

**MITIGATION MONITORING PLAN  
PANHANDLE ANNEXATION AND PUD (P05-077)**

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Compliance Standards	Timing	Verification of Compliance (Initials and Date)
<p>the Panhandle PUD and subsequent development in the Southern Portion shall be required to the satisfaction of the CSD-1. Each parcel and each building with a sewage source shall have a separate connection to the CSD-1 sewer system.</p>				and/or improvement plans.	
<p><b>MM 4.13.4.1b</b> The project applicant shall submit a final sewer study for the Panhandle PUD for review and approval by CSD-1 prior to approval of small lot final maps. The sewer study report shall be done in accordance with CSD-1's current Minimum Sewer Study Requirements and shall demonstrate that downstream facilities have capacity to accommodate flows from the Panhandle PUD.</p>	CSD-1, SRCSD and City of Sacramento.	CSD-1, SRCSD and City of Sacramento.	See text of mitigation measure.	Prior to approval of small lot final maps.	
<p><b>MM 4.13.4.1c</b> Prior to approval of small lot final maps or issuance of building permits for the Krumenacher Subdivision map, the project applicant shall enter into and record an agreement, to require land reservation for acquisition by the SRCSD for the upper Northwest Interceptor project to install pipelines and facilities in conformance with the SRCSD Master Plan.</p>	CSD-1 and City of Sacramento.	CSD-1 and City of Sacramento.	See text of mitigation measure.	Prior to approval of small lot final maps or issuance of building permits within the Krumenacher Subdivision map.	

**ATTACHMENT 6 - REORGANIZATION RESOLUTION**

**RESOLUTION NO.**

Adopted by the Sacramento City Council

**INITIATING THE PANHANDLE ANNEXATION (REORGANIZATION)  
AND REPEALING RESOLUTION NO. 2000-734 (M05-031 / P05-077)**

(APNs: 201-0320-016,-018, -019, -020, -024, and -025; 225-0050-003, -016, -020, -021, and -022; 225-0060-021; 237-0011-037; 237-0013-002; 237-0014-001; 237-0600-001, -002, -003, -004, -005, -006, -007, and -008)

**BACKGROUND**

A. The City Council adopted Resolution 2000-734 on December 12, 2000 to initiate the annexation of certain territory to the City of Sacramento, known as the "Frying Panhandle Annexation." That annexation effort was never completed, and the boundaries of the proposed annexation have been substantially modified. The territory that is the subject of this Resolution is a portion of the territory described in Resolution No. 2000-734.

B. This application for reorganization is being made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et. seq.);

C. The proposed reorganization will result in the creation of an unincorporated island (unincorporated territory being completely surrounded by the incorporated territory of the City of Sacramento). Pursuant to Government Code Sections 56744 and 56375(m), the City Council finds that:

1. The proposed unincorporated island is comprised of territory south of Del Paso Road. Annexation of this territory will result in significant fiscal impacts (differing tax structures between Sacramento County and the City of Sacramento) to the landowners of the island who believe that, at the present time, the costs they would incur from annexation would exceed the benefits they would gain from annexation. These landowners would protest the annexation, which would result in a majority protest and terminate the proceedings.

2. With the amount of existing infrastructure inconsistent with city development standards and the proposed Property Tax Sharing Agreement with

Sacramento County (including sales and property taxes for the area south of Del Paso Road), annexing this area would be fiscally adverse to the City of Sacramento.

3. The proposed annexation will result in an island area that would be enclosed in a way that the island area cannot reasonably be annexed to another city or incorporated as a new city; and

4. The creation of this boundary will facilitate orderly planning, in that:

a. The annexation is consistent with the City of Sacramento's General Plan and North Natomas Community Plan;

b. The area is currently functioning as an unincorporated island and the proposed annexation will begin to fill an irregular geographic gap in the North Natomas Community Plan area;

c. City utilities will be looped and stubbed to the City limits adjacent to the island;

d. The proposed annexation will not preclude any future attempts at annexing this area into the City of Sacramento.

D. This reorganization is the Annexation to City of Sacramento and Detachment from the Rio Linda-Elverta Recreation and Parks District; Natomas Fire Protection District; County Service Area #1; and Sacramento County Water Maintenance District Zone #40;

E. A description of the exterior boundaries of the affected territory subject to this reorganization is attached hereto as Exhibits A and B, and incorporated herein by reference;

F. The reasons for the reorganization are as follows:

1. The affected territory is within the Sphere of Influence of the City.

2. The annexation represents a logical and reasonable extension of the City boundaries since it is surrounded on the east and west by the existing City limits;

3. The annexation would facilitate the more efficient provision of municipal services, including compliance with uniform City planning and development standards;

4. The annexation and inclusion in the North Natomas Community Plan area will provide greater protection from inappropriate land uses adjacent to existing land uses.

G. The regular County Assessment Roll will be utilized.

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

- Section 1. The City Council of the City of Sacramento hereby initiates the reorganization described above, and requests that proceedings be taken for the proposal pursuant to Cortese-Knox-Hertzberg Government Reorganization Act of 2000 (Government Code Section 56700, etal.)
- Section 2. Resolution No. 2000-734 is repealed.

**Table of Contents:**

- Exhibit A Panhandle Annexation Boundary Description  
Exhibit B Panhandle Annexation Map

Exhibit A Panhandle Annexation Boundary Description

**PANHANDLE ANNEXATION**

All that real property situate in the County of Sacramento, State of California, described as follows:

Beginning at a point being the interception of the easterly boundary of the Sacramento City Limits as described in Sacramento City Ordinance No. 2327, Fourth Series, "Natomas Annexation Area No. 2" with the north line of Section 12, Township 9 North, Range 4 East, M. D. B. & M., said point also being the center line of Del Paso Road; thence, from said point of beginning, northerly along said easterly boundary of said "Natomas Annexation Area No. 2" to the north line of Section 36, Township 10 North, Range 4 East, M. D. B. & M.; thence easterly and southerly along the northerly and easterly lines of the proposed annexation the following five (5) courses, distances and arcs:

1. Easterly along said north line of Section 36 a distance of 2246.46 feet to its interception with the northerly production of the easterly boundary of that certain property deeded to Louis F. Krumenacher and Viola Krumenacher by Louis F. Krumenacher, also known as Louis Krumenacher, as recorded in the Official Records of the County Recorder of Sacramento County in Book 2209, Page 371;
2. South 0°23'00" East along said northerly production of said easterly line of said property a distance of 2673.32 feet to the northeast corner of Lot 74 of Natomas East Side Subdivision, as shown and recorded in Book 17 of Maps, Map No. 34, in the Office of the Recorder of Sacramento County;
3. South 0°23'00" East a distance of 806.00 feet along the easterly line of said Lot 74, to a point of curvature;

