

## **ORDINANCE NO. 2007-073**

Adopted by the Sacramento City Council

September 4, 2007

**APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND GROVE INVESTMENT COMPANY, A CALIFORNIA GENERAL PARTNERSHIP AND CONTINENTAL PLAZA PHASE IV, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF THE RICHARDS BOULEVARD AND NORTH 7<sup>TH</sup> STREET INTERSECTION. (APN 001-0020-017, 001-0020-018, 001-0020-049, 001-0020-050, 001-0020-051) (P07-015)**

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

### **SECTION 1**

This Ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement, by and between the City of Sacramento and Grove Investment Company, a California general partnership and Continental Plaza Phase IV, LLC, a California limited liability corporation (collectively, "the landowners"), a copy of which is attached hereto.

### **SECTION 2**

The City Council finds:

1. The agreement is consistent with the City's General Plan, Central City Community Plan and the Richards Boulevard Area Plan goals, policies, standards and objectives in that the Continental Plaza PUD supports and promotes the Central City's role as the region's office and employment center, reuses and revitalizes an existing developed area, and encourages the intensification of uses around light rail stations.
2. The Development Agreement should be encouraged since the first three phases of the Continental Plaza PUD contributed to the widening and street improvements of Richards Boulevard from 7<sup>th</sup> to 16<sup>th</sup> Street; the construction of the 7<sup>th</sup> Street extension through the UP Railyards connecting Richards Boulevard to the Central Business District; and, the preliminary work for the reconfiguration of the intersection at Richards Boulevard and North 16<sup>th</sup> Street.

3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement since the property owner may not be able to secure a State office use without having a fully entitled project.
4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit.
5. The landowner will participate in all programs established and/or required under the General Plan or any applicable specific or community plan and all of its approving resolutions (including any Mitigation Monitoring Plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public.
6. The landowner has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

### SECTION 3

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

Table of Contents:  
Exhibit A: Development Agreement

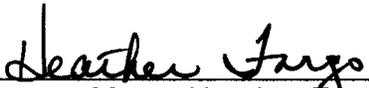
Adopted by the City of Sacramento City Council on September 4, 2007 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.

  
\_\_\_\_\_  
Mayor Heather Fargo

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

Passed for Publication August 21, 2007  
Published August 16, 2007  
Effective October 4, 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 (Historic City Hall)  
Sacramento, CA 95814

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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**DEVELOPMENT AGREEMENT**

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**CONTINENTAL PLAZA**

**P07-015**

**Grove Investment Company, a California general partnership  
and Continental Plaza Phase IV, LLC,  
a California limited liability corporation**

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

**CONTINENTAL PLAZA  
DEVELOPMENT AGREEMENT**

**TABLE OF CONTENTS**

**RECITALS**..... 1

**AGREEMENT** ..... 9

**I. DEFINITIONS**..... 9

**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 Development** ..... 13

**B. Discretionary Approvals**..... 13

**C. Development Timing**..... 13

**D. Land Uses and Development Regulations** ..... 13

**6. CITY Review of Applications** ..... 15

**7. Extension of Entitlements** ..... 15

**8. Fees, Charges, Assessments and Taxes** ..... 15

**A. CITY Fees** ..... 15

**B. Levies Imposed by Other Jurisdictions**..... 16

**9. Landowners' Dedication of Park Easement**..... 16

**10. Funding of Traffic Signal**..... 17

**11. North 8<sup>th</sup> Street**..... 17

**12. Air Quality Mitigation**..... 17

**13. Vine Street** ..... 18

**14. Litigation/Indemnification** ..... 18

**A. Challenge to Agreement or Entitlements**..... 18

**B. Indemnification** ..... 20

**15. Effect of Subsequent Laws**..... 20

**A. Laws of Other Agencies**..... 20

**B. Laws Passed by CITY**..... 21

**16. Enforced Delay; Extension of Times of Performance** ..... 21

**17. Legal Actions; Applicable Law; Attorney's Fees**..... 21

**A. Legal Actions** ..... 21

**B. Applicable Law**..... 22

**C. Attorney Fees**..... 22

**18. Amendment of Agreement** ..... 22

**19. CITY'S Good Faith in Processing**..... 22

**20. Submission Requirements for Subsequent Applications** ..... 22

**21. Default, Remedies, Termination**..... 23

**A. General Provisions**..... 23

**B. LANDOWNERS' Default**..... 23



**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF SACRAMENTO  
AND  
GROVE INVESTMENTS AND CONTINENTAL PLAZA PHASE IV, LLC.**

This Development Agreement (hereinafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and GROVE INVESTMENT COMPANY, a California general partnership and CONTINENTAL PLAZA PHASE IV, LLC, a California limited liability corporation (hereinafter the "LANDOWNERS").

**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. CITY and LANDOWNERS desire to enter into a development agreement to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan and the Richards Boulevard Area Plan ("RBAP").

C. 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 and the RBAP.

D. This Agreement concerns that certain real property commonly known as the Continental Plaza Project Site, consisting of four parcels and approximately 18.25± acres of land (the "Property"), as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

E. The Continental Plaza Project Site is located at the northeast corner of the Richards Boulevard and North 7<sup>th</sup> Street intersection. The Property is also located within the Richards Boulevard Area Plan and the Richards Boulevard Redevelopment District.

F. The Parties to this Agreement are Grove Investment Company, a California general partnership, as owner in fee of a 13.5+/- acre portion of the Property, which consists of Phases I, II and III of the Continental Plaza Project, and Continental Plaza Phase IV, LLC, a California limited liability corporation, as owner in fee of a 4.75+/- acre portion of the Property, which consists of Phase IV of the Continental Plaza Project; and the City of Sacramento, a California municipal corporation.

Continental Plaza Development Agreement  
Revised 08/22/07

-1-

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

G. The Continental Plaza Project is a Planned Unit Development ("PUD") consisting of an approximately 1,100,000 square foot office campus designed to be developed in four phases, three of which (totaling approximately 287,500 square feet of building floor area) have already been completed.

