appropriate authority.

83. 17. **Default, Remedies, Termination**.

A. **General Provisions**. Subject to any extensions of time by mutual consent of the parties, and subject to the cure provisions set forth herein, any failure or unreasonable delay by either Party to perform any material term or provision of this Agreement shall constitute a default.

(1) **LANDOWNER Default**. In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by LANDOWNER is alleged, CITY shall not be obligated to issue any building permit, or grant any entitlement as to which an application has been filed.

(2) **CITY Default**. In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by CITY is alleged, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.

(3) **Successors in Interest**. Where the Property, following the Effective Date, has been lawfully conveyed in whole or in part to one or more successors in interest, in such a manner as to invoke the provisions of Section II.4 of this Agreement, and one or more of such successors in interest is in default with respect to the portion of the Property owned by it, neither LANDOWNER nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of Section II.4 have been complied with, and in accordance with the terms and conditions of that section.

B. **Cure of Default**. In the event of an alleged default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party notice in writing specifying the nature of the alleged default and the

manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

C. **Remedies After Expiration of Cure Period**. After notice and expiration of the thirty (30) day period, if the alleged default has not been cured in the manner set forth in the notice, the other Party may at its option:

(1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or

(2) give the other Party notice of intent to terminate this Agreement pursuant to Government Code section 65868 and the Procedural Ordinance. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

18. **Annual Review**.

A. **General Provisions**. In accordance with Government Code section 65865.1, and the Procedural Ordinance, CITY shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future annual review or to otherwise enforce the provisions of this Agreement, nor shall a Party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any Party hereto from performing its obligations under this Agreement.

B. **Scope of Review**. The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

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

   At the conclusion of the annual review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors have complied in good faith with the terms and conditions of this Agreement.

2. **Failure of Compliance**. Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in Section II.17 of this Agreement. If termination is proposed, it shall apply solely with respect to that portion of the Property (if less than all) affected by the failure to show good faith compliance. If modification of the Development Agreement is proposed, the modification shall pertain solely to the provisions hereof as applicable to that portion of the Property (if less than all) affected by the condition that has prompted the proposed modification.

19. **Termination Upon Completion of Development**.

A. **General Provisions**. This Agreement shall terminate as to each parcel of property contained within the Property when that parcel of property has been fully developed and all of LANDOWNER'S obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's Department of Development Services, determine if the Agreement has terminated, with respect to any parcel, and shall not unreasonably withhold termination as to that parcel if LANDOWNER'S obligations therewith are satisfied. CITY shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including but not limited to CITY's administrative and legal expenses. Upon termination of this Agreement, CITY shall upon LANDOWNER's request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and LANDOWNER agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement, by the

Financing Plan or any of the measures implementing said plan, and shall have the effect as set forth in Section II.17.C(2).

B. **Multi-family and Single Family Residential Projects**. This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when it has been approved by CITY for occupancy.

C. **Effect of Termination on Landowner Obligations**. Termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with CITY's General Plan, Community Plan, the RBAP, and all entitlements issued for the Property, nor shall it affect any other covenants of this Agreement specified in this Agreement to continue after the termination of this Agreement including, but not limited to, those specified in Sections II.6, II.8, II.9, and II.10 and subsection II.13.C.

20. **No Joint Venture, Partnership, or Other Relationship**. Nothing contained in this Agreement or in any other document executed in connection with this Agreement shall be construed as creating a joint venture or partnership between CITY and LANDOWNER. No relationship exists as between LANDOWNER and CITY other than that of a governmental entity regulating the development of private property, and the owners of such private property.

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

84.

85. A. Notice to the CITY:

86.

87. City of Sacramento
915 I Street
Sacramento, California, 95814
ATTN: City Manager

88. B. Notice to the LANDOWNER:

Capitol Station 65 LLC
424 North Seventh Street, Ste 200
Sacramento CA 95814

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

ATTN: Steve Goodwin

and

Scott Syphax
Nehemiah Corporation of America
424 North Seventh Street, Suite 250
Sacramento, CA 95814

with copies to:

Remy, Thomas, Moose and Manley
Attn: Tina A. Thomas
455 Capitol Mall, Suite 210
Sacramento, CA 95814
(916) 443-2745
(916) 443-9017
e-mail: tthomas@rtmmlaw.com

and

Alberto Esquivel
Esquivel Real Estate, Inc.
1801 "F" Street
Sacramento, CA 95816

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

22. **Severability**. If any provision of this Agreement is held by a court to be invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties, utilizing the procedures specified herein and the Procedural Ordinance. Provided, however, that if such holding affects a material provision of this Agreement, LANDOWNER shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to CITY; provided further, however, that in the event LANDOWNER so elects to terminate, such election shall not affect in any manner the terms and conditions of any entitlement theretofore granted by CITY with respect to the Property, or any portion thereof.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

23. **Recording**. The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following execution of this Agreement by CITY, which execution will take place no sooner than the effective date of the ordinance approving this Agreement.

24. **Reimbursement to CITY**. LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is $142.00 per hour, but not to exceed $3,000. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

25. **Provisions Relating to Lenders**.

A. **Lender Rights and Obligations**.

(1) **Prior to Lender Possession**. No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertains to the Property or such portion thereof in which it holds an interest. Nothing in this section shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including but not limited to termination and/or refusal to grant entitlements with respect to the Property.

(2) **Lender in Possession**. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development

contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of LANDOWNER hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized assignee under the provisions of Section II.4 of this Agreement.

B. **Notice of LANDOWNER's Default Hereunder**. If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNER, any notice given to LANDOWNER with respect to any claim by CITY that LANDOWNER has committed a default, and if CITY makes a determination of non-compliance, CITY shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on LANDOWNER.

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

D. **Other Notices Given By City**. A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in Section II.21 hereof.

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

thereof shall be in recordable form and may be recorded at the expense of the recording Party.

27. **Construction**. All parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Development Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.

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

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

30. **Limitation of Actions**. No court action shall be filed by a party to this Agreement on the ground of default or breach of its terms unless such action is filed within one hundred eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of breach or default.

31. **No Third Parties Benefitted**. No Person who is not a qualified successor or assign of a party hereto pursuant to Section II.4 of this Agreement, or who has not become a party by duly adopted amendment hereof may claim the benefit of any provision of this Agreement.

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

33. **Covenant of Good Faith**. CITY and LANDOWNER agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

34. **Exhibits**: The following are the exhibits to this Agreement:

Exhibit "A"	Legal Description of Property
Exhibit "B"	Project Development Plan
Exhibit "C"	Project Entitlements
Exhibit "D"	Final Environmental Impact Report and Mitigation Measures
Exhibit "E"	Inclusionary Housing Plan
Exhibit "F"	Financing Plan
Exhibit "G"	Protest Waiver Provisions
Exhibit "H"	Map and Summary Listing of Land Dedications and Reservations and Public Facilities to be Constructed by Landowner
Exhibit "I"	Irrevocable Offer of Dedication Agreement Form
Exhibit "J"	Reservation Agreement Form
Exhibit "K"	Assignment and Assumption Agreement Form
Exhibit "L"	Design Guidelines
Exhibit "M"	Special Conditions
Exhibit "N"	Land Acquisition Program

35. **Entire Agreement**. This Agreement, together with its Exhibits A to N, inclusive, and all documents which are referred to in this Agreement or Exhibits constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties hereto to supersede all prior development agreements, if any, for the Property which may exist between CITY and LANDOWNER. The provisions of subsection II.10.B of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever against CITY, its officers, employees and agents, arising out of or in any way relating to the Property.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Development Agreement as of the date first set forth above.

CITY OF SACRAMENTO

By: _____
Mayor

ATTEST:

_____
City Clerk

APPROVED FOR LEGAL FORM:

_____
Senior Deputy City Attorney

CAPITOL STATION 65 LLC

By: _____
Steve Goodwin

By: _____
Scott Syphax

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____

DATE ADOPTED:_____

EXECUTION PAGE FOR LENDER

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

LENDER hereby executes this Agreement and agrees to be bound by the terms and condition hereof, subject to the limitations set forth in section 24 hereof.