4. From a radial line which bears South  $89^{\circ}34'15''$  West, southeasterly 806.34 feet along the arc of a 766.80 foot radius non-tangent curve to the left through a central angle of  $60^{\circ}15'00''$ , said curve being the easterly, northeasterly line of Lots 74 and 75 of said Natomas East Side Subdivision, subtended by a chord bearing South  $30^{\circ}33'15''$  East a distance of 769.70 feet as shown on said Natomas East Side Subdivision;
5. South  $60^{\circ}37'30''$  East a distance of 37.20 feet to its interception with the center line of Sorento Road, said point also being on the most northerly west line of the Sacramento City Limits as described in Sacramento City Ordinance No. 2399, Fourth Series, "Gardenland-Del Paso Heights-Robla Annexation Area", effective August 25, 1962;

Thence southerly along the westerly line of said "Gardenland-Del Paso Heights-Robla Annexation Area" to its interception with the southerly line of the right of way easement of Main Avenue as described in Portion "B" of Exhibit "A" of City of Sacramento Resolution Number 2004-678 adopted on August 17, 2004, the following six (6) courses and distances:

1. South  $00^{\circ}40'00''$  East, 1152.10 feet along the center line of Sorento Road;
2. South  $00^{\circ}35'00''$  East, 2551.90 feet along the center line of Sorento Road;
3. South  $20^{\circ}26'00''$  West, 1135.30 feet along the center line of Sorento Road;
4. South  $12^{\circ}51'39''$  East, 1674.68 feet along the center line of Sorento Road to the north line of Section 12, Township 9 North, Range 4 East, M. D. B. & M.;
5. North  $89^{\circ}06'00''$  East, 2175.79 feet along said north line of Section 12 and Section 7, Township 9 North, Range 5 East, M. D. B. & M. to the center line of East Levee Road;
6. South  $08^{\circ}32'00''$  East, 550.08 feet along said center line of East Levee Road to the southerly right of way line of Main Avenue;

Thence westerly along said southerly line of Main Avenue as shown on said Resolution Number 2004-678, from a radial line which bears South  $06^{\circ}10'30''$  East, westerly 301.39 feet along the arc of a 2126.67 foot radius non-tangent curve to the right through a central angle of  $8^{\circ}07'11''$ , subtended by a chord bearing South  $87^{\circ}53'06''$  West, 301.14 feet;

Thence westerly along said southerly line of Main Avenue (future alignment of Del Paso Road) as dedicated and shown on "Parcel Map, Portion of Lots 103, 104, & 109 of "Natomas East Side Subdivision" 17 B.M. 34"', filed in Book 51 of Parcel Maps, Page 4, Sacramento County Records, to the interception of the center line of Kenmar Road, the following three (3) courses, distances, and arcs:

1. From a radial line which bears South  $00^{\circ}56'58''$  East, westerly 464.30 feet along the arc of a 2060.00 foot radius non-tangent curve to the right through a central angle of  $12^{\circ}54'50''$ , subtended by a chord bearing North  $84^{\circ}29'33''$  West, 463.32 feet;
2. North  $71^{\circ}35'35''$  West, 120.00 feet;
3. From a radial line which bears South  $15^{\circ}18'07''$  West, westerly 357.11 feet along the arc of a 2050.00 foot radius non-tangent curve to the right through a central angle of  $9^{\circ}58'51''$ , subtended by a chord bearing North  $69^{\circ}42'27''$  West, 356.66 feet to the interception of the center line of Kenmar Road;

Thence southerly along the center line of Kenmar Road the following three (3) courses, distances, and arcs:

1. South  $25^{\circ}16'58''$  West, 220.00 feet to the beginning of a tangent curve;
2. Thence southerly 221.94 feet along the arc of a 500.00 foot radius curve to the left through a central angle of  $25^{\circ}25'58''$ , subtended by a chord bearing South  $12^{\circ}33'59''$  West, 220.12 feet;

3. South  $00^{\circ}09'00''$  East, 1074.17 feet;

Thence westerly and northerly along the southerly and westerly lines of Parcel 6 of said Parcel Map to the interception of the southerly line of Del Paso Road, the following two (2) courses and distances:

1. South  $89^{\circ}51'00''$  West, 878.00 feet;
2. North  $00^{\circ}09'00''$  West, 1750.48 feet;

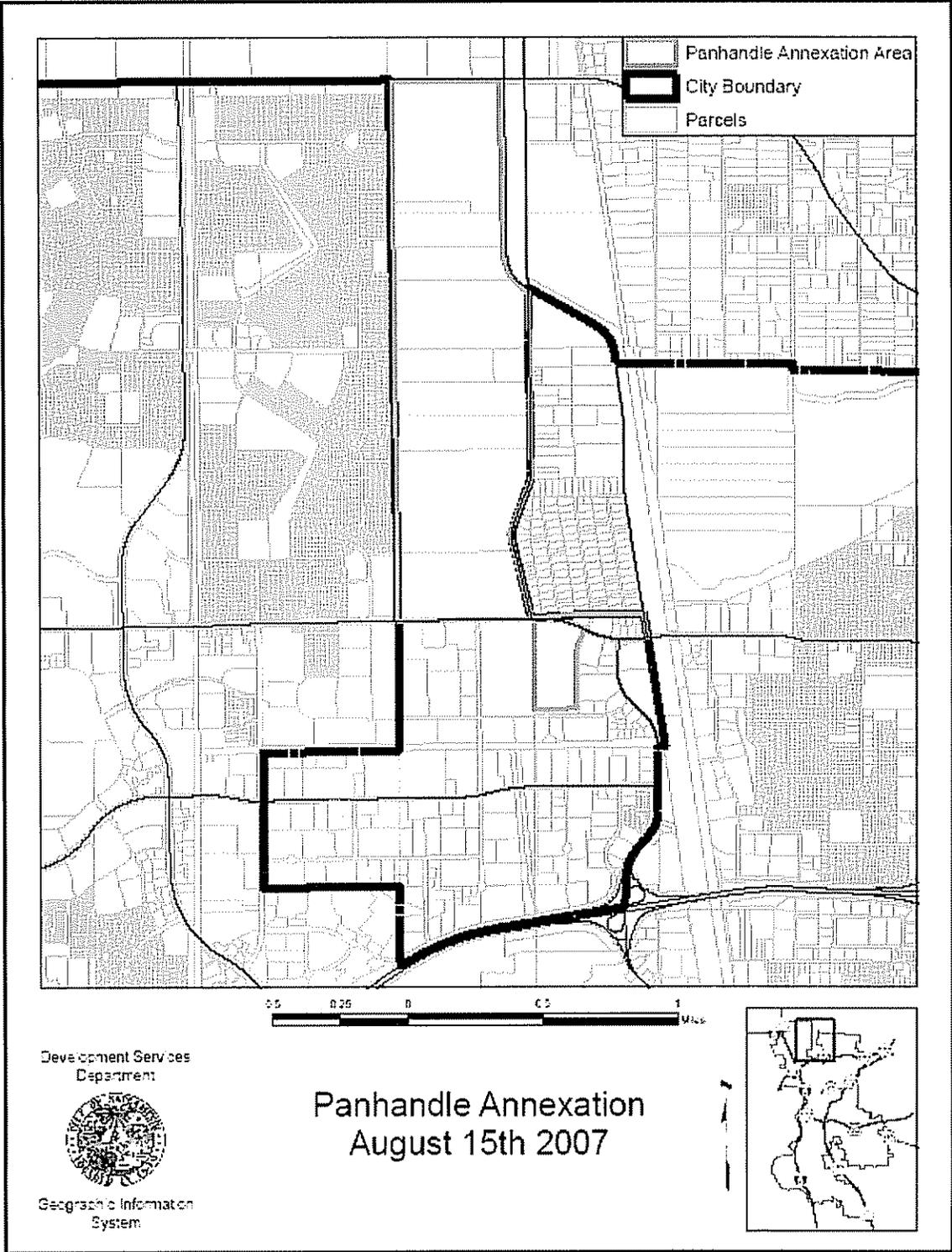
Thence westerly along said southerly line of Del Paso Road the following nine (9) courses and distances:

1. South  $89^{\circ}06'00''$  West, 649.44 feet;
2. South  $86^{\circ}37'26''$  West, 162.03 feet;
3. South  $89^{\circ}06'00''$  West, 125.00 feet;
4. North  $85^{\circ}43'10''$  West, 55.38 feet;
5. South  $86^{\circ}29'52''$  West, 154.20 feet;
6. South  $89^{\circ}06'00''$  West, 164.85 feet;
7. North  $88^{\circ}02'15''$  West, 180.23 feet;
8. South  $89^{\circ}06'00''$  West, 126.45 feet;

9. South  $89^{\circ}06'00''$  West, 1015.83 feet;

Thence North  $00^{\circ}09'00''$  West, 55.00 feet to said Point of Beginning, containing 650.342 acres of land, more or less.

Exhibit B Panhandle Annexation Map



**ATTACHMENT 7 – GENERAL PLAN AMENDMENT RESOLUTION (M05-031)**

**RESOLUTION NO. 2007-XXXX**  
Adopted by the Sacramento City Council

Date

**AMENDING THE GENERAL PLAN LAND USE MAP RELATING TO THE  
NORTHGATE 880 AREA (M05-031)**

**BACKGROUND**

- A. The Planning Commission conducted a public hearing on June 28, 2007, and the City Council conducted a public hearing on July 31, 2007; August 14, 2007; September 4, 2007; and September 18, 2007 concerning the above General Plan land use map amendment and based on documentary and oral evidence submitted at the public hearing, the Council hereby finds:
  - 1. The proposed land use amendment is compatible with the surrounding land uses;
  - 2. The subject site is suitable for light industrial development; and
  - 3. The proposal is generally consistent with the policies of the North Natomas Community Plan and the General Plan.

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

Section 1. The City Council adopts the General Plan Amendment for the property, as described on the attached Exhibit A, and the property is hereby re-designated on the General Plan land use map from 11.0± acres of Rural Estates, 43.0± acres of Low Density Residential, 307.0± acres of Mixed Use, 377.0± acres of Heavy Commercial or Warehouse, 15.0± acres of Water, and 82.0± acres of Roadways to 736.98± acres of Special Planning District, 16.02± acres of Water, 82.0± acres of Roadways (APN: 225-0060-021, -032 through -034, -040 through -042, -054 through -059, -061, and -066 through -068; 225-0941-001, -025, -027 through -029, -032 through -034, -036 through -038, -046 through -048, and -050 through -054; 225-0942-001, -006, -023 through -025, -028, -034, -035, -038 through -049, -051 through -054, 225-0943-001, -011, -016, -020, -023, -026 through -032, -034 through -037, 225-0944-002, -031 through -033, -042, -043, -054, -056, -057, -060, -064, -065, -068, -071, -073, -076, -078, -080 through -085, -091, -096 through -111, -114, and -115; 225-2310-001 through -007; 237-0011-016, -028, -029, -037, -046, -047, -049 through -

057, -060 through -067, and -069 through -072; 237-0012-011 through -013; 237-0013-002; 237-0014-001; 237-0015-003, and -006 through -013; 237-0031-039; 237-0410-010, -011, -014 through -017, -019, -020, -024 through -027, -029 through -034, and -037 through -045; 237-0420-001, -007, -011 through -016, -018, -021, -022, -028 through -030, -032 through -045, and -048; 237-0600-001 through -008)

**Table of Contents:**

Exhibit A: General Plan Amendment Exhibit – 2 Pages

Exhibit A – General Plan Amendment Exhibit (M05-031)