(1) Phase I of the Continental Plaza Office Campus consists of a 1989 renovation for office use of the single story, 160,000± square foot Continental Can Manufacturing facility originally constructed in 1946.

(2) Phase II of the Continental Plaza Office Campus consists of a two story, 67,500± square foot office building constructed in 1990.

(3) Phase III of the Continental Plaza Office Campus consists of a two story, 60,000± square foot office building constructed in 1998.

(4) Phase IV of the Continental Plaza Office Campus consists of a twelve story, 810,000± square foot office building to be constructed on a portion of the Continental Plaza Project Site zoned OB-PUD-SPD, an "off-site" parking structure to be constructed on a portion of the Continental Plaza Project Site zoned M-2-PUD-SPD, and a 4,300 square foot child care center to be operated within the existing Phase I office building in the M-2-PUD-SPD zone.

H. Land Use Entitlements Governing Development of the Continental Plaza Project. The Continental Plaza Project currently has the following existing land use entitlements (the "Continental Plaza Development Entitlements" or the "Entitlements"):

(1) a Planned Unit Development ("PUD") zoning district designation;

(2) PUD Guidelines that provide for the development of a 1,097,500± square foot office campus within the PUD zoning district;

(3) OB-PUD-SPD zoning (applicable to a 4.75 acre portion of the Continental Plaza Project Site) and M-2-PUD-SPD zoning (applicable to the remaining 13.5± acre portion of the Continental Plaza Project Site), both of which allow office development as a permitted use;

(4) a Special Permit to construct an 810,000 square foot office building in the OB-PUD-SPD portion of the Continental Plaza PUD;

(5) a Special Permit to construct a parking garage to serve the Continental Plaza Project in the M-2-PUD-SPD portion of the Continental Plaza PUD;

(6) a Special Permit to operate a 4,300 square foot child care facility in the Phase I office building; and

**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(7) Design Review approval of a twelve story, 810,000 square foot office building and a parking garage to be constructed in the Continental Plaza PUD. Pursuant to the provisions of the Zoning Code, the design review approval has expired and the LANDOWNERS will have to process a new application for design review.

I. The initial Entitlement Application for Continental Plaza Phases III and IV was filed with the City in 1993. This initial application resulted in the following series of land use approvals, all by an unanimous vote of the respective City approval bodies:

(1) In 1996, the City Planning Commission and City Council held public hearings on various land use entitlements requested by LANDOWNER for the Property. At the conclusion of these hearings, the City Council on October 29, 1996 certified an Environmental Impact Report (Initial Study and Notification of the Use of the Railyards Specific Plan/Richards Boulevard Area Plan EIR and SEIR for the Continental Plaza Phase III and Phase IV) (the "Continental Plaza EIR") and approved a Mitigation Monitoring Program ("MMP") for the Continental Plaza Project. After making specific findings and adopting a Statement of Overriding Considerations under the California Environmental Quality Act ("CEQA"), the City Council took the following actions:

(a) Certified the 1996 Continental Plaza EIR, adopted Findings of Fact, a Statement of Overriding Considerations, and the Mitigation Monitoring Plan relating to the Continental Plaza Project;

(b) Rezoned approximately 4.75 acres of the Property for office development with a base zoning district designation of Office Building ("OB") and a Planned Unit Development ("PUD") and Richards Boulevard Special Planning District ("SPD") overlays;

(c) Imposed a Planned Unit Development ("PUD") designation on the Property and found the PUD consistent with Government Code Section 65402;

(d) Approved a Schematic Plan and Development Guidelines for the PUD;

(e) Approved a Special Permit for a 60,000 square foot office building ("Continental Plaza Phase III") in the M-2 (PUD/SPD) zone;

(f) Approved a Special Permit for an 810,000 square foot office building ("Continental Plaza Phase IV") on a 4.75 acre portion of the Property in the OB-PUD-SPD zone;

(g) Approved a Special Permit to locate 1,136 parking spaces off-site for an 810,000 square foot office building; and

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(h) Approved a Special Permit for the development of a child care facility in the M-2 (PUD/SPD) zone.

The Special Permits for the 810,000 square foot office building, the off-site structured parking and the child care center collectively constitute the "Continental Plaza Phase IV Special Permits."

(2) On July 7, 1998, the City Design Review/Preservation Board held a public hearing on and approved LANDOWNER's request for design review of the two story, 60,000 square foot Continental Plaza Phase III office building and the twelve story, 810,000 square foot Continental Plaza Phase IV office building.

(3) On February 24, 2000 the City Planning Commission held a public hearing on LANDOWNER's request for an extension of time within which to exercise the Continental Plaza Phase IV Special Permits. At the conclusion of this hearing, the Planning Commission took the following actions:

- (a) Certified the 2000 Continental Plaza Phase IV Supplemental Environmental Impact Report;
- (b) Approved the Continental Plaza Phase IV Mitigation Monitoring Plan;
- (c) Approved the Special Permit Time Extension for an 810,000 square foot office building in the OB-PUD-SPD zone;
- (d) Approved the Special Permit Time Extension for off-site parking for an 810,000 square foot office building; and
- (e) Approved the Special Permit Time Extension for the development of a child care facility in the M-2 (PUD/SPD) zone.

(4) On September 18, 2002, the City Design Review/Preservation Board held a public hearing on and approved LANDOWNER's request for a three year time extension on the previously approved design review of the twelve story, 810,000 square foot Continental Plaza Phase IV office building.

(5) On October 24, 2002, the City Planning Commission held a public hearing on LANDOWNER's request that the Continental Plaza Phase IV Special Permits be readopted and that the PUD Guidelines be amended. At the conclusion of this hearing, the Planning Commission took the following actions:

- (a) Approved an Addendum to the 2000 Continental Plaza Supplemental Environmental Impact Report;

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(b) Approved a Mitigation Monitoring Plan;

(c) Approved Amendments to the Continental Plaza PUD Guidelines to modify text regarding timing and development on a total of 18.25± gross acres in the OB-PUD-SPD and M-2-PUD-SPD zones;

(d) Approved a Special Permit to construct an 810,000 square foot office building in the Continental Plaza PUD;

(e) Approved a Special Permit for off-site parking for the proposed 810,000 square foot office building; and

(f) Approved a Special Permit to operate a 4,300 square foot child care facility within the existing 159,316 square foot Phase I office building in the M-2-PUD-SPD zone.