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

_____

_____

_____

Attn:_____

Dated:_____

LENDER:

By:_____

Its:_____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT A

DESCRIPTION OF LANDOWNER'S PROPERTY

THE PROPERTY CONSISTS PARCELS OF LAND DESIGNATED AS ASSESSOR PARCELS NOS. 001-0020-003, -019, -034, -036, -041, -044, -045, -046, 001-0200-012, -013, AND -034. THE PROPERTY IS LOCATED WITHIN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION PROVIDED AS EXHIBIT A-1 ATTACHED, WHICH IS INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: UPON RECORDATION OF THE FINAL MASTER PARCEL MAP FOR THE PROJECT, THE PARTIES AGREE THAT EXHIBIT A-1 WILL BE REPLACED BY THE SAID MAP, WITHOUT THE NEED FOR AN AMENDMENT OF THIS AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT B

PROJECT DEVELOPMENT PLAN

SEE ATTACHED COPIES OF THE APPROVED ZONING MAP LABELLED AS EXHIBIT B-1, SCHEMATIC PLAN LABELLED AS EXHIBIT B-2, AND MASTER PARCEL MAP LABELLED AS EXHIBIT B-3. EXHIBITS B-1, B-2 AND B-3 ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE

NOTE: ANY CHANGES TO THE TERMS AND CONDITIONS OF THE ATTACHED MAPS AND PLANS REQUIRES AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT C
PROJECT ENTITLEMENTS

THE FOLLOWING APPROVED ENTITLEMENTS FOR THE PROJECT, WHICH IS REFERENCED AS P-06-047, AND THE ORDINANCES, RESOLUTIONS, PERMITS AND FINDINGS AND CONDITIONS ATTACHED TO SUCH ENTITLEMENTS AS OF THE EFFECTIVE DATE OF THIS AGREEMENT ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: ANY CHANGES TO THE TERMS AND CONDITIONS OF THE FOLLOWING ENTITLEMENTS REQUIRES AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

Commission or City Council	Date of Hearing	Description of Approved Entitlements	Ordinance or Resolution No.	Attached as:
City Council		Master Tentative Parcel Map	Resolution No. 2007 - ___	**Exhibit C-1**
City Council		Rezoning from Heavy Industrial Zone -American River Parkway Corridor- Special Planning District North Richards Boulevard and Central Richards Boulevard (M-2-PC-SPD (N) and M-2-SPD (C) to Residential Mixed Use (RMX-PUD) and Open Space (AOS-PUD)	Ordinance No. 2007-___	**Exhibit C-2**
City Council		Designation of Property as a Planned Unit Development (PUD) and adoption of the Township 9 PUD Design Guidelines and Schematic Plan	Resolution No. 2007-	**Exhibit C-3**

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____

DATE ADOPTED:_____

EXHIBIT D

FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MEASURES

THE RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT AND ADOPTING FINDINGS OF FACT, MITIGATION MEASURES, STATEMENTS OF OVERRIDING CONSIDERATION IS ATTACHED AS EXHIBIT D-1.

THE ADOPTED MITIGATION MEASURES ARE SET OUT IN THE MITIGATION MONITORING PROGRAM, WHICH IS ATTACHED AS EXHIBIT D-2, AND ARE INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

NOTE: IF THE CITY APPROVES ANY CHANGES TO THE MITIGATION MEASURES WHICH WERE REQUESTED BY LANDOWNER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT, THOSE CHANGES WILL BE INCORPORATED INTO THIS AGREEMENT WITHOUT THE NEED FOR AN AMENDMENT TO THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____

DATE ADOPTED:_____

EXHIBIT E

INCLUSIONARY HOUSING PLAN

INTENTIONALLY OMMITTED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____

DATE ADOPTED:_____

EXHIBIT F

FINANCING PLAN

THE RAILYARDS/RICHARDS BOULEVARD AREA INFRASTRUCTURE FINANCING PLAN (HEREINAFTER "PLAN") DATED AS OF SEPTEMBER 17, 1997 WAS THE BASIS FOR ESTABLISHMENT OF A PUBLIC FINANCING MECHANISM AND/OR DEVELOPMENT FEE PROGRAM TO FUND PUBLIC FACILITIES AND/OR PUBLIC SERVICES THAT THE LANDOWNER IS OBLIGATED TO COMPLY WITH AS A CONDITION OF APPROVAL OF THE PROJECT ENTITLEMENTS. THIS PLAN IS INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE AS IF SET FORTH IN FULL.

NOTE: ANY CHANGES TO THE TERMS AND CONDITIONS OF THE FINANCING PLAN AS A RESULT OF THE CITY'S APPROVAL OF AN UPDATE OR REVISION OF THE FINANCING PLAN AFTER THE EFFECTIVE DATE OF THIS AGREEMENT DOES NOT REQUIRE AN AMENDMENT TO THIS AGREEMENT FOR THE LANDOWNER TO BE OBLIGATED TO COMPLY WITH THAT NEW FINANCING PLAN AND FOR THE CITY TO APPLY THE TERMS OF THAT PLAN TO THE PROJECT AND TO SUBSEQUENT APPROVAL, EXCEPT AS SPECIFIED IN THIS AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____

DATE ADOPTED:_____

EXHIBIT G

PROTEST WAIVER PROVISIONS

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

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

If a Public Financing Mechanism, Development Fee and/or Land Acquisition Fee is proposed for adoption by CITY, which mechanism or fee (i) directly and significantly conflicts with the language and the intent of the Financing Plan, as it may be amended from time to time, (ii) directly and significantly conflicts with the Nexus Study adopted by the City Council in connection with establishment of Development Fee for the Financing Plan area, and/or (iii) directly and significantly conflicts with the Land Acquisition Program; LANDOWNER shall have the right to

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

protest only the actual amount of the directly and significantly conflicting proposed fee, charge, special tax, or assessment proposed to be levied, charged, assessed or taxed against the Property by virtue of the proposed Public Financing Mechanism, Development Fee or Land Acquisition Fee. However, LANDOWNER's right to protest, together with any right to object, shall be waived unless LANDOWNER's protest of objection is made at or before the time of the public hearing wherein the proposed Public Financing Mechanism, Development Fee, or Land Acquisition fee, together with the fee, charge, special tax or assessment, is established by the City Council.

LANDOWNER's right to judicial challenge of any such Public Financing Mechanism, Development Fee or Land Acquisition fee, and the fees, charges, assessments or special taxes imposed or to be imposed in connection therewith, shall be limited to review of the decision of the City Council establishing the said mechanism and the said fees, charges, assessments or special taxes. LANDOWNER shall not have the right, in connection with any land use entitlement proceeding with respect to the Property, to judicially challenge the Public Financing Mechanism, Development Fee, Land Acquisition Fee, or the fees, charges, assessments or special taxes as applied to the Property or the Project, and waives any statutory or common law right to withhold payment or to pay such fees, charges, assessment or special taxes under protest. For purposes of this Agreement, "fees, charges, assessments or special taxes" shall include any monetary exaction or payment required to be paid by LANDOWNER by virtue of or relating to Development of the Property.

Without limiting the generality of the foregoing, LANDOWNER for itself, its constituents, successors and assignees specifically, as to the Property, agrees to the following which are adopted by the City Council pursuant to the Financing Plan:

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

Without limiting the generality of the foregoing, LANDOWNER specifically waives: (i) the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 of the Streets and Highways Code, beginning at Section 2800), together with associated provisions of the California

Constitution; (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism; and (iii) the provisions of any procedure embodied in the Sacramento City Code designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism.