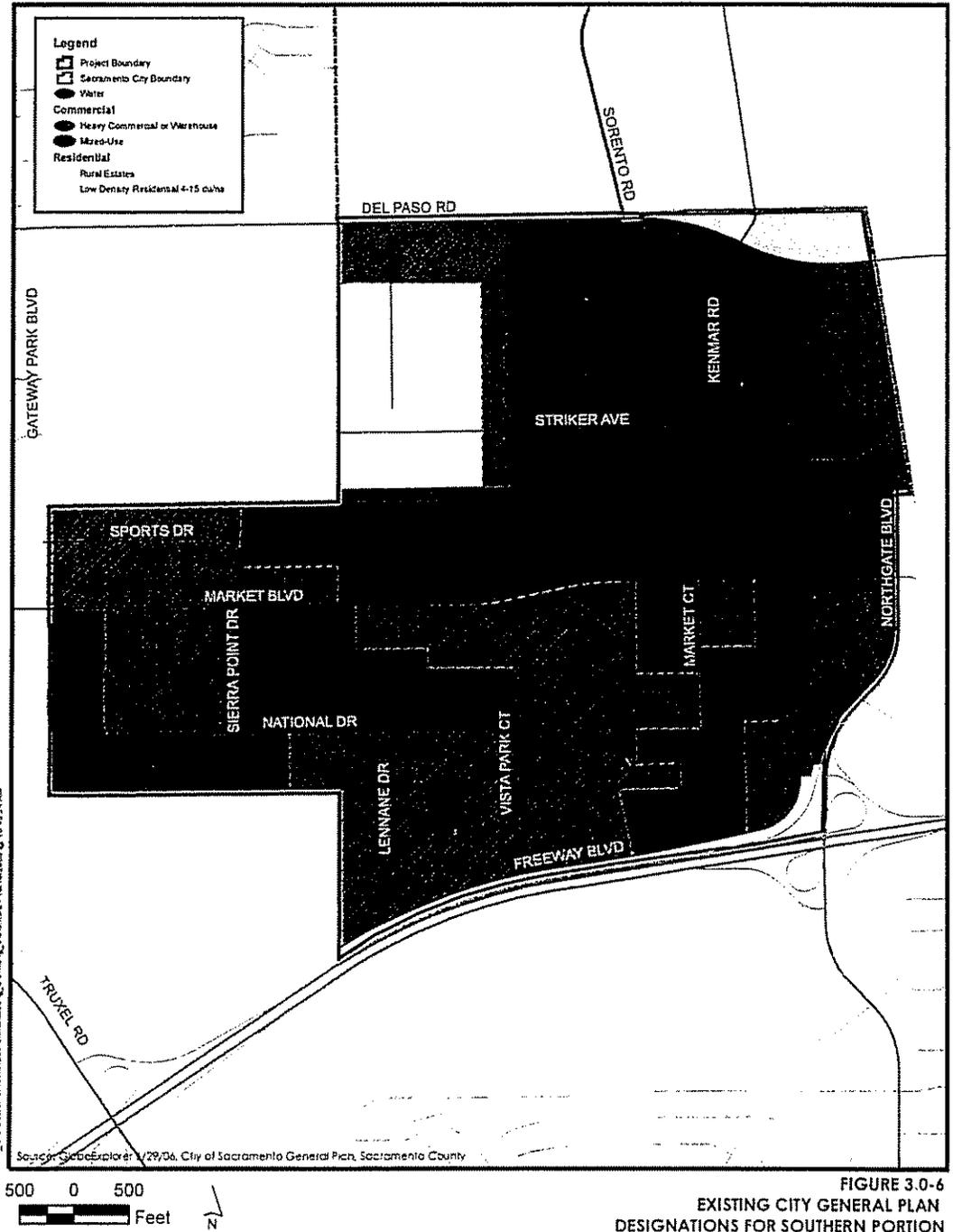


FIGURE 3.0-6  
EXISTING CITY GENERAL PLAN  
DESIGNATIONS FOR SOUTHERN PORTION  
**PMC**

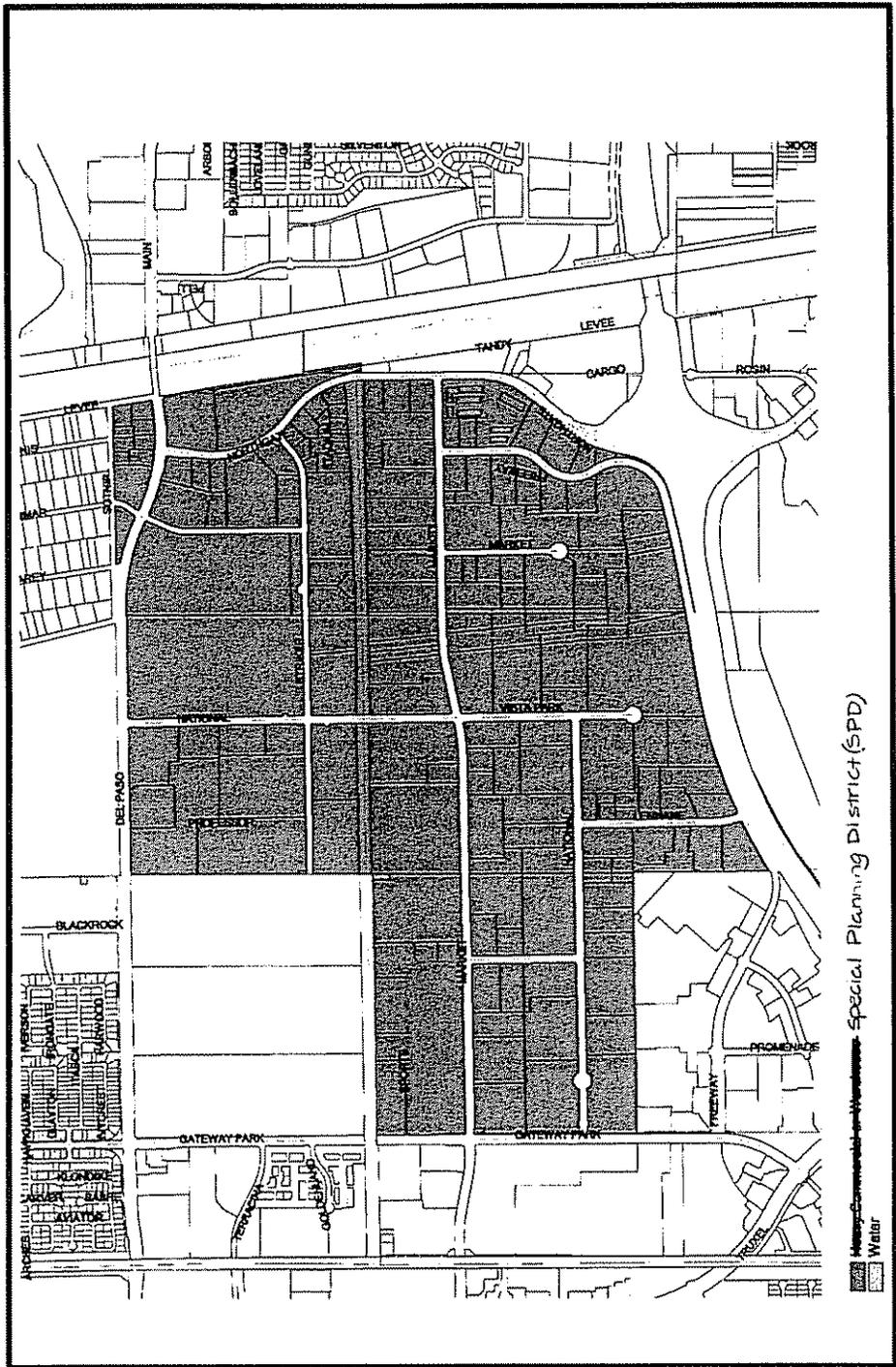


FIGURE 3.0-7  
PROPOSED CITY GENERAL PLAN DESIGNATIONS FOR SOUTHERN PORTION  
PMC

**ATTACHMENT 8 – NORTH NATOMAS COMMUNITY PLAN TEXT AMENDMENT  
RESOLUTION (M05-031)**

**RESOLUTION NO.**

Adopted by the Sacramento City Council

**AMENDING THE NORTH NATOMAS COMMUNITY PLAN TEXT TO  
ADD REFERENCES TO THE NORTHGATE 880 SPECIAL PLANNING  
DISTRICT (M05-031)**

**BACKGROUND**

- A. The Planning Commission conducted a public hearing on June 28, 2007, and the City Council conducted a public hearing on July 31, 2007; August 14, 2007; September 4, 2007; and September 18, 2007 concerning the above plan amendment and based on documentary and oral evidence submitted at the public hearing, the Council hereby finds:
1. The proposed plan amendment is compatible with the existing and surrounding use;
  2. The subject plan area is already included in the North Natomas Community Plan area; and
  3. The proposal is consistent with the policies of the City's general Plan.

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

- Section 1. The City Council of the City of Sacramento determines that the attached amendments, included as Exhibits A and B, be made to the North Natomas Community Plan text.