(6) On November 17, 2004, the City Zoning Administrator held a public hearing on LANDOWNER's request for a time extension of the Continental Plaza Phase IV Special Permits. At the conclusion of this hearing, the Zoning Administrator took the following actions:

(a) Approved a Zoning Administrator Special Permit Three Year Time Extension to construct an 810,000 square foot office building in the Continental Plaza PUD;

(b) Approved a Zoning Administrator Special Permit Three Year Time Extension for off-site parking; and

(c) Approved a Zoning Administrator Special Permit Three Year Time Extension to operate a 4,300 square foot child care center within the existing 159,316 square foot Phase I building in the M-2-PUD-SPD zone.

The Special Permit Three Year Time Extensions approved by the Zoning Administrator and listed above will expire on October 24, 2007.

(7) On August 28, 2007 and \_\_\_\_\_, 2007, the City Council held public hearings on LANDOWNERS' request to enter into a Development Agreement with the City of Sacramento, to rezone approximately 1.19 gross acres, and to modify the PUD Guidelines and Schematic Plan for the Continental Plaza PUD. At the conclusion of the hearings, the City Council took the following actions:

(a) Approved the Addendum to the Continental Plaza PUD EIR;

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

- (b) Approved the Mitigation Monitoring Program;
- (c) Approved the Continental Plaza Development Agreement;
- (d) Approved the Rezone of approximately one (1.0) acre from Heavy Industrial North Special Planning District (M-2N SPD) to Heavy Industrial - North Planned Unit Development Special Planning District (M-2N PUD/SPD) and approximately 0.19 acre from Heavy Industrial Central Special Planning District (M-2C SPD) to Office Building Planned Unit Development Special Planning District (OB PUD/SPD);
- (e) Approved Amendments to the Continental Plaza Planned Unit Development (PUD) Development Guidelines; and
- (f) Approved Amendments to the Continental Plaza Planned Unit Development (PUD) Schematic Plan.

J. The City acknowledges that completion of the Continental Plaza Project will play a critical role in the success of the redevelopment of the Richards Boulevard Plan Area. In forming the Continental Plaza PUD, the City Council approved PUD Guidelines, the express purpose of which is to promote certain redevelopment-related objectives including:

- (1) To accommodate the State's plans for consolidation of State-occupied office space at a location that has been targeted by the City for such use;
- (2) To house office users seeking the efficiency, flexibility and cost-effectiveness of large floor plate designs in an attractive back-office setting;
- (3) To provide a signature building to anchor the 7th Street corridor to the north and establish a design standard for the "lower cost, support office space" targeted by the Richards Boulevard Area Plan (RBAP) for this location.
- (4) To contribute to financing of the critical first phase of infrastructure for the Railyards Specific Plan (RSP) and Richards Boulevard Area Plan (including the widening of the I-5/Richards Boulevard undercrossing, the 7th Street extension and the transportation facilities);
- (5) To provide a logical extension of downtown employment activity, commerce and trade;
- (6) To reinforce the use of major transit improvements planned for the area (including the intermodal transportation facilities to be located in the Railyards Specific Plan area and the LRT Station to be located west of the Continental Plaza site on Richards Boulevard); and

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_ ORDINANCE NO. \_\_\_\_\_  
DATE ADOPTED: \_\_\_\_\_

(7) To provide the catalyst for the redevelopment of the Richards Boulevard area (now known as the Capitol Station District).

K. City has made a substantial investment in infrastructure designed to serve and promote redevelopment of the Richards Boulevard Plan Area, including:

(1) The widening of Richards Boulevard from 7<sup>th</sup> Street to 16<sup>th</sup> Street at an approximate cost of \$ 3.6 million; and

(2) The construction of the 7<sup>th</sup> Street Extension through the UP Railyards connecting Richards Boulevard directly to the Sacramento's downtown Central Business District, at an approximate cost in excess of \$25,000,000.

(3) The preliminary work, including feasibility analysis, design and environmental review pursuant to CEQA, required to significantly reconfigure the intersection of Richards Boulevard and 16<sup>th</sup> Street, a project that is scheduled to be completed in June 2007 at an approximate cost of \$5.1 million.

L. Success of Richards Boulevard Redevelopment Effort Dependent on Competitiveness in Regional Market for State Office Space.

(1) The success of the Richards Boulevard redevelopment program and the City's investment in infrastructure to promote redevelopment of the Richards Boulevard Plan Area depends, to a large extent, on the ability of LANDOWNERS in the Richards Boulevard Redevelopment District to compete effectively in the regional back-office real estate market, in general, and in the procurement process for State office requirements, in particular.

(2) To compete effectively for State office requirements, Richards Boulevard LANDOWNERS must have property:

(a) That not only is fully entitled and ready to develop but also has development entitlements that will remain in place long enough for the State to make effective use of them; and

(b) That is not constrained by parking limitations.

(3) The Continental Plaza Phase IV Special Permits will expire before the State can make effective use of them given the State's lengthy and uncertain procurement process unless they are vested for a longer term through a project development agreement.

(4) The Richards Boulevard Plan Area was originally designed to include:

**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(a) An Intermodal Transportation Facility to be located at the intersection of North 7<sup>th</sup> Street and North B Street; and

(b) A light rail station on the planned Natomas/Airport line near the northwest corner of North 7<sup>th</sup> Street and Richards Boulevard.