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

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

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

EXHIBIT H

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

INTENTIONALLY OMMITTED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT I

IRREVOCABLE OFFER OF DEDICATION AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

IRREVOCABLE OFFER TO DEDICATE EASEMENT AGREEMENT FOR LIGHT RAIL FACILITIES

CAPITOL STATION 65 LLC, a California Limited Liability Company ("GRANTOR"), hereby irrevocably offers to dedicate an easement, of approximately 60 feet in width and 1,060 feet in length, to the CITY OF SACRAMENTO, a municipal corporation ("CITY"), for development of light rail transit facilities over that certain real property ("Property") in the City of Sacramento, County of Sacramento, State of California, described as follows, which description expressly reserves to GRANTOR the airspace rights to the Property above 35 feet measured from the ground surface:

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

GRANTOR, for itself, its successors and assigns hereby waives any claims for any and all damages which: (i) will accrue to the remaining property of the undersigned by reason of its severance from that portion the Property subject to this offer to dedicate, (ii) taking compensation, if any, or (iii) damages on account of the location, establishment, construction or operation of the public facilities to be located on the Property. The foregoing waivers shall include any and all rights or claims that GRANTOR may have under Article 1, Section 19 of the California Constitution, the Eminent Domain Law, or any other law or regulation. GRANTOR acknowledges for itself, its successors and assigns that it has been advised to seek the advice of counsel

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

on the issue of waiver of severance and other damages, and has either done so or has chosen not to do so despite being given such advice.

GRANTOR acknowledges and agrees as follows:

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

2. This offer may be accepted at any time by the City Council of CITY or this offer may be transferred by CITY to the Sacramento Regional Transit District (RT) and accepted by RT, and in such event the references to "CITY" in the following sections shall mean "RT". This offer may be terminated only in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.

3. CITY assumes no responsibility or liability whatsoever with respect to the Property or occurrences thereon, as a consequence of the offer set forth herein.

4. GRANTOR shall not create, nor permit to be created, any lien, encumbrance or other title impediment of any sort or nature on or affecting the Property.

5. At the time CITY accepts this offer, GRANTOR shall insure that the Property is free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except (a) easements or rights-of-way for public utilities, if any, and (b) item which CITY has expressly consented in writing, if any.

6. In the event that there are improvements upon the Property placed thereon after this offer is recorded, GRANTOR shall have full legal responsibility, without cost to CITY, to remove such improvements that conflict with or impair the easement interests set out herein, if this offer is accepted by CITY.

7. To the best of GRANTOR's knowledge, there are no notices or other information giving GRANTOR reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor,

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

groundwater, surface water or land use.

As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 8 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by CITY prior to acceptance of the offer.

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

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

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

GRANTOR expressly reserves the right to place kiosks, sign poles, signs, banners and similar facilities within the easement area for the purpose of advertising public events and providing directional signage which are otherwise permitted on private or public

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

property under the City of Sacramento Municipal Code, as long as the placement, size, color and similar attributes of such facilities does not conflict, interfere or impede the exercise of the easement rights granted herein including, without limitation, the safe and convenient operation of the Sacramento Regional Transit light rail transit system.

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

GRANTOR(s): _____

Capitol Station 65 LLC

By: _____
Steven Goodwin
Managing Member

Date: _____

[Notary Acknowledgement Required]

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT J

RESERVATION AGREEMENT FORM

INTENTIONALLY OMITTED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT K

ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

ASSIGNMENT AND ASSUMPTION AGREEMENT

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

RECITALS

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

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

C. LANDOWNER has agreed to assign to ASSIGNEE, and ASSIGNEE has agreed to assume from LANDOWNER, all of the rights and obligations under the Development Agreement as they relate to the Assigned Parcel(s). The CITY has consented to the foregoing assignments and assumptions on the terms and conditions set forth below.

AGREEMENT

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

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

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

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

3. **Assumption Terms and Conditions.** LANDOWNER and ASSIGNEE understand and agree that this Assignment is subject in particular to Section II.4 of the Development Agreement, which reads as follows:

89.

90. "LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided, however, that LANDOWNER shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to CITY an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve LANDOWNER of the obligations expressly assumed only if (a) LANDOWNER is not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNER has provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNER's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "K" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

the effective date of the assignment.

Any purchaser, assignee, or transferee shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, only with respect to the Property, or such portion thereof, sold, assigned, or transferred to it. Any such purchaser, assignee, or transferee shall observe and fully perform all of the duties and obligations of LANDOWNER under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred."

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

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

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

7. **Legal Advice.** ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the duties and obligations set out in the Development Agreement to which ASSIGNEE is herby bound, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i)

LANDOWNER has furnished ASSIGNEE with a copy of all documents and materials containing or relating to terms and conditions of development of the Assigned Parcel(s); (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other public financing mechanisms and obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials, in addition to the express terms and conditions of the Development Agreement.

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

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

10. **Notices.** All notices required or provided for under this Assignment shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the other Parties and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party(ies) as indicated in Section 20 of the Agreement.

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

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

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

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

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

By:_____
LANDOWNER

By:_____
ASSIGNEE

By:_____
CITY

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT L

DESIGN GUIDELINES

THE TOWNSHIP 9 DESIGN GUIDELINES DATED AS OF AUGUST 3, 2007 AND APPROVED BY THE CITY COUNCIL ON AUGUST 21, 2007 AS REFERENCED IN THE PROJECT ENTITLEMENTS (EXHIBIT C) ARE ATTACHED AS EXHIBIT L-1 AND INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

THE DESIGN GUIDELINES ALSO INCLUDE THE DESIGN GUIDELINES SET OUT IN THE RICHARDS BOULEVARD AREA PLAN DATED OCTOBER 1994 ADOPTED ON DECEMBER 13, 1994 BY RESOLUTION NO. 94-736. THE TOWNSHIP 9 DESIGN GUIDELINES AND THE TERMS OF THIS DEVELOPMENT AGREEMENT SHALL CONTROL IN THE EVENT OF ANY CONFLICT WITH THE RICHARDS BOULEVARD AREA PLAN DESIGN GUIDELINES.

91. THE DESIGN GUIDELINES ALSO INCORPORATE BY REFERENCE A PORTION OF THE CENTRAL CITY URBAN DESIGN PLAN DESIGN STANDARDS; TO THE EXTENT THAT THE SAME SUBJECT MATTER REGARDING A SPECIFIC DESIGN STANDARD IS NOT INCLUDED IN THE TOWNSHIP 9 DESIGN GUIDELINES, THEN THE APPLICABLE REQUIREMENT IN THE CENTRAL CITY URBAN DESIGN PLAN SHALL APPLY TO THE PROJECT. AS OF THE EFFECTIVE DATE OF THIS AGREEMENT, THE CENTRAL CITY URBAN DESIGN PLAN IS IN DRAFT FORM. THE PARTIES AGREE THAT THE ADOPTED VERSION OF THE CENTRAL CITY URBAN DESIGN PLAN, AND AS IT MAY BE AMENDED IN THE FUTURE, WILL BE APPLICABLE TO THE PROJECT TO THIS LIMITED EXTENT.

NOTE: ANY CHANGES TO THE ARCHITECURAL STANDARDS IN THE TOWNSHIP 9 DESIGN GUIDELINES REQUESTED BY LANDOWNER AND APPROVED BY CITY DOES NOT REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

EXHIBIT M
SPECIAL CONDITIONS

I. PURPOSE AND INTENT

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

Under no circumstances can Development of the Property proceed without satisfaction of the conditions specified in this Exhibit M in addition to the conditions set out in the Project Entitlements, Exhibit C, and the Mitigation Measures, Exhibit D.

These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the Development of the Property for the Project, in addition to other obligations, requirements and conditions imposed as set out in the Development Agreement.

II. LANDOWNERS' OBLIGATIONS

A. **Park and Open Space Development Phasing.** Public parks and open spaces must be developed concurrently with the housing units on the adjacent lots so that these Public Facilities are available for use prior to, or no later than, when the housing units are ready for occupancy. Park and open space plantings require a reasonable period of time for growth to be established before they can be accessed by the public. Therefore, CITY retains the right to impose conditions of approval regarding subsequent Project tentative maps on the completion of certain Project parks and open spaces, which may be located within the subject phase or within a later phase, prior to the recordation of the final map in order to insure that the Project parks and open spaces are properly developed and have been completed and are available to serve the Project residents when the housing units are first occupied.