**Table of Contents:**

- Exhibit A Northgate 880 SPD Amendments to the North Natomas Community Plan  
Exhibit B Northgate 880 SPD Boundary Map

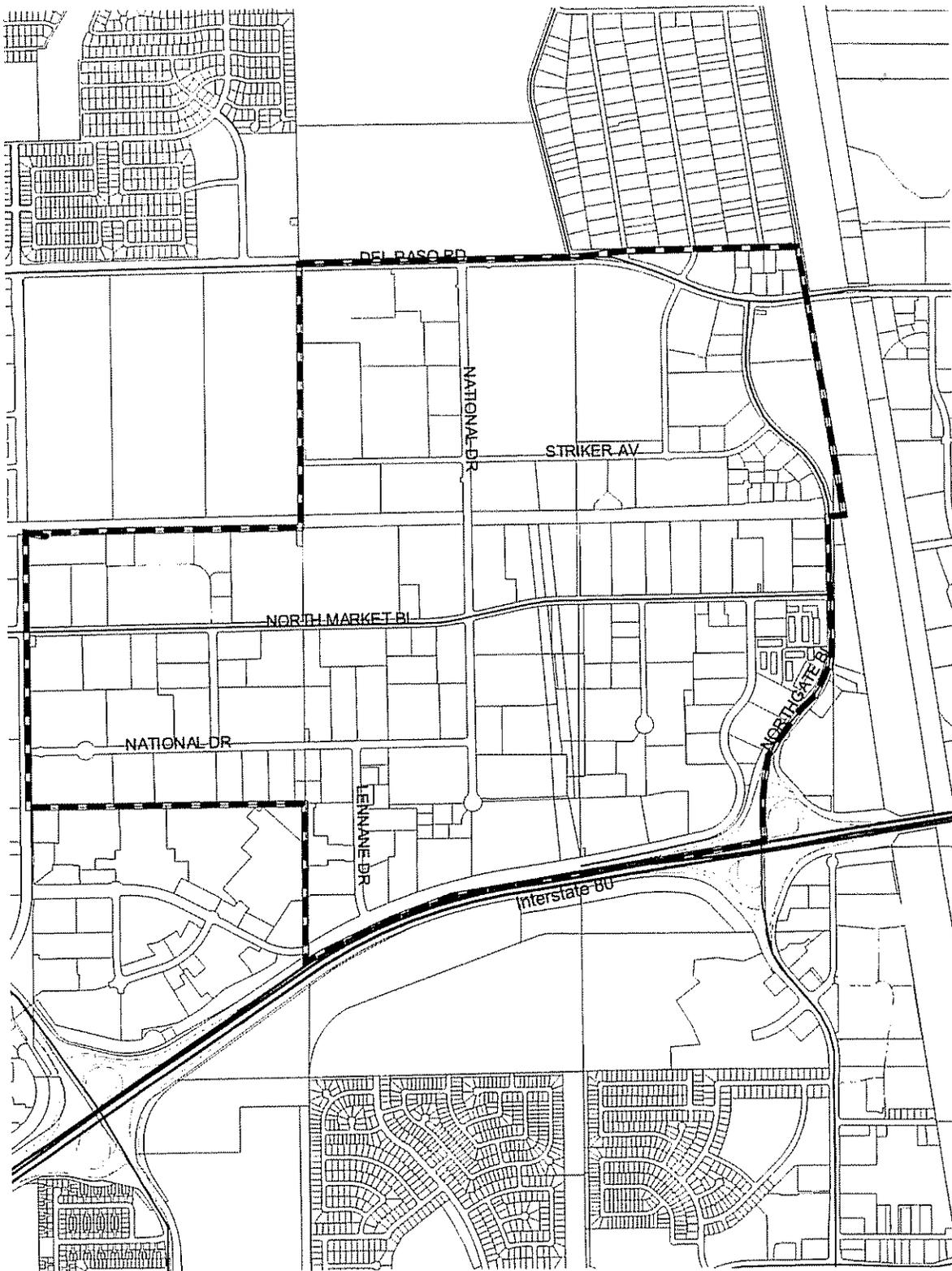
## Exhibit A Northgate 880 SPD Amendments to the North Natomas Community Plan

Northgate 880 Special Planning District (N880-SPD): Prior to annexation to the city, the Northgate 880 area was almost fully developed with light industrial, warehousing, office and commercial uses, consistent with Sacramento County zoning. The purpose of the Northgate 880 special planning district is to ensure zoning regulations similar to what applied in the county will apply to this area upon annexation to the city.

The Northgate 880 special planning district ("district") is comprised of that area of North Natomas generally bounded by Interstate 80 (I-80) to the south; Northgate Boulevard and East Levee Road to the east; Gateway Park Boulevard to the west; and Del Paso Road and Sotnip Road to the north. The area is comprised of the following APNs and is shown on the map in Figure \_\_\_.

APNs: 225-0060-021, -032 through -034, -040 through -042, -054 through -059, -061, and -066 through -068; 225-0941-001, -025, -027 through -029, -032 through -034, -036 through -038, -046 through -048, and -050 through -054; 225-0942-001, -006, -023 through -025, -028, -034, -035, -038 through -049, -051 through -054, 225-0943-001, -011, -016, -020, -023, -026 through -032, -034 through -037, 225-0944-002, -031 through -033, -042, -043, -054, -056, -057, -060, -064, -065, -068, -071, -073, -076, -078, -080 through -085, -091, -096 through -111, -114, and -115; 225-2310-001 through -007; 237-0011-016, -028, -029, -037, -046, -047, -049 through -057, -060 through -067, and -069 through -072; 237-0012-011 through -013; 237-0013-002; 237-0014-001; 237-0015-003, and -006 through -013; 237-0031-039; 237-0410-010, -011, -014 through -017, -019, -020, -024 through -027, -029 through -034, and -037 through -045; 237-0420-001, -007, -011 through -016, -018, -021, -022, -028 through -030, -032 through -045, and -048; 237-0600-001 through -008

Exhibit B Northgate 880 SPD Boundary Map



**ATTACHMENT 9 – NORTH NATOMAS COMMUNITY PLAN MAP AMENDMENT  
RESOLUTION (M05-031)**

**RESOLUTION NO. 2007-XXXX**

Adopted by the Sacramento City Council

Date

**AMENDING THE NORTH NATOMAS COMMUNITY PLAN LAND USE MAP  
RELATING TO THE NORTHGATE 880 SPECIAL PLANNING DISTRICT  
(M05-031)**

**BACKGROUND**

The Planning Commission conducted a public hearing on June 28, 2007, and the City Council conducted a public hearing on \_\_\_\_\_, 2007 concerning the North Natomas Community Plan land use map and based on documentary and oral evidence submitted at the public hearing, the City Council hereby finds:

- A. The proposed plan amendment is compatible with the surrounding uses;
- B. The subject site is suitable for light industrial development; and
- C. The proposal is consistent with the policies of the General Plan and the North Natomas Community Plan to support the annexation of unincorporated lands within the Community Plan area and implement this plan throughout the plan area.