M. In recognition of the expectation that the Continental Plaza Project would be served by the Intermodal Transportation Facility at North 7<sup>th</sup> Street and North B Street and the light rail station on Richards Boulevard near the North 7<sup>th</sup> Street intersection, the parking ratios for which provision is made in the Continental Plaza PUD Guidelines were reduced from the more typical City standard of one space for every 250 to 275 square feet of office building floor area to one space for every 600 square feet. The Intermodal Transportation Facility has been relocated to the site of the existing historic SP Depot, where a new Intermodal Transportation Facility will be constructed approximately 400 feet to the north of the existing Depot. The Richards Boulevard light rail station and the light rail line to connect it with the future Intermodal Transportation Facility at the old SP Depot site have not yet been funded or designed and will not be constructed and ready for occupancy for many years. To compete effectively in the regional back-office market and to be successful in the regional competition for State office requirements, in particular, the Continental Plaza Project must be able to offer more typical parking ratios in the absence of proximate access to light rail or intermodal transportation alternatives.

N. To promote the redevelopment of the Richards Boulevard Plan Area, to protect City's investment in backbone infrastructure to facilitate such redevelopment, and to protect LANDOWNERS' investment in the existing Continental Plaza Development Entitlements, City and LANDOWNERS desire to enter into this Development Agreement for the principal purpose of removing the land use constraints referenced above that otherwise negatively effect the ability of the Continental Plaza Project to compete effectively in the regional market for back-office uses, including in particular State office requirements.

O. This Agreement is voluntarily entered into by LANDOWNERS to assure the implementation of the General Plan, the RBAP and the development entitlements referenced hereinabove, 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 and the RBAP.

P. The authority for this Agreement is contained in the City Charter of CITY, the General Plan, Chapter 18.16 of the City Code, other applicable CITY ordinances, resolutions and procedures and Government Code section 65864, et seq.

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

Q. CITY and LANDOWNERS have taken all actions mandated by and have fulfilled all requirements set forth in Chapter 18.16 for the adoption of this Agreement by the City Council.

R. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, the RBAP, the CITY Code 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

### I

## DEFINITIONS

The terms set forth below, unless the context otherwise requires, shall have the meanings prescribed, for purposes of this Agreement.

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

● **Annual Review:** the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNERS with all of the terms and conditions of this Agreement, which process and procedures are as specified in Chapter 18.16 of the City Code and in Section 19 of this Agreement.

● **Assignee:** a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit B.

● **Assignment:** the sale or other transfer by LANDOWNERS 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.

● **Assumption Agreement:** the agreement prescribed in Exhibit B, 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

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### FOR CITY CLERK USE ONLY

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

performance of such obligations and other terms and conditions, with respect to the portion of the Property assigned to the Assignee.

- **CEQA:** the California Environmental Quality Act, set forth at California Public Resources Code section 21000 et seq., as amended from time to time.
- **CITY:** the City of Sacramento.
  
- **City Agency:** the Redevelopment Agency of the City of Sacramento, and the Housing Agency of the City of Sacramento.
  
- **City Council:** the Council of the City of Sacramento.
  
- **Continental Plaza Development Entitlements ("Entitlements"):** The development entitlements and approvals set forth in Recitals H and I.
  
- **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).
  
- **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.
  
- **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.
  
- **Development Agreement:** this Agreement.
  
- **Effective Date:** the date on which the ordinance approving this Agreement becomes effective.
  
- **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.
  
- **Land Use and Development Regulations:** the General Plan, the Richards Boulevard Area Plan, the CITY's Subdivision Map Act Ordinance (Title 16 of the Sacramento City Code), the Zoning Code (Title 17 of the Sacramento City Code) together with any other CITY ordinance, or resolutions, rules, regulations and official policies as they exist on the Effective Date, which govern or regulate land use and/or development in the RBAP.

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_ ORDINANCE NO. \_\_\_\_\_  
DATE ADOPTED: \_\_\_\_\_

● **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.

● **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.

● **Parties:** the City of Sacramento and LANDOWNERS.

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

● **Project:** part or all of the elements set forth in LANDOWNERS' Development Plan.

● **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.

● **Property:** the real property owned by LANDOWNERS, as set forth in Exhibit A.

● **Purchaser:** an assignee.

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

● **Transfer:** an assignment.

● **Transferee:** an assignee.

● **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 Code (Title 17 of the Sacramento City Code).

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

● **Zoning Code:** the Zoning Code of the City of Sacramento (Title 17 of the Sacramento City Code), as that code exists on the Effective Date.

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_      ORDINANCE NO. \_\_\_\_\_  
DATE ADOPTED: \_\_\_\_\_

II

**TERMS AND CONDITIONS OF AGREEMENT**

1. **Property Description and Binding Covenants.** The Property is that certain real property owned by LANDOWNERS 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 4 below, to their successors-in-interest.

2. **Interests of LANDOWNERS.** LANDOWNERS represent that LANDOWNERS own the Property in fee title.

3. **Term.** The term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, unless it is sooner terminated or modified by the mutual consent of the parties.

4. **Assignment.** LANDOWNERS shall have the right to sell, assign, or transfer their 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 LANDOWNERS shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNERS 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 LANDOWNERS of the obligations expressly assumed only if (a) LANDOWNERS are not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNERS have provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNERS' 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 "B" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNERS 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 the duties and obligations of LANDOWNERS under this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned, or transferred.

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ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**5. Development of the Property.**

**A. Permitted Development:** LANDOWNERS shall have the vested right to develop the Property in accordance with the Continental Plaza Development Entitlements, the terms and conditions of this Agreement and the Land Use and Development Regulations.

**B. Discretionary Approvals.**

**Project Review.** Development of the Property is subject to all required discretionary approvals. In reviewing and approving applications for special permits and other discretionary approvals, CITY may exercise Project Review and may attach such conditions and requirements as are consistent with the policies, goals, standards and objectives of the General Plan, the RBAP and the Zoning Code, and as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such reserved discretionary approvals.

**C. Development Timing.** This Agreement contains no requirement that LANDOWNERS 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 LANDOWNERS be able to develop the Property in accordance with LANDOWNERS' own schedule; provided, however, that to the extent that phasing is required by the Continental Plaza Development Entitlements, this Agreement or the Land Use and Development Regulations such provisions shall govern. No future modification of the Sacramento 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 LANDOWNERS from any time conditions 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.