B. **Park and Open Space Maintenance.** The tentative map conditions imposed as part of the Project Entitlements require LANDOWNER to initiate and fund the proceedings to create an assessment district, the form of which is to be determined by CITY, that will encompass the Property to fund the maintenance of all of the Public Facilities as permitted under the applicable assessment district statute. The assessments would provide funding for maintenance of the Project's public park and

open space features which include, without limitation, the parks, parkways, greenbelts, paseos, plazas, fountains, trails, pedestrian pathways and facilities, lighting, landscaped medians, and decorative paving treatments.

The CITY will collect the assessments to fund maintenance of these Public Facilities and will determine whether to undertake the maintenance work with CITY forces or to contract for all or a portion of the maintenance work with private contractors, LANDOWNER, and/or with the homeowners association that is formed for the Project. Because the park and open space features in this Project are unique and will be developed with high quality materials and fixtures which are non-standard, it is important that the maintenance work is performed at a level that will protect and enhance these Public Facilities and that materials and fixtures will be replaced on an as-needed basis with the same or substantially similar materials (including plantings) and fixtures.

The CITY commits to LANDOWNER that it will in good faith maintain the Public Facilities funded under the assessment district in accordance with the Design Guidelines and at a high quality level of maintenance, and LANDOWNER acknowledges that the CITY's obligation to maintain the Public Facilities to such standards may require a higher level of assessments. The CITY commits that it will communicate and collaborate with LANDOWNER and the homeowners association in regards to the frequency and scope of maintenance of the park and open space Project features.

C. **Park and Open Space Dedication.** The City of Sacramento Municipal Code section 16.64.030 sets out the Quimby park dedication requirement, including payment of in-lieu fees, for the Project which must be met at the time of filing the final map(s). Compliance with the Quimby park dedication requirement will also satisfy the park and open space requirements set out in the Richards Boulevard Area Plan (RBAP).

Some of the lots on the Project's tentative master parcel map designated as park space are of such substandard size or design that the space does not conform to the Quimby park dedication requirement. However, in consideration of the unique design of the Project, its location abutting the American River Parkway, and the CITY's desire for development of this residential urban infill project within a blighted industrial area, the CITY will grant credit for park space (which includes open space) that is offered for dedication on the final map(s) towards the Quimby park requirements if the space would serve a public recreational purpose in accordance with the Project Entitlement conditions and the provisions and the following provisions.

The type of land proposed by LANDOWNER and conditionally approved by CITY as park space for Quimby dedication purposes would include developed park areas, natural open space areas within the American River Parkway that are above the flood line as established in the March 2001 photograph, landscaped medians which are large enough to be usable public gathering spaces, paseos which are exclusively for pedestrian/bicycle access and provide through connections to public streets or parks, plazas which are usable public spaces, and landscape easements which are large enough to be usable public gathering spaces along the street, provided that LANDOWNER installs, adjacent to the easements, sidewalks that exceed the standard width. Spaces which are part of the street right of way (including street sidewalks and intersections) that can not be safely accessed and used as public gathering spaces, such as the plazas within the roundabouts, will not be acceptable as park spaces for Quimby credit. In addition, land offered for dedication as park space for Quimby credit shall not be subject to easements or other encumbrances that could restrict or conflict with use of the space for public park purposes. Street right of way located within a parcel to be dedicated for a park shall not be counted towards Quimby credit. Landscaped walkways and paths (excluding street sidewalks) that are exclusively for pedestrian and bicycle use and dedicated to the CITY (excluding the light rail station parcel) may also be accepted for Quimby credit.

The amount of credit shall be determined at the time of filing the final map(s). The total acreage to be credited toward LANDOWNER's Quimby dedication requirement shall be based upon the actual amount of land dedicated and accepted by the CITY as park and open space, and that amount must be specified on the final map(s), subject to the foregoing limitations and exclusions. The final location of the park and open space parcels shall substantially conform to the location of each park and open space parcel shown on the tentative master parcel map, with the precise location within the LANDOWNER's sole discretion, but the amount of Quimby credit for such parcels shall be subject to the CITY's sole discretion.

D. **7th Street Median Park Easement.** Within the 7th Street right-of-way easement that was previously dedicated by LANDOWNER or its predecessors to CITY for a public street, LANDOWNER shall grant to CITY a twenty (20) foot easement for recreational purposes, measured from the centerline of the roadway, to allow for creation of a linear parkway within the street median. The easement shall either be an offer of dedication on the final map or in a form approved by the City Attorney, and shall be executed and conveyed to the CITY within thirty (30) days of the CITY's written request. Upon the conveyance and acceptance of the easement, the land subject to the

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

easement shall be considered park space for purposes of satisfying the Quimby dedication requirement as set forth in Chapter 16.64.030 of the City Code.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

However, notwithstanding the foregoing, acceptance of the 7th Street median as park space for meeting Quimby dedication requirements is contingent on: (1) the CITY's ability to obtain an easement for recreational purposes for the additional 20 feet of right of way from the adjacent property owner to create a minimum 40 foot wide linear parkway; and (2) LANDOWNER's agreement to develop the 7th Street parkway under a turnkey agreement with the CITY, because the park spaces needs to be developed concurrently with the roadway and prior to 7th Street being opened for vehicular travel. As consideration for LANDOWNER's agreement to develop the 7th Street Parkway under a turnkey agreement, CITY shall credit the full value of the improvements installed pursuant to the turnkey agreement against LANDOWNER's obligation to pay park impact fees or Quimby requirements as per City Code.

E. **Off-Site Park Dedication.** The dedication of park and open space land as shown on the tentative master parcel map is not sufficient to meet the provisions of Chapter 16.64 of the City Code regarding the on-site park and recreational facilities needed to serve Project residents and occupants. The net unsatisfied park acreage requirement must be met by the payment of in-lieu dedication fees under Chapter 16.64.

However, the CITY desires the dedication of land within the RBAP area that can be developed as park space to serve the Project residents rather than payment of in-lieu fees, particularly so that sufficient land area in the vicinity of the Project can be secured to develop sports fields and other active recreation uses, and LANDOWNER has been diligent in trying to acquire land off-site of the Project to dedicate to the CITY to fully or partially satisfy the remaining park land dedication requirement. As of the Effective Date of this Agreement, the in-lieu fee for the area where the Project is located is based on a land valuation of $250,000 per acre (the "off-site land valuation fee"). Pursuant to Chapter 16.64 of the City Code, in-lieu fees require payment of this per acre fee plus 20% to cover the cost for improvements for off-site park parcels that would otherwise not be incurred by the CITY if the park was located within the Project, such as streets, sidewalks and utility extensions (the "off-site improvement fee").

In consideration of LANDOWNER's efforts to secure off-site parcels and due to the higher costs of land within the RBAP, the CITY agrees to waive the 20% off-site improvement fee from the amount of the in-lieu fee valuation for off-site parcels if the off-site parcels offered for dedication are acceptable to CITY and will be substantially improved with public streets, sidewalks and utilities at the time of CITY's acceptance of the off-site parcels. The off-site land dedication must be of sufficient size to develop at least two standard soccer or baseball playfields, which is approximately four (4) acres.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

The CITY will also accept off-site land that is located within the American River Parkway or immediately adjacent to the

designated Sutters Landing Park and will waive the 20% off-site improvement fee, even though such parcels are not substantially improved with public streets, sidewalks and utilities.

Waiver the of the 20% off-site improvement fee means that the amount of the in-lieu fees owed by LANDOWNER will be based on the off-site land valuation fee in effect at the time of recording of the final map(s), which amount will exclude the 20% off-site improvement multiplier, compared against the value of the off-site land to be donated to CITY. If any net amount of in-lieu fee is owed at that time, the off-site improvement fee will be added to that net amount to determine the required Quimby in-lieu fee.