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

Section 1. The City Council adopts the Community Plan Amendment for the property, as described on the attached Exhibit A, which property is hereby re-designated on the North Natomas Community Plan land use map from 11.0± acres of Rural Estates, 37.0± acres of Low Density Residential, 5.0± acres of Medium Density Residential, 307.0± acres of Employment Center (EC-30), 377.0± acres of Light Industrial, 16.0± acres of Parks/Open Space, and 82.0± acres of Roadways to 16.02± acres of Parks/Open Space, 736.98± acres of Northgate 880 Special Planning District (SPD), and 82.0± acres of Roadways (APN: 225-0060-021, -032 through -034, -040 through -042, -054 through -059, -061, and -066 through -068; 225-0941-001, -025, -027 through -029, -032 through -034, -036 through -038, -046 through -048, and -050 through -054; 225-0942-001, -006, -023 through -025, -028, -034, -035, -038 through -049, -051 through -054, 225-0943-001, -011, -016, -020, -023, -026 through -032, -034 through -037,

225-0944-002, -031 through -033, -042, -043, -054, -056, -057, -060, -064, -065, -068, -071, -073, -076, -078, -080 through -085, -091, -096 through -111, -114, and -115; 225-2310-001 through -007; 237-0011-016, -028, -029, -037, -046, -047, -049 through -057, -060 through -067, and -069 through -072; 237-0012-011 through -013; 237-0013-002; 237-0014-001; 237-0015-003, and -006 through -013; 237-0031-039; 237-0410-010, -011, -014 through -017, -019, -020, -024 through -027, -029 through -034, and -037 through -045; 237-0420-001, -007, -011 through -016, -018, -021, -022, -028 through -030, -032 through -045, and -048; 237-0600-001 through -008)

**Table of Contents:**

Exhibit A: North Natomas Community Plan Amendment Exhibit – 2 pages

Exhibit A: North Natomas Community Plan Amendment Exhibit

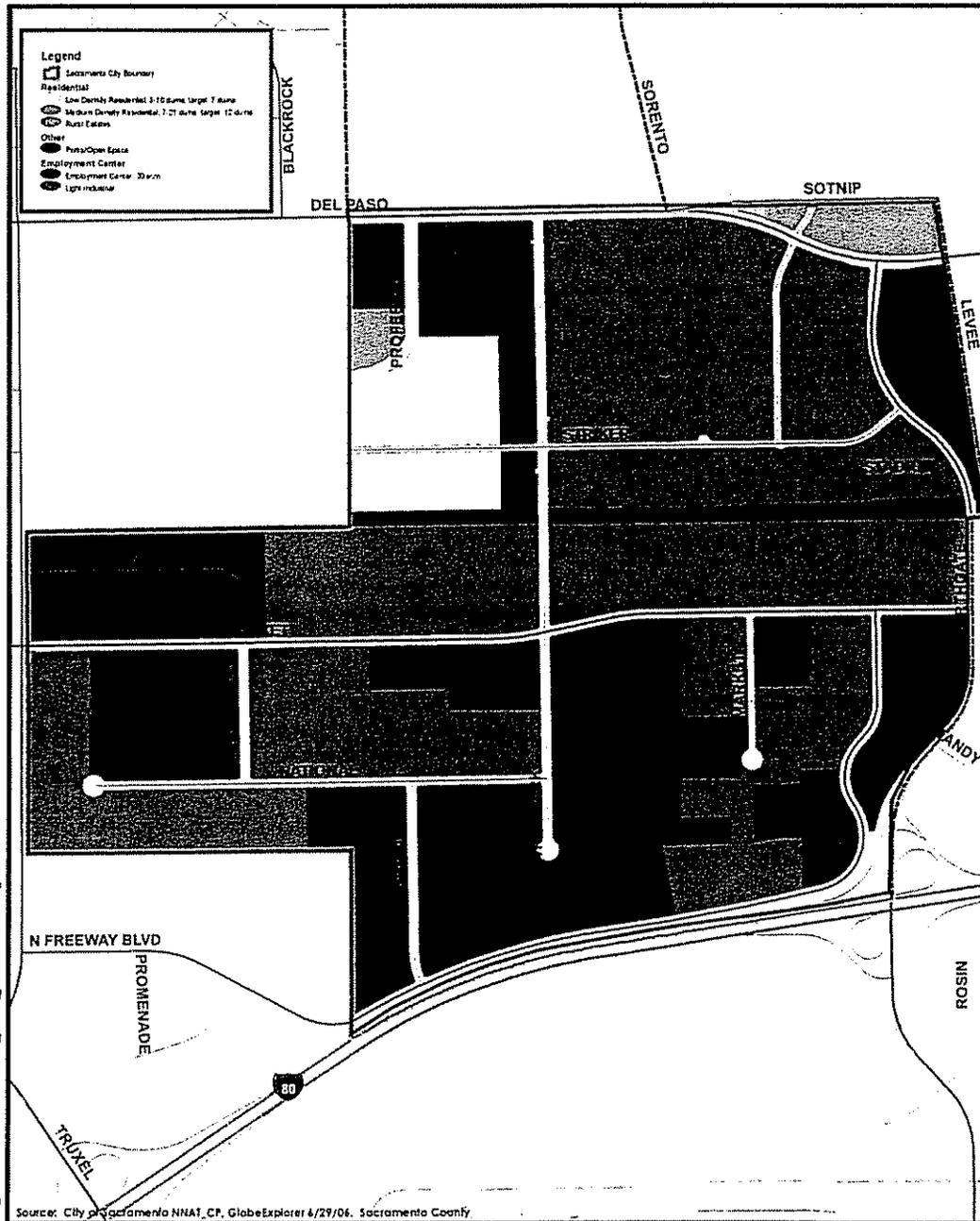
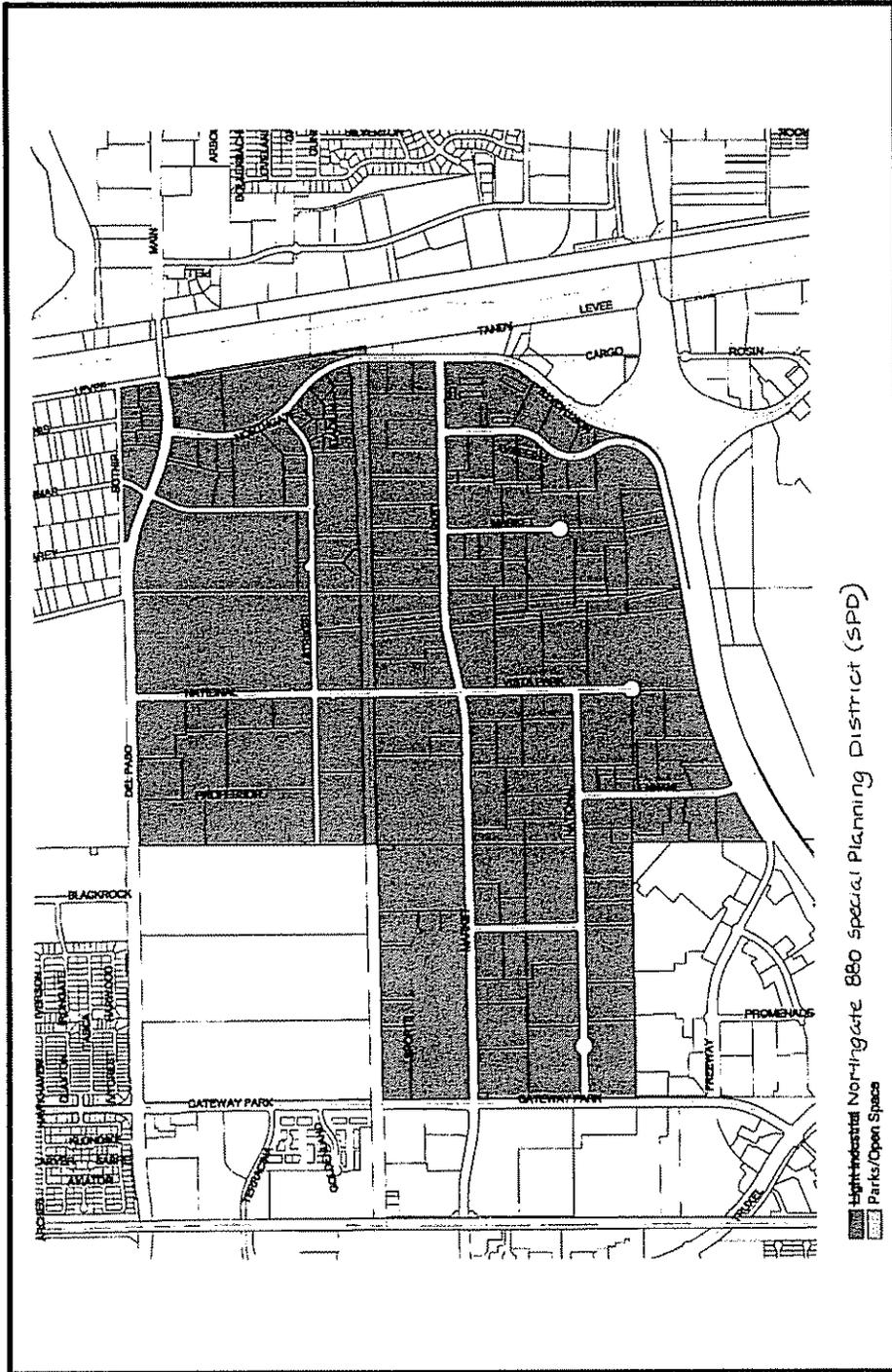