**D. Land Uses and Development Regulations.**

(1) Except as otherwise provided in this Agreement, development of the Property shall be subject to the Land Use and Development Regulations applicable to such development on the Effective Date.

(2) 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 the section 5, the terms and conditions of this Agreement shall

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ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

prevail, unless 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.

(3) 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.

(4) Nothing in this Agreement shall preclude the application to development of 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.

(5) 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, 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.

(6) 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, which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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

(8) 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 5D(4), 5D(5) and 5D(6) of this Agreement.

**6. CITY Review of Applications.** Consistent with the standards set forth in section 15 of this Agreement, nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNERS 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.

**7. 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. The provisions of section 25 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNERS 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.

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

**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.

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**B. Levies Imposed by Other Jurisdictions.** LANDOWNER shall be responsible for:

(1) all fees, charges, assessments, special taxes or levies of any sort imposed by any other state or local agency, including but not limited to the Sacramento Area Flood Control Agency, in the future as a charge for mitigation measures imposed for the purpose of mitigation of environmental impacts associated with the provision of flood control improvements and measures.

(2) all fees, charges, assessments, special taxes or levies of any sort associated with the financing of the construction and implementation of said flood control improvements and measures;

(3) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of public improvements, where the Property is located within a district formed for that purpose by any agency other than CITY;

(4) any fees or other charges required by RD-1000 to be paid to it in implementation of the RD-1000 Agreement; and

(5) ad valorem real estate taxes, and utility fees.

In the event that any of the fees, charges, assessments, special taxes or levies covered by this subsection B are imposed by or with the assistance of CITY, LANDOWNERS shall nevertheless be responsible therefor. Nothing in this Agreement shall be construed to limit LANDOWNERS's right to protest, in accordance with applicable provisions of law: the formation of any district included within the provisions of this subsection or to protest the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof; or to protest the nature and amount of any tax, fee, assessment or charge imposed pursuant to this subsection.

**9. LANDOWNERS' Dedication of Park Easement:** Within the 7th Street right of way easement that was previously dedicated by LANDOWNERS or their predecessors to CITY for a public street, LANDOWNERS 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 be 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 conveyance of the easement, the land subject to the easement shall be considered on-site open space for purposes of satisfying the on-site open space requirement for development in the Richards Boulevard Plan area, as set forth in Chapter 17.120 of the City Code.

Confidential Plaza Development Agreement  
Revised 08/22/07

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ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

10. **Funding of Traffic Signal:** LANDOWNERS shall pay to the City One Hundred and Seventy-Five Thousand Dollars (\$175,000.00), this figure representing one-half of the estimated cost of the traffic signal to be installed at 8th Street and Richards Blvd. LANDOWNERS shall provide these funds at the time of issuance of building permit(s). 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.

11. **North 8<sup>th</sup> Street:** LANDOWNERS shall dedicate a forty (40) right of way for North 8<sup>th</sup> Street, from Richards Boulevard to Signature Street. LANDOWNERS shall provide the CITY with an Irrevocable Offer of Dedication (IOD) within sixty (60) days of the effective date of this Agreement. Notwithstanding Section 3, failure to provide the City with the IOD for North 8<sup>th</sup> Street within this time period shall result in the expiration of this Development Agreement on the 61<sup>st</sup> day following the effective date.

LANDOWNERS shall be responsible for one-half of the costs of design and construction of North 8<sup>th</sup> Street, from Richards Boulevard to Signature Street; developers of the Township 9 project shall be responsible for the other half of the costs of design and construction. As a condition of the mitigation monitoring plan and the tentative map for the Township 9 project, the developers of Township 9 project are required to design and construct North 8<sup>th</sup> Street at fifty percent (50%) of buildout if North 8<sup>th</sup> Street has not already been constructed. LANDOWNERS shall reimburse Township 9 one-half of the costs of the design and construction of North 8<sup>th</sup> Street, with payment to be made at time of issuance of the building permit for Phase IV. If North 8<sup>th</sup> Street has not been designed and constructed at the time of issuance of the building permit for Phase IV, then LANDOWNERS shall be responsible for the design and construction of North 8<sup>th</sup> Street, and shall be entitled to reimbursement of one-half of the costs from the developers of the Township 9 project, with payment by Township 9 to be made at the time of issuance of the first building permit to Township 9 following completion of the construction of North 8<sup>th</sup> Street.

12. **Air Quality Mitigation:** LANDOWNERS shall implement the following air quality mitigation measures:

A. LANDOWNERS have conducted an Air Quality Analysis for the construction and operation phases of the project. Pursuant to that analysis, approved by the Sacramento Air Quality Management District (SMAQMD or District) LANDOWNERS agree to implement the following air quality mitigation measures to reduce the emissions identified in the analysis:

1. LANDOWNERS shall implement the District's standard construction mitigation and shall pay to the District the construction mitigation fee in the amount of Two Thousand Four Hundred and Fifty Three Dollars (\$2,453.00). No grading permit shall issue unless the construction mitigation fee has been paid to the District.

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CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**B.** The proponent will develop and implement an operational Air Quality Mitigation Plan (AQMP) endorsed by the Air District which commits to the mitigation of 15% of the project's NOX emissions. This AQMP will include measures from the District's most recent list of mitigation measures, "Recommended Guidance for Land Use Emission Reductions" specifically including, but not limited to:

- a. User paid parking;
- b. Mandatory membership in the applicable TMA as a condition of any tenant lease agreements, purchase agreement or other means acceptable to the District.
- c. Alternative transportation incentive program requirement included in all tenant lease agreements, purchase agreements or other means acceptable to the District.

This AQMP shall be completed by LANDOWNERS and endorsed by the District no later than the date of issuance of a grading permit or 12/31/07, whichever comes first. Under no circumstances, will any grading or improvement permit be issued if these conditions have not been met.

**C.** LANDOWNERS shall assure the on-going implementation of this AQMP to all four phases of Continental Plaza through lease or purchase agreements.