If CITY, in its sole discretion, approves the off-site land dedication, which may be in the form of an offer to donate the land, LANDOWNER or its affiliate entity shall dedicate or transfer the off-site land to CITY for park purposes by the time of filing of the first final subdivision map. The value of the off-site parcels for the purpose of off-setting the required Quimby in-lieu fee shall be based on the fair market value of the land at the time of the offer of dedication or donation, based on either the actual purchase price paid by LANDOWNER of its affiliated entity for the off-site parcels or a current appraisal, as determined by CITY at the time of filing the first final map. If the amount of the value of the off-site parcels to be dedicated or donated to CITY under this option is less than the in-lieu fees owed to meet the Project's Quimby requirement, then LANDOWNER shall pay the remaining in-lieu fees owing at the time of filing of the first final map in accordance with the provisions of Chapter 16.64 of the City Code. If the value of the off-site parcels to be dedicated or donated to CITY under this option is more than the in-lieu fees owed to meet the Project's Quimby requirement, then CITY shall pay LANDOWNER for the difference in the fair market value of the land that is accepted by CITY at the time title is transferred to CITY.

Notwithstanding the foregoing, nothing in this Agreement shall prohibit CITY from granting credits to LANDOWNER for privately owned and maintained open space or local recreation facilities, or both, as provided by Section 16.64.100 of the City Code. Such credit, if granted in acres, or comparable in lieu fees, shall not exceed twenty-five (25) percent of the dedication or fees, or both, as provided under Chapter 16.64 at the time of filing the final map(s).

F. **Richards Boulevard Special Planning District On-Site Open Space Requirements.** Within the RMX zone, the Richards Boulevard Special Planning District includes an open space requirement, as set out in Section 17.120.020 (3)(g) of the City Code, that specifies that a minimum of eighty (80) square feet of common usable open space per unit and a minimum of fifty (50) square feet of private (exclusive) usable open space per unit that is directly accessible from the unit. LANDOWNER shall be allowed to meet this combined 130 square foot on-site open space per unit requirement by a combination of common and private open spaces. This means that if the amount of common open space provided exceeds eighty (80) square feet per unit, the excess common open space may counted towards meeting the minimum of fifty (50) square feet of private open space per unit, as long as each unit has some amount of private open space (e.g., a Juliette balcony). In addition, all or part of the common open space for one parcel may be provided on the immediately adjacent parcel of land if the common open space is accessible to the residents in both of the adjoining parcels. Landscaped setback areas may be counted towards meeting the common open space requirement if the setback area is designed to be an integral part of a larger common open space area.

The Parties acknowledge that CITY anticipates adopting a new Central City Urban Design Plan that makes recommendations regarding changes to Central City design guidelines and development standards, including open space requirements for residential developments. Notwithstanding that the applicable Land Use and Development Regulations are set as of the Effective Date, the Parties agree that, if and when the Urban Design Plan is adopted and the Richards Boulevard Special Planning District is amended to change the open space requirements for residential developments, the Project shall be subject to those open space requirements if such requirements provide for a reduction in the total amount of common and private open space or provide for any other benefit to the LANDOWNER.

G. **Richards Boulevard and North 8th Street Intersection.** In addition to funding the installation of the traffic signals and intersection improvements as listed in the Project Entitlements (Exhibit C) and/or as Mitigation Measures (Exhibit D), LANDOWNER shall also fund its fair share of the cost for installation of a traffic signal and intersection improvements at Richards Boulevard and North 8th Street if the adjacent property owner for the project referred to as Continental Plaza agrees to dedicate to CITY the right of way needed to create a North 8th Street and Richards Boulevard intersection. The cost for the North 8th Street intersection is estimated at $350,000. LANDOWNER's fair share contribution has been determined to be $175,000, and in no event shall LANDOWNER's contribution exceed $175,000, but the amount shall be subject to the following inflation escalation ("fair share"). The amount

shall be adjusted by a figure equal to the percentage increase, if any, of the construction cost index for San Francisco (based on 1913 U.S. average = 100) during the period from the Effective Date of this Agreement to the date of payment.

If the Continental Plaza project applicant agrees to dedicate the right of way needed to create the North 8th Street and Richards Boulevard intersection and agrees to pay the remaining cost to fund this intersection improvement or the CITY otherwise has sufficient funding to undertake this improvement; LANDOWNER shall pay CITY its fair share of the cost for the North 8th Street intersection and said payment shall be due at the time of issuance of the first Building Permit after the date of the CITY's right of way dedication acceptance from the Continental Plaza property owner; provided, however, that LANDOWNER may defer its fair share payment to a later date if the Continental Plaza project has not yet commenced construction, and further provided that LANDOWNER shall be relieved of its "fair share" obligation in its entirety in the event construction of the Continental Plaza project does not commence prior to issuance of the final Building Permit for the Project. Once the Continental Plaza project has commenced construction, the fair share payment shall be due and payable at the time of the issuance of the Building Permit.

H. **North 8 Street.** CITY will obtain from Continental Plaza the obligation to dedicate a forty foot right-of-way for construction of North 8th Street north of Richards Boulevard to where Signature Street would intersect North 8th Street (approximately 320 feet). LANDOWNER shall be obligated to pay a fair share contribution for construction of North 8th Street, and to undertake construction of this street as follows. If at 50% of build-out of Township 9, North 8th Street has not been constructed by Continental Plaza, then LANDOWNER shall design and construct North 8th Street to the satisfaction of CITY, subject to reimbursement in the amount of Continental Plaza's fair share. If Continental Plaza develops phase 4 of their Planned Unit Development before Township 9 reaches 50% build-out, then CITY will require Continental Plaza to design and construct North 8th Street, subject to reimbursement by LANDOWNER in the amount of Township 9's fair share. Once the Continental Plaza project has commenced construction of North 8th Street, the fair share payment shall be due and payable at the time of the issuance of the next Building Permit for Township 9. "Fair share" contribution for both Continental Plaza and Township 9 is fifty percent (50%) of the total costs for the design and construction of North 8th Street. The cost of design and construction will be based upon an engineers estimate submitted either at the time of 50% build-out of Township 9 or the development of Phase 4 of Continental Plaza, which ever occurs first.

I. **Public Facilities Development Impact Fees.** In accordance with the provisions of Section II.6.B of the Development Agreement, the CITY is in the process of updating the Financing Plan for Facility Element of the Railyards Specific Plan and the Richards Boulevard Area Plan ("Facility Element") in response to the pending revision of the Railyards Specific Plan. Allocation of the total costs for the Public Facilities specified in the Facility Element between the Railyards Specific Plan and the Richards Boulevard Area Plan areas was determined based on the proposed land use changes to the Railyards Specific Plan, and the costs for the Public Facilities was also updated. A copy of this study dated June 25, 2007 is attached as Exhibit M-1.

This Financing Plan update resulted in revised transportation impact fees and public facilities fees (collectively "Development Impact Fees") for the Project. While the residential development impact fee was reduced slightly as shown in Table 1 of Exhibit M-1, the office and retail development impact fee increased. LANDOWNER shall be obligated to pay CITY the Development Impact Fees for the Project's allocated fair share of the costs of off-site Public Facilities in accordance with the amounts specified in Table 1 of Exhibit M-1 entitled "Revised Richards Area Fees (2007)" as the time of issuance of each Building Permit. These Development Impact Fees may be adjusted annually by the change in the consumer price index ("inflation adjustment") in the same manner and in the same percentage increase as the CITY imposes for similar development impact fees. Notwithstanding the foregoing, if CITY undertakes a subsequent revision of the Financing Plan during the term of this Agreement and adjusts the amount of the Development Impact Fee, LANDOWNER shall pay that the amount of that fee at the time of issuance of each Building Permit, provided however that the Development Impact Fee specified in Table 1 of Exhibit M-1 plus the compounded annual inflation adjustment will be in effect for a minimum period of four years. The four year period shall commence upon the earlier of (i) the date of issuance of the first building permit, or (ii) December 31, 2008. In the event the Financing Plan is not updated on or before termination of the four year period described above, the Development Impact Fee specified in Table 1 of Exhibit M-1 plus the compounded annual inflation adjustment shall remain in effect until the adoption of new Development Impact Fees based on the updated Financing Plan.