FIGURE 3.0-8  
EXISTING NORTH NATOMAS COMMUNITY  
PLAN DESIGNATIONS FOR SOUTHERN PORTION

PMC



High Industrial Northgate 880 Special Planning District (SPD)

FIGURE 3.0-9

PROPOSED NORTH NATOMAS COMMUNITY PLAN DESIGNATIONS FOR SOUTHERN PORTION



**ATTACHMENT 10 – ZONING CODE TEXT AMENDMENT ORDINANCE (M05-031)**

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**ADDING CHAPTER 17.102 TO TITLE 17 OF THE SACRAMENTO CITY CODE (THE ZONING CODE) ESTABLISHING THE NORTHGATE 880 SPECIAL PLANNING DISTRICT (M03-051)**

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

**SECTION 1.** Chapter 17.102 is added to Title 17 of the Sacramento City Code (the Zoning Code) to read as follows:

Chapter 17.102

Northgate 880 Special Planning District

17.102.010 Purpose and intent.

Prior to annexation to the city, the Northgate 880 area was almost fully developed with light industrial, warehousing, office and commercial uses, consistent with Sacramento County zoning. The purpose of the Northgate 880 special planning district is to ensure zoning regulations similar to what applied in the county will apply to this area upon annexation to the city.

17.102.020 Northgate 880 SPD boundaries.

The Northgate 880 special planning district ("district") is comprised of that area of North Natomas generally bounded by Interstate 80 (I-80) to the south; Northgate Boulevard and East Levee Road to the east; Gateway Park Boulevard to the west; and Del Paso Road and Sotnip Road to the north. The area is shown on the map in Appendix A, set out at the end of this chapter.

17.102.030 Land use regulations.

Development within the Northgate 880 SPD shall be subject to the requirements and restrictions of this chapter in addition to those of the underlying zoning district set forth in this title. If a conflict between a provision in this chapter and a provision contained in another chapter of this title relating to the underlying zoning district occurs, the provisions of this chapter shall prevail.

17.102.040 Allowed uses in the M-1 zone.

A. Except as provided in subsection (B) of this section, uses permitted in the M-1 zone outside of the Northgate 880 SPD shall be permitted in the M-1 zone inside of the Northgate 880SPD. If this title requires the approval of a special permit or other discretionary entitlement(s) or imposes other restrictions or requirements on the establishment of a particular use in the M-1 zone outside of the Northgate 880 SPD, approval of the same discretionary entitlement(s) and compliance with the same restrictions or requirements shall be required to establish the use within the M-1 zone inside of the Northgate 880 SPD.