**13. Vine Street:** The developers of the Township 9 Project have requested a reduction in the width of the Vine Street right of way (ROW). If the Vine Street ROW is reduced from a 90 foot width to a 70 foot width, LANDOWNERS' obligation to dedicate and improve Vine Street shall be reduced from a 45 foot wide half section to a 35 foot half section.

**14. 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 ("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:

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(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, LANDOWNERS shall be entitled, subject to court approval, to join in or intervene in the action on its own behalf, or to advocate in favor of validity of this Agreement or any challenged entitlement. In such a case, each party shall bear its own attorney fees and costs.

(c) In the event that CITY determines to tender the defense of the action to LANDOWNERS, LANDOWNERS 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, LANDOWNERS 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, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNERS are named or become parties in such litigation, LANDOWNERS 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 LANDOWNERS 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 Chapter 18.16 of the City Code, shall apply. If agreement is not reached,

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

either party shall have the right to terminate this Agreement by giving the other party sixty days' notice of termination.

(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 LANDOWNERS or LANDOWNERS' contractors, subcontractors, agents or employees.

**15. 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 LANDOWNERS, 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 LANDOWNERS' right to develop the Property in a reasonable manner pursuant to the Continental Plaza Development Entitlements, this Agreement and the Land Use and Development Regulations.

(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) LANDOWNERS 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

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ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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 10A(1) and 10A(2) above shall apply.

**B. Laws Passed by CITY.** Subject to this Agreement, neither the CITY nor any CITY Agency shall 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 or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

**16. 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 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.

**17. Legal Actions; 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 LANDOWNERS 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.

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**B. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. LANDOWNERS agree and acknowledge 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.

**18. 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.

**19. CITY's Good Faith in Processing.** Subject to the provisions of section 5B 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 Continental Plaza Development Entitlements, the Land Use and Development Regulations and this Agreement.

**20. Submission Requirements for Subsequent Applications.** Upon request, CITY shall inform LANDOWNERS 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.

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**21. 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.

**B. LANDOWNERS' 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 LANDOWNERS is alleged, CITY shall not be obligated to issue any building permit, or grant any entitlement as to which an application has been filed.

**C. 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 LANDOWNERS' performance caused by CITY's default shall not constitute a LANDOWNERS default, or be grounds for termination or cancellation of this Agreement.

**D. 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 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 LANDOWNERS nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of section 4 have been complied with, and in accordance with the terms and conditions of that section.

**E. 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.

**F. 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, declaratory relief, or termination of this Agreement; or

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ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(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 LANDOWNERS are the party alleged to be in default, LANDOWNERS shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNERS at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNERS copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

**22. Annual Review.**

**A. General Provisions.** In accordance with Government Code section 65865.1, and Chapter 18.16 of the City Code, CITY shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith compliance by LANDOWNERS with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNERS 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.

**C. Proceedings.** The procedures specified in the Chapter 18.16 of the City Code 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 LANDOWNERS a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNERS shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNERS' performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNERS so elect.

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 LANDOWNERS or their successors have complied in good faith with the terms and conditions of this Agreement.

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**D. Failure of Compliance.** Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in section 16 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.

**23. 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 LANDOWNERS' obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNERS to CITY's Department of Planning and Development, determine if the Agreement has terminated, with respect to any parcel, and shall not unreasonably withhold termination as to that parcel if LANDOWNERS' 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 LANDOWNERS' request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

**B. Effect Of Termination On LANDOWNERS' 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, 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.

**24. 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 LANDOWNERS. No relationship exists as between LANDOWNERS and CITY other than that of a governmental entity regulating the development of private property, and the owners of such private property.

**25. 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 LANDOWNERS or LANDOWNERS' assigns and successors, and to Lender, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other party as indicated below:

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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

Notice to the LANDOWNERS: Continental Plaza Phase IV, LLC  
3184 J Airway Avenue  
Costa Mesa, CA 92626-4619  
ATTN: Bruce Nott

with a copy to: Continental Plaza Phase IV, LLC  
190 Newport Center Drive, Suite 220  
Newport Beach, CA 92660  
ATTN: Ernie Gallardo

Grove Investment Company  
3184 J Airway Avenue  
Costa Mesa, CA 92626-4619  
ATTN: Bruce Nott

with a copy to: Grove Investment Company  
190 Newport Center Drive, Suite 220  
Newport Beach, CA 92660  
ATTN: Ernie Gallardo

Notice to LENDER: \_\_\_\_\_  
\_\_\_\_\_  
ATTN: \_\_\_\_\_

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.

**26. Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties, utilizing the procedures specified herein and the

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_ ORDINANCE NO. \_\_\_\_\_  
DATE ADOPTED: \_\_\_\_\_

Procedural Ordinance. Provided, however, that if such holding affects a material provision of this Agreement, LANDOWNERS shall have the right in their sole discretion to terminate this Agreement upon providing written notice of such termination to CITY; provided further, however, that in the event LANDOWNERS so elect 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.

**27. 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.

**28. Reimbursement to CITY.** LANDOWNERS agree 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 but are not limited to recording fees, publishing fees and any special meeting costs, staff time (including review by the City Attorney), and notice costs. Such expenses shall be paid by LANDOWNERS within thirty (30) days of receipt of a detailed written statement of such expenses.

**29. Lender Rights and Obligations.**

**A. 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 LANDOWNERS or LANDOWNERS' successors in interest, but shall otherwise be bound by all of the terms and conditions of this Agreement, which pertain 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 LANDOWNERS hereunder, or to limit any remedy CITY has hereunder in the event of default by LANDOWNERS, including but not limited to termination and/or refusal to grant entitlements with respect to the Property.

**B. 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 LANDOWNERS, 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

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

future) and charges, and assumption of all obligations of LANDOWNERS hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNERS 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 4 of this Agreement.

**C. Notice of LANDOWNERS' Default Hereunder.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNERS hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNERS, any notice given to LANDOWNERS with respect to any claim by CITY that LANDOWNERS 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 LANDOWNERS.

**D. Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNERS to cure or remedy, on behalf of LANDOWNERS, 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 LANDOWNERS hereunder.