J. **Freeway Congestion Mitigation.** The Final Environmental Impact Report on Table 6.11-15 indicates that freeway mainline operations along the I-5 freeway will remain at the same level of service with Project traffic added to the baseline conditions. However, because some of the freeway mainline segments are at level of service D or worse under the baseline condition, the California Department of Transportation (Caltrans) has requested that the CITY impose a freeway congestion mitigation

requirement as a condition of approval of the Project, as well as to require fair share impact fees to fund improvements to the Richards Boulevard/I-5 Freeway interchange. LANDOWNER will pay its fair share of the interchange improvements as part of the Supplemental Development Fees, as addressed in Section J above, and the revised Development Fees imposed under the updated Financing Plan.

In regard to freeway congestion mitigation, in its letter dated April 16, 2007, Caltrans recognized that the extension of the existing light rail system along the adopted Downtown-Natomas-Airport (DNA) alignment will help alleviate congestion on the mainline segments of the I-5 freeway. The Phase 1 of the DNA project, referred to as the Minimum Operable Segment (MOS), will extend light rail service from the existing system at the Sacramento Valley Station (and the future Sacramento Intermodal Transportation Facility) along 7th Street to Richards Boulevard, with a station to be located at the Project site. The DNA MOS project is scheduled to be completed in 2014, which is when the build-out of the Project is anticipated. As noted in Caltrans letter dated November 27, 2006, the CITY has the responsibility to determine the fair share proportionality cost.

Following the same cost allocation concepts set out in the formulas in Appendix B, Methodology for Calculating Equitable Mitigation Measures, from Caltrans Guide for the Preparation of Traffic Impact Studies, using information provided by the Sacramento Regional Transit District (RT) for the MOS portion of the DNA project, and assuming federal, state and local funding for the DNA project consistent with funding of prior RT light rail projects, the LANDOWNER's fair share proportionate cost for the DNA project Minimum Operable Segment set as the current fair market value of the land LANDOWNER is required to dedicate for the DNA light rail station located on Property, as shown below.

RT Downtown-Natomas-Airport LRT Project

DNA Minimum Operable Segment Cost	$ 82.5 million ($ 2006)
Source RT Planning Dept May 7, 2007. MOS cost includes the Richards Blvd/ North 7th Street Light Rail Station	
Federal, state and Measure A subsidies (prior LRT projects received 50% federal/state funding. Assume only 40% since MOS	$ 33 million

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

segment not eligible for FTA funds per RT.)

Net Local Costs DNA MOS Cost	$ 82.5 million
	- 33.0 million
	$ 49.5 million

Assume $50 million unfunded DNA MOS cost

Measure A funding of approximately $50 million has been programmed for DNA design and engineering studies, but RT is considering applying a portion of such funding towards construction of the DNA MOS segment, subject to approval by the Sacramento Transportation Authority of such reappropriation. Therefore, the net unfunded cost for the DNA MOS is unknown at this time.

Township 9 Project – Scenario A Residential/Retail Transit Trips

Project Average Weekday Boardings	249 retail transit trips
(DEIR Table 6.11-10)	610 residential transit trips
	859 total transit trips (2013)

Township 9 Project – Scenario B Residential/Office/Retail Transit Trips

Project Average Weekday Boardings	249 retail transit trips
(Scenario B DEIR Table 6.11-10)	467 office transit trips
Subtotal:	716
	+ 504 residential transit trips
	1,220 total transit trips (2013)

Township 9 DNA Contribution/ Freeway Congestion Mitigation

Since the Project is located within the Central City, the residential component will accommodate future growth by creating housing opportunities closer to jobs in the Central Business District, thereby reducing vehicle trips that would otherwise use the mainline freeway system. Also, locating a light rail station as part of the Project will encourage greater transit use by the employees and residents at the Project site to use transit as RT's light rail and bus system provides connections throughout Sacramento County. Once the DNA line is eventually extended to the South Natomas and North Natomas communities, and ultimately to the Sacramento International Airport, Project employees and residents will be able to use this alternative transportation route in lieu of the I-5 freeway for northbound trips.

The light rail station at the Project site at the intersection of Richards Boulevard and North 7th Street will serve the developments within a ¼ to ½ mile radius (walking distance) of the Project site, thereby further reducing traffic along the mainline freeway.

The total value of LANDOWNER's land dedication for the DNA project is approximately **$870,000** as set out in more detail below. In addition, as described in the PUD Design Guidelines, portions of the existing buildings on-site will be used to replicate the cannery building architectural vernacular in the passenger shelter at the light rail station, and LANDOWNER may construct a portion of the station platform as part of a pedestrian plaza on Richards Boulevard. The value of these station construction contributions would be in addition to the value of the land dedications.

Township 9 - DNA Land Dedication Requirements

LRT Track Alignment - The Project will be required to dedicate at no cost the right of way needed for the DNA light rail tracks. The required track alignment is 40 feet in width by 1,060 feet in length or 42,400 square feet. The value of right of way land is approximately $8.00 per sq. ft. based on a recent railroad spur sale. Therefore, the value of the LRT right of way dedication is $339,200. This land dedication requirement is set out in more detail in Section I, below.

LRT Station – The Project will also be required to set-aside the additional land required for the Light Rail Station proposed at the DNA MOS terminus at North 7th Street and Richards Blvd because the Station is planned to be located at the Project site. Construction of the LRT Station is solely the obligation of Regional Transit, although LANDOWNER may undertake some of the station improvements in advance of the light rail line construction which would benefit RT. This land dedication requirement is set out in more detail in Section I, below.

The additional land needed for LRT Station is 20 feet in width and 1,060 feet in length or 21,200 sq. ft. This Station would be located behind the tracks in an area that could otherwise be developed for retail and/or residential use. The land value for vacant (developable) property along Richards Boulevard ranges from $20 to $25[1] per sq. ft. Since the land will be transferred in the future when RT is ready to construct the first phase of the DNA extension, the land value will increase. Therefore, at the high end of the range at $25 per sq. ft., the Station land value is $530,000.

Township 9 – LRT Station Land Over Dedication Reimbursement/Credit

The LANDOWNER only offered to reserve the Station land rather than to dedicate it. Reservation of land would have required RT to reimburse the LANDOWNER for the original cost of the land plus holding costs until it is transferred to RT. LANDOWNER has agreed to transfer the land to RT (or CITY) at no cost as an easement dedication with a reservation by LANDOWNER of the airspace rights above the Station to allow for possible future joint use development. A copy of the proposed easement to be executed in favor of the CITY is attached to this Agreement as Exhibit I.

1 Source: Bud Applegate, commercial broker with Colliers International citing recent land transactions within the Richard Boulevard area.

In consideration for LANDOWNER's agreement to dedicate the Station land to RT at no cost, in addition to the LRT track alignment right of way, and in recognition that Station land value will increase significantly between 2007 and 2014, LANDOWNER's total land value contribution ($870,000 plus the value of these station construction contributions) for the DNA MOS project will be recognized as: (i) the Project's fair share contribution towards the Freeway Congestion Mitigation, and (ii) supporting RT's interim transit service within the Richards Boulevard area until the DNA MOS is constructed. LANDOWNER agrees that the track alignment right of way and the Station land may be used by RT on an interim basis to support bus transit service until the DNA MOS project is implemented. The Parties agree that the Project's total fair share contribution toward the Freeway Congestion Mitigation and RT's interim transit service shall not exceed LANDOWNER's total land value contribution, which has been determined to be $870,000 plus the value of any station construction contributions, including but not limited to the costs of preserving historic timbers for use in construction of the Station.

In the past, CITY has required other developers that benefit from a station to contribute towards the land cost and provides for partial reimbursement to the property owner who was required to dedicate the station parcel. In recognition of LANDOWNER's over-dedication of land for the station and the possibility that it may undertake some station improvements, CITY shall use its best efforts to secure contributions as conditions of entitlements for development of parcels within ½ mile of the Project boundary to pay a fair share contribution to fund station construction and to reimburse LANDOWNER for the value of its over-dedication. The value of LANDOWNER's land dedication and station construction which exceeds its fair share contribution will be based on the updated Finance Plan. The reimbursement that may be owed to LANDOWNER may be funded based on an adjustment of Development Fees and/or imposition of a Land Acquisition Fee pursuant to implementation of the updated Financing Plan. If a Development Fee and/or Land Acquisition Fee is established in the RBAP for the DNA project, LANDOWNER shall be credited for the value of its over-dedication on a pro-rata basis at the time of Building Permit issuance.

K. **Light Rail Dedication.** Pursuant to the terms of the Project Entitlements (Exhibit C) and the foregoing Freeway Congestion Mitigation Fee provision, LANDOWNER is required to dedicate right of way for the light rail alignment and an easement for the light rail station. Of the 129.5 feet of right of way to be dedicated to CITY and measured from the centerline of Richards Blvd across the Property: (i) 59.5 feet is to be dedicated in fee for the expansion of Richards Boulevard for consistency with the Richards Boulevard Area Plan street sections; (ii) 60 feet will be dedicated to the CITY as an easement along the southern edge of Lots 13, 14 and 17 (approximately

1,060 feet in length) for the benefit of the Sacramento Regional Transit District for construction and operation of Phase 1 of the Downtown-Natomas-Airport (DNA) light rail line extension, including 40 feet for the light rail tracks and 20 feet for the light rail station and ancillary facilities subject to the terms of the Irrevocable Offer of Dedication Agreement provided as Exhibit I; and (iii) 10 feet will be dedicated to CITY as an easement for a sidewalk and landscaping strip. The location of the 60 foot light rail station easement and the 10 foot sidewalk and landscaping strip may be interchangeable because final design of the DNA line and station have not been completed and the DNA line and station may be located either abutting the street or behind the landscaping strip and sidewalk, and the 15 foot sidewalk and landscaping strip may be designed as part of the light rail station facility.

LANDOWNER has agreed to transfer the land to RT (or CITY) at no cost as an easement dedication with a reservation by LANDOWNER of the airspace rights above the Station to allow for possible future joint use development, provided however that LANDOWNER agrees that it shall not intrude into the "operating zone" or "restricted area" of the Station without prior review and approval from RT regarding safety issues and
potential interference with the rail operations; and further provided that, prior to CITY's issuance of the first building permit for the Project, LANDOWNER and RT shall enter into an agreement regarding the allowable uses within the airspace above the Station. For purposes of this Development Agreement, the "operating zone" and the "restricted area" will be defined by an agreement between RT and LANDOWNER. The form of the easement for dedication of the land for the light rail station is provided in Exhibit I. This form easement may be revised to incorporate the approved operating zone and restricted area definitions.

L. **Regional Sanitation Fees.** The current "infill" fee imposed by the Sacramento County Regional Sanitation District ("District") is $2,725 per ESD (equivalent single family dwelling unit), and the District may grant developers sewer credits to account for the prior land uses on the property that generated sewer flows in light of the fees paid by the prior property owner for the District's infrastructure improvements. CITY currently budgets funds annually for payment of the Regional Sanitation "infill" fee on behalf of developers ("sewer fee credits") by waiving imposition of sewer fees at time of Building Permit issuance for eligible development projects. The amount of CITY sewer fee credits available for allocation to eligible development projects is contingent on the amount budgeted by CITY each year and the demand for sewer fee credits at any given time may exceed the amount budgeted. LANDOWNER owns 2,000 sewer fee credits issued by the District that it acquired through its purchase

of the Property from the prior landowner.

LANDOWNER desires to sell its credits to developers within the Project area. CITY agrees that it shall not sell CITY's sewer fee credits to developers and/or builders within the Project area unless LANDOWNER no longer has sewer fee credits and notifies CITY that all previously obtained credits have been allocated to builders and/or developers within the Project area; provided, however, that LANDOWNER shall not unreasonably withhold its credits and further provided that LANDOWNER shall not sell its credits for a fee higher than the amount of the District's "infill" fee at the time of sale.

M. **North 7th Street Improvements.** LANDOWNER is obligated to install street right of way improvements on the west side of North 7th Street within the Project area as a condition of the Project Entitlements (Exhibit C). The adjacent property owner of the project referred to as Continental Plaza is obligated to install street right of way improvements on the east side of North 7th Street. Because LANDOWNER may commence Development of the Project prior the development of that portion of the Continental Plaza project which requires access from North 7th Street, LANDOWNER may be required by the CITY to install street right of way improvements both on the west and east sides of North 7th Street, and the cost of the improvements on the east side of North 7th Street would exceed LANDOWNER's obligation under the Project Entitlement conditions. If LANDOWNER is obligated to undertake improvements on the east side of North 7th Street, CITY will reimburse LANDOWNER for the costs of street right of way improvements which exceed LANDOWNER's obligations under the terms of the Project Entitlement conditions. Such reimbursement shall be pursuant to the terms and conditions of a standard CITY public improvement agreement to be executed between CITY and LANDOWER.

N. **Public Agency Radio and Microwave Communication Systems.** Notwithstanding LANDOWNER's Vested Rights and anything contained herein to the contrary, in the event CITY determines that the Project will interfere with the Public Agency Radio and/or Microwave Communication Systems, LANDOWNER agrees to work with CITY to reduce such interference by either (i) providing the funding necessary to purchase and install "repeaters" on Project buildings as necessary to re-route microwaves around the Project, (ii) restricting the heights of buildings to allow the microwaves to cross the Project site, or (iii) any other means acceptable to the Parties. In the event the LANDOWNER fails to comply with (i), (ii) or (iii), above, CITY may deny or condition a subsequent project approval including, without limitation, an application for a Building Permit or approval of a tentative or final map in order to avoid interference with the radio and microwave communications systems operated by the

Sacramento Regional Radio Communications Systems (SRRCS), the Automated Local Evaluation in Real Time (ALERT) system and the State of California Public Safety Microwave Network.

These systems are emergency and weather communication facilities that serve federal, state, county, CITY and other Public Agencies and are used to protect the public health, safety and welfare. These systems are in existence as of the Effective Date, the systems' radio and microwaves cross the Property as is depicted in Exhibit M-2, attached, and the operations of one or more of these systems could experience interference if the Project is developed as permitted under the Land Use and Development Regulations. In addition, Building Permits may be conditioned on compliance with the provisions set out in Exhibit M-3, Public Safety Radio Communication Requirements for Buildings.

O. **Zoning Code Special Permits.** Chapter 17.180 of the City Code regarding regulation of Planned Unit Developments provides under Section 17.180.030 that development projects within a PUD shall be subject to a planning director's plan review under Chapter 17.200, unless the proposed project otherwise requires a special permit. Under Chapter 17.60 of the City Code, Height and Area Regulations, Section 17.60.030 (9) provides that building with a size in excess of 75,000 square feet, or in the OB zone a building in excess of 40,000 square feet, requires a special permit before the building can be constructed or expanded. In consideration of the fact that most of the buildings within the Project are proposed to exceed these building size standards and the design and development standards set out in the Design Guidelines already address the same considerations as a special permit would encompass, CITY hereby waives the requirement under Section 17.60.030 (9) for LANDOWNER to obtain a special permit based on the square footage size of a building.