**E. 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 20 hereof.

**30. 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.

**31. 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

**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

"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.

**32. 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.

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

**34. 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.

**35. No Third Parties Benefitted.** No Person who is not a qualified successor or assign of a party hereto pursuant to section 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.

**36. 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.

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

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

**A. Legal Description of the Property.**

**B. Assignment and Assumption Agreement.**

**39. Entire Agreement.** This Agreement, together with its Exhibits A and B, inclusive, 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 LANDOWNERS. The provisions of subsection 11B of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

against CITY, its officers, employees and agents, arising out of or in any way relating to any prior development agreement relating to the Property.

**40. CITY Attorney Costs.** LANDOWNER shall pay to the City of Sacramento the sum of \$1,500.00 as and for reimbursement of the costs of the City Attorney in preparation and processing of this Agreement.

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

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

**CITY:**

CITY OF SACRAMENTO,  
a municipal corporation

By: \_\_\_\_\_  
Heather Fargo, Mayor ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED FOR LEGAL FORM:

Richard Earl Archibald, ACA

**LANDOWNERS:**

CONTINENTAL PLAZA PHASE IV, LLC,  
a California limited liability corporation

By: Bruce E. Nott  
Bruce E. Nott, Manager

By: \_\_\_\_\_  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Manager

GROVE INVESTMENT COMPANY,  
a California general partnership, a general partner

By: Bruce E. Nott  
Bruce E. Nott, Trustee of the Nott Family Trust  
u/d/t dated May 12, 1999, a general partner

By: MEADOWS MOBILE HOMES,  
a California general partnership, a general partner

By: \_\_\_\_\_  
James Lee, Trustee of the Lee Family Trust u/d/t  
dated January 30, 1989, a general partner

By: \_\_\_\_\_  
Barrett C. Fait, a general partner

**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

ORANGE

} ss.

On August 27, 2007 before me, MARY H. PLATTER

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Bruce E. NOTT

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Mary H. Platter  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

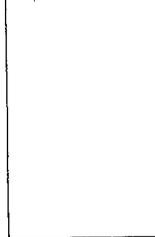
Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here



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

**CITY:**

CITY OF SACRAMENTO,  
a municipal corporation

By: \_\_\_\_\_  
Heather Fargo, Mayor ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED FOR LEGAL FORM:  
  
\_\_\_\_\_

**LANDOWNERS:**

CONTINENTAL PLAZA PHASE IV, LLC,  
a California limited liability corporation

By: \_\_\_\_\_  
Bruce E. Nott, Manager

By: Barrett C. Fait  
Barrett C. Fait, Manager

By: \_\_\_\_\_  
James Lee, Manager

GROVE INVESTMENT COMPANY,  
a California general partnership, a general partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust  
u/d/t dated May 12, 1999, a general partner

By: MEADOWS MOBILE HOMES,  
a California general partnership, a general  
partner

By: \_\_\_\_\_  
James Lee, Trustee of the Lee Family Trust u/d/t  
dated January 30, 1989, a general partner

By: Barrett C. Fait  
Barrett C. Fait, a general partner

**FOR CITY CLERK USE ONLY**

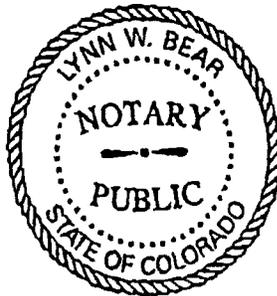
CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

Notary for Barrett C. Falt, only

Lynn W. Bear



My Commission Expires 05/17/2010

Development Agreement - Continental Playa

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

**CITY:**

CITY OF SACRAMENTO,  
a municipal corporation

By: \_\_\_\_\_  
Heather Fargo, Mayor ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED FOR LEGAL FORM:  
\_\_\_\_\_

**LANDOWNERS:**

CONTINENTAL PLAZA PHASE IV, LLC,  
a California limited liability corporation

By: \_\_\_\_\_  
Bruce E. Nott, Manager

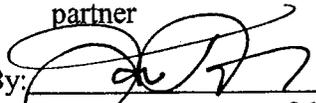
By: \_\_\_\_\_  
Barrett C. Fait, Manager

By:  \_\_\_\_\_  
James Lee, Manager

GROVE INVESTMENT COMPANY,  
a California general partnership, a general partner

By: \_\_\_\_\_  
Bruce E. Nott, Trustee of the Nott Family Trust  
u/d/t dated May 12, 1999, a general partner

By: MEADOWS MOBILE HOMES,  
a California general partnership, a general  
partner

By:  \_\_\_\_\_  
James Lee, Trustee of the Lee Family Trust u/d/t  
dated January 30, 1989, a general partner

By: \_\_\_\_\_  
Barrett C. Fait, a general partner

**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

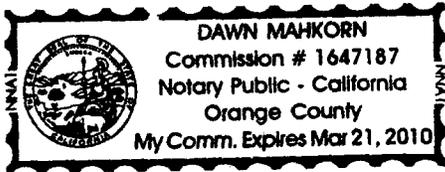
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Orange } ss.

On Aug. 27, 2007, before me, Dawn MahKorn, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared James Lee,  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



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

WITNESS my hand and official seal.

Dawn MahKorn  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Development Agreement

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

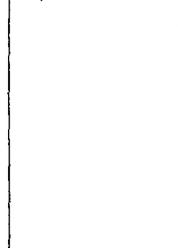
**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here



**(ATTACH APPROPRIATE ACKNOWLEDGMENT)**

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF LANDOWNER'S**  
**PROPERTY**

**SEE ATTACHED**

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**LEGAL DESCRIPTION**

**EXHIBIT "A"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**Parcel One:**

Parcel 1 as shown on that certain Parcel Map of Lot Line Adjustment Book 990826, Page 1522, filed in Book 152 of Parcel Maps, Page 8,

of Official Records of Sacramento County.

Assessor's Parcel No. 001-0020-049-0000

**Parcel Two:**

Parcel 2 as shown on that certain Parcel Map of Lot Line Adjustment Book 990826, Page 1522, filed in Book 152 of Parcel Maps, Page 8, Official Records of Sacramento County.