III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

A. In addition to other findings and conditions as may be deemed applicable, no special permit, subdivision map or other land use entitlement ("Subsequent Approval")for Development of the Property shall be approved unless the approving body either makes the following findings or expressly waives such findings, in whole or in part, as not applicable to the Property or the Project and stating the reasons therefor in the record or document of approval. These findings are:

1. The approval of the proposed project is consistent with the policies,

goals, standards and objectives of the General Plan, RBAP and Specific Plan and other relevant factors and circumstances, and the LANDOWNER is in compliance with the applicable terms and conditions of the Development Agreement including, without limitation, these Special Conditions, the Mitigation Measures and the conditions of approval of the Project Entitlements.

2. All transfers of land, owned by or under the control of LANDOWNER, which are specified in the Project Entitlements or in Section II, above, as being necessary for Public Facilities needed to serve the Project have been transferred to CITY, City Agency or Public Agency as appropriate.

3. LANDOWNER has obtained all permits and approvals required from other public agencies for Development of the Project and has entered into all agreements required by such agencies.

4. Appropriate environmental review of the Subsequent Approval has been completed, and all additional feasible mitigation measures resulting therefrom to reduce impacts to less than significant have been included as conditions of approval of the entitlement application.

B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the entitlement application if all of the following conditions can be satisfied with respect to each such special finding not made:

1. Practicable and feasible requirements or mitigation measures can be imposed upon the Subsequent Approval, the implementation of which would allow such special finding to be made;

2. The applicant has agreed to be bound (through written agreement satisfactory to the City Attorney) by and to implement such requirements or mitigation measures, and has posted such security for compliance therewith as may be required by the City Manager; and

3. It is in the public interest and consistent with the policies, goals, standards and objectives of the General Plan, RBAP and Specific Plan for the entitlement application to be approved with such requirements and mitigation measures.

EXHIBIT M – 1

[Insert copy of EPS June 25, 2007 report]

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
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EXHIBIT M – 2

[Insert diagram showing radio interference]

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CITY AGREEMENT NO._____ DATE
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EXHIBIT M – 3

PUBLIC SAFETY RADIO COMMUNICATION REQUIREMENTS FOR BUILDINGS

The following requirements may be imposed at the time of application for a Building Permit. These requirements will be superseded by the adoption of an ordinance establishing public safety radio communication requirements after the Effective Date of this Agreement. Notwithstanding anything contain in this Agreement to the contrary, all Building Permit applications filed after the adoption of said ordinance shall be subject to compliance with its terms and conditions.

(A) **General.** Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to, any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage for the Sacramento Regional Radio Communications System (SRRCS), including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following: (1) a minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest Sacramento Regional Radio Communications System site; (2) a minimum signal strength of -95 dBm received at the closest Sacramento Regional Radio Communications System site when transmitted from 90% of the area of each floor of the building; (3) the frequency range that much be supported shall be the current band of frequencies used by either the City or County sub-systems; and (4) a 100% reliability factor. When measuring the performance of a bi-directional amplifier, signal strength measurements are based on one input signal adequate to obtain a maximum continuous operating output level.

(B) **Amplifications Systems Allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned to so that they will be 35 db below the SRRCS frequencies.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE
ADOPTED:_____

(C) **Testing Procedures.**

1. Acceptance Test Procedure. When an in-building radio system is required, and upon completion of installation, it will be the building owner's responsibility to have the radio system tested to ensure that two-way coverage on each floor of the building is a minimum of 90%. Each floor of the building shall be divided into a grid of approximately 20 equal areas. A maximum of two non-adjacent areas will be allowed to fail the test. In the event that three of the areas fail the test, in order to be more statistically accurate, the floor may be divided into 40 equal areas. In that event, a maximum of four non-adjacent areas will be allowed to fail the test. After the 40 area test, if the system continues to fail, the building owner shall have the system altered to meet 90% coverage requirement. The test shall be conducted using a Motorola MTS2000, XTS2500, XTS5000 or equivalent portable radio, talking through the Sacramento Regional Radio Communications System as specified by the authority having jurisdiction. A spot located approximately in the center of a grid area will be selected for the test, then the radio will be keyed to verify two-way communications to and from the outside of the building through the SRRCS. Once the spot has been selected, prospecting for a better spot within the grid area will not be permitted. The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified each year during the annual tests. In the event that the measurement results become lost, the building owner will be required to rerun the acceptance test to re-establish the gain values.

   As part of the installation, a spectrum analyzer or other suitable test equipment shall be utilized to insure that spurious oscillations are not being generated by the subject bi-directional amplifier (BDA) due to coupling (lack of sufficient isolation) between the input and output systems. This test will be conducted at time of installation and subsequent annual inspections.

2. Annual Tests. When an in-building radio system is required, the building owner shall test all active components of the system, including but not limited to amplifiers, power supplies and backup batteries, a minimum of once every 12 months. Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance. Backup

batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one hour test period, in the opinion of the testing technician, the battery exhibits symptoms of failure; the test shall be extended for additional one hour periods until the testing technician confirms the integrity of the battery. All other active components shall be checked to determine that they are operating within the manufacture's specifications for the intended purpose.

3. Five-Year Tests. In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five years to ensure that radio system continues to meet the requirements of the original acceptance test. The procedure set forth above shall apply to these tests.

4. Qualifications of Testing Personnel. All tests shall be conducted, documented and signed by a person in possession of a current FCC license, or a current technician certification (minimum Associate level) issued by the Electronics Technicians Association. All original test records shall be retained on the inspected premises by the building owner and copies of the records shall be submitted to the Sacramento Fire Department via the "Self Help Inspection Process".

5. Field Testing: Police and Fire personnel, after providing reasonable notice to the owner or his representative, shall have the right to enter onto the property to conduct field-testing to be certain that the required level of radio coverage is present.

(D) **Permits:** A permit fee of $100.00 shall be submitted to the Sacramento Fire Department along with copies of all test records.

(E) **Implementation:** Although not a condition of occupancy, the building shall be in compliance of this ordinance within 90 days of occupancy.

(F) **Penalties:** Pursuant to 8.040.080 of the SCC, a violation of this ordinance is a misdemeanor criminal offense and a civil penalty up to $25,000.00 per day (for each and every day that the violation exists) can be imposed.

(G) **Exemptions:** This section shall not apply to buildings less than 5,000 square feet

or buildings zoned for Residential 1& 2 Family Units.

(H) *Required Path Availability of SRRCS Microwave System & Mitigation Issues:*
The SRRCS Microwave System is designed for a minimum of 99.999% availability which takes into consideration existing structures along the microwave system transmission path, obstruction from natural terrain, and environmental factors.

If the City determines that mitigation efforts are required, prior to the issuance of final permits or occupancy of the building, the building owner shall mitigate the new building or structure's blockage or obstruction of the SRRCS Microwave System paths so as to restore a minimum of 99.999% system availability by either (1) providing a new microwave relay site/equipment at another site; (2) relocating existing microwave relay/site equipment or (3) pay an impact fee to be determined by the City to cover any work required to restore the SRRCS Microwave System's availability. Prior to commencing any mitigation work, the building owner shall submit a detailed mitigation plan to the City for approval.

EXHIBIT N

LAND ACQUISITION PROGRAM

The purpose of this Exhibit is to address the contingency for funding the costs of land required for development of off-site Public Facilities needed to serve the Project which are not otherwise addressed under the Project Entitlements (Exhibit C) or the Special Conditions (Exhibit M), or where it is uncertain as of the Effective Date whether the land costs for off-site Public Facilities will be included as part of the Development Fees to be established in the future to implement the Financing Plan update. However, a Land Acquisition Program has not been adopted for the Richards Boulevard Area Plan pursuant to the Facility Element or the Financing Plan as of the Effective Date. Since LANDOWNER has agreed to: (i) be subject to compliance with the Financing Plan as it may be updated in the future as described in Exhibit M, which may include both a change in the amount of the Development Fees as well as a separate Land Acquisition Fee, and (ii) pay updated Development Impact Fees subject to the restrictions set forth in Exhibit M Section H; there is no need to address a Land Acquisition Program for this Project.