Assessor's Parcel No. 001-0020-050-0000

**Parcel Three:**

Beginning at a point on the center line of 7th Street (said 7th Street being the Northerly production of 7th Street of the City of Sacramento, and 80.00 feet in width), from which point of beginning an iron pin monument marking the intersection of the center line of North B Street with the center line of 7th Street bears South 19°07'West 1416.53 feet; thence from said point of beginning North 19°07'East 328.70 feet along said center line of 7th Street; thence South 71°00'East 593.83 feet along the South line of that certain 13.07 acre tract of land described in the deed executed by Bercut-Richards Packing Company, a corporation, to Continental Can Company, Inc., dated August 24, 1945, recorded September 14, 1945, in Book 1164 of Official Records, page 214, to a point on the Westerly boundary of that certain 3.78 acre tract of land described in the deed executed by English Estate Company, a California corporation, to Central Pacific Railway Company, a Utah corporation, dated December 29, 1944, recorded March 13, 1945, in Book 1130 of Official Records, Page 150; thence South 19°07'West 249.30 feet along the Westerly boundary of said 3.78 acre tract; thence South 70°53'East 11.50 feet along a boundary of said 3.78 acre tract; thence South 19°07'West 78.26 feet along the Westerly boundary of said 3.78 acre tract to a point on the North line of a county road 80.00 feet in width; thence North 71°06'50"West 605.33 feet along said North line of county road to the point of beginning.

Assessor's Parcel No. 001-0020-018-0000

**Parcel Four:**

Beginning at a 1 1/2 inch diameter iron pipe monument stamped RE 2675 set on the East line of 7th Street (said 7th Street being the Northerly production of 7th Street in the City of Sacramento, and 80.00 feet in width), from which point of beginning an iron pin monument marking the intersection of the center line of 7th Street with the center line of North B Street bears South 19°07'West 1745.23 feet along said East line of 7th Street, and North 71°00'West 40.00 feet; thence from said point of beginning South 71°00'East 533.83 feet; thence North 19°07'East 20.00 feet; thence North

EXHIBIT "A" (continued)

71°00' West 533.83 feet to said East line of 7th Street; thence South 19°07' West 20.00 feet along said East line of 7th Street to the point of beginning; being the Westerly 533.83 feet of the Southerly 20.00 feet of the premises conveyed to said New York Life Insurance Company, a New York Corporation, by Deed from said Continental Can Company, Inc., a New York corporation, dated December 30, 1946, recorded January 8, 1947, in Book 1321 of Official Records, Page 72.

Assessor's Parcel No. 001-0020-017-0000

Parcel Five:

All that portion of those lands designated as "Southern Pacific Company" as shown on that certain Record of Survey filed in Book 26 of Surveys, Page 28, Official Records of Sacramento County, together with all that portion of Projected Township 9 North, Range 4 East, Mount Diablo Meridian, described as follows:

Beginning at the Northeast corner of Parcel 2 as shown on that certain Parcel Map filed in Book 152 of Parcel Maps, at Page 8, Official Records of Sacramento County; thence from said point of beginning, leaving said Northeast corner South 71°37'15" East 40.00 feet to a point in the Easterly line of said Southern Pacific Company right-of-way as shown on said Record of Survey; thence along said right-of-way line South 18°29'45" West 1428.79 feet to the point in the centerline of Richards Boulevard as shown on said Records of Survey; thence along said centerline North 71°41'42" West 40.00 feet; thence leaving said centerline, along the Westerly boundary of said Southern Pacific Company property the following five (5) courses: (1) North 18°29'45" East 119.13 feet; (2) North 71°30'15" West 11.50 feet; (3) North 18°29'45" East 1021.17 feet; (4) South 71°30'15" East 11.50 feet and (5) North 18°29'45" East 288.55 feet to the point of beginning.

Excepting therefrom all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Union Pacific Railroad Company, its successors and assigns, but without entering upon or using the surface of the property, and in such a manner as not to damage the surface of said lands or to interfere with the use thereof by Grove Investment Company, its successors or assigns, as reserved in the deed recorded January 25, 2006, Book 20060125, Page 1897, Official Records.

Assessor's Parcel No. 001-0020-051-0000

**EXHIBIT B**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_ (herein "LANDOWNERS") and \_\_\_\_\_ (herein "ASSIGNEE").

**RECITALS**

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

B. LANDOWNER has assigned its interests under the Development Agreement to ASSIGNEE under a written agreement dated \_\_\_\_\_, as to that portion of the Property identified and incorporated herein by this reference (herein the "Assigned Parcel(s)").

C. ASSIGNEE desires to assume all of LANDOWNER's rights and obligations and other terms and conditions under the Development Agreement with respect to the Assigned Parcel(s).

**AGREEMENTS**

NOW, THEREFORE, LANDOWNER AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. ASSIGNEE hereby assumes all of the burdens and obligations of LANDOWNER under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of LANDOWNERS under the Development Agreement, and to be subject to all of the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both LANDOWNERS and ASSIGNEE that, upon the execution of this Agreement, ASSIGNEE shall become substituted for LANDOWNERS as the "LANDOWNER" under the Development Agreement with respect to the Assigned Parcel(s).

2. ASSIGNEE understands and agrees that this Agreement is subject to section 4 of the Development Agreement. Section 4 reads as follows:

**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**Assignment.** LANDOWNERS shall have the right to sell, assign, or transfer their 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 LANDOWNERS shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNERS 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 LANDOWNERS of the obligations expressly assumed only if (a) LANDOWNERS are not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNERS have provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNERS' 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 "B" 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 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.

3. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s).

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

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**FOR CITY CLERK USE ONLY**

ORDINANCE NO. \_\_\_\_\_

CITY AGREEMENT NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

5. ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the Development Agreement, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) LANDOWNERS have furnished ASSIGNEE with a copy of Richards Boulevard Area Plan (RBAP)(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 financial 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 WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

By: \_\_\_\_\_  
"ASSIGNEE"

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_