B. The following uses shall be allowed by right in the M-1 zone in the Northgate 880 SPD:

Offices

Military Surplus Equipment and Goods

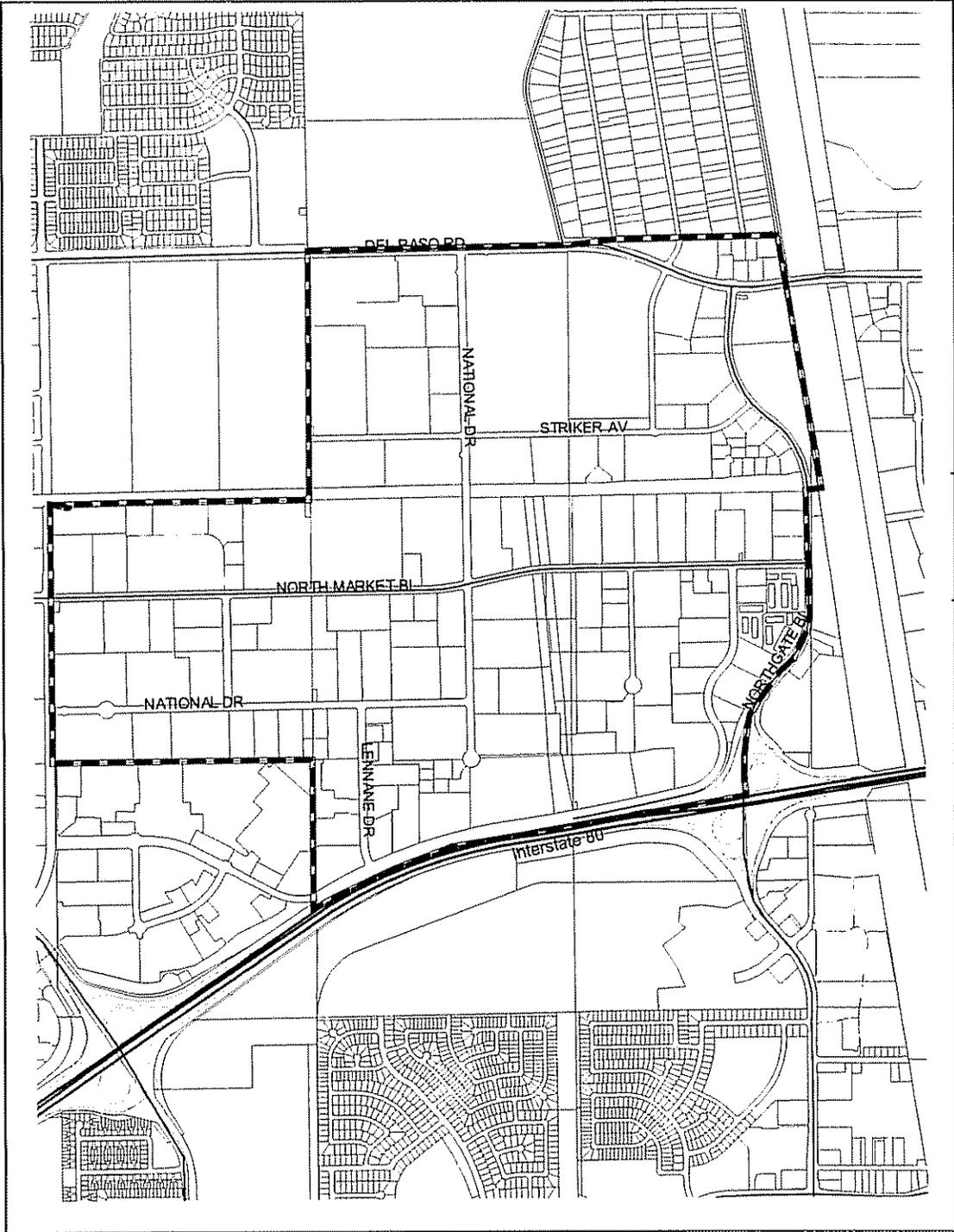
Church

Parking Lot/Garage

**Table of Contents:**

Exhibit A Northgate 880 Special Planning District Boundary Map

Exhibit A Northgate 880 Special Planning District Boundary Map



ATTACHMENT 11 – PREZONE ORDINANCE (M05-031)

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date

**PREZONING CERTAIN REAL PROPERTY LIGHT INDUSTRIAL  
NORTHGATE 880 SPECIAL PLANNING DISTRICT (M-1-N880-SPD)  
ZONES (LOCATED NORTHWEST, NORTHEAST, AND SOUTHWEST OF  
THE INTERSECTION OF DEL PASO ROAD AND KENMAR ROAD)**

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

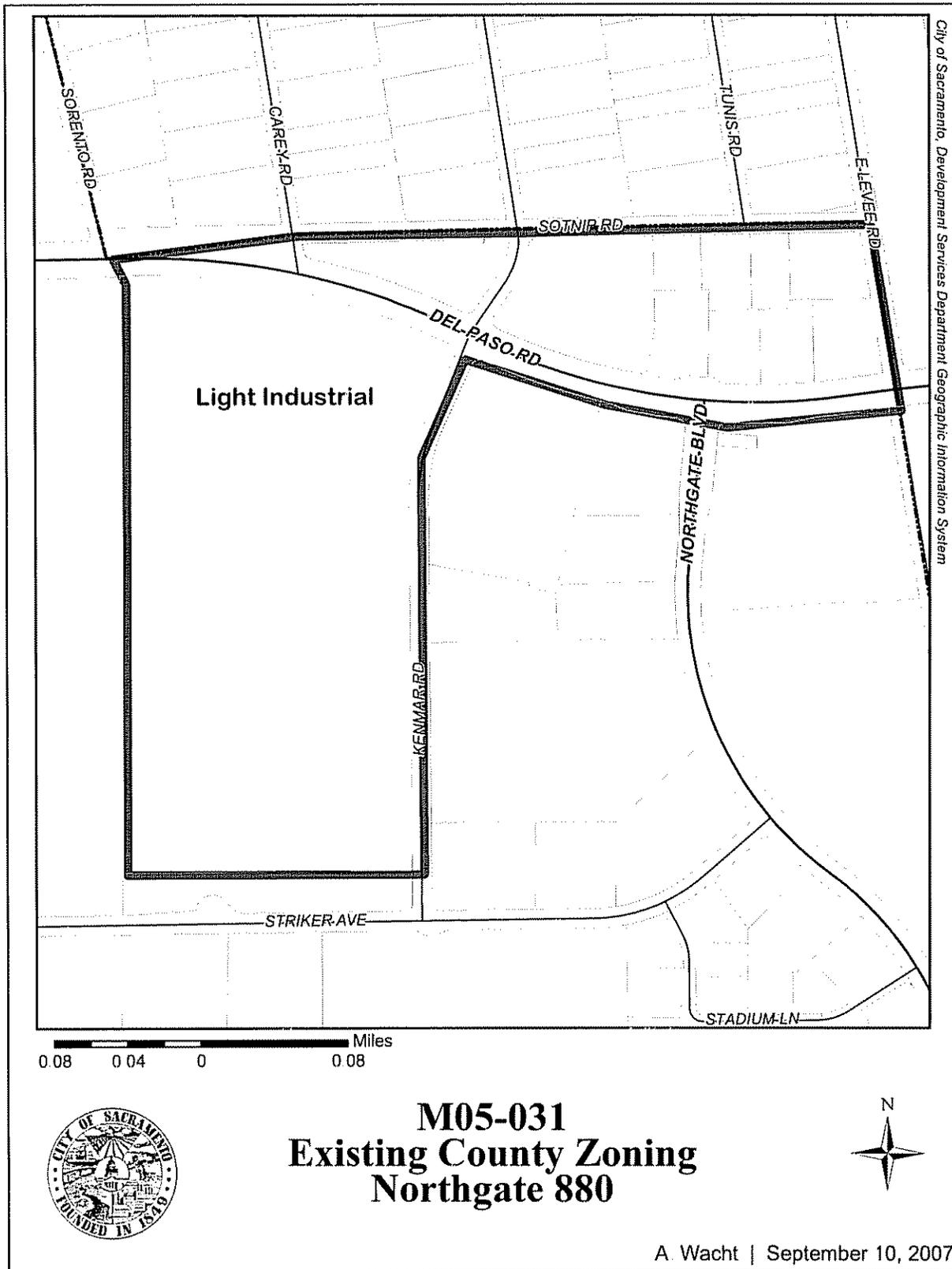
Section 1. The prezoning designations for the properties described by APNs below and as shown and described in the attached Exhibit A are approved.

APN: 237-0011-037; 237-0013-002; 237-0014-001; 237-0600-001, -002, -003, -004, -005, -006, -007, and -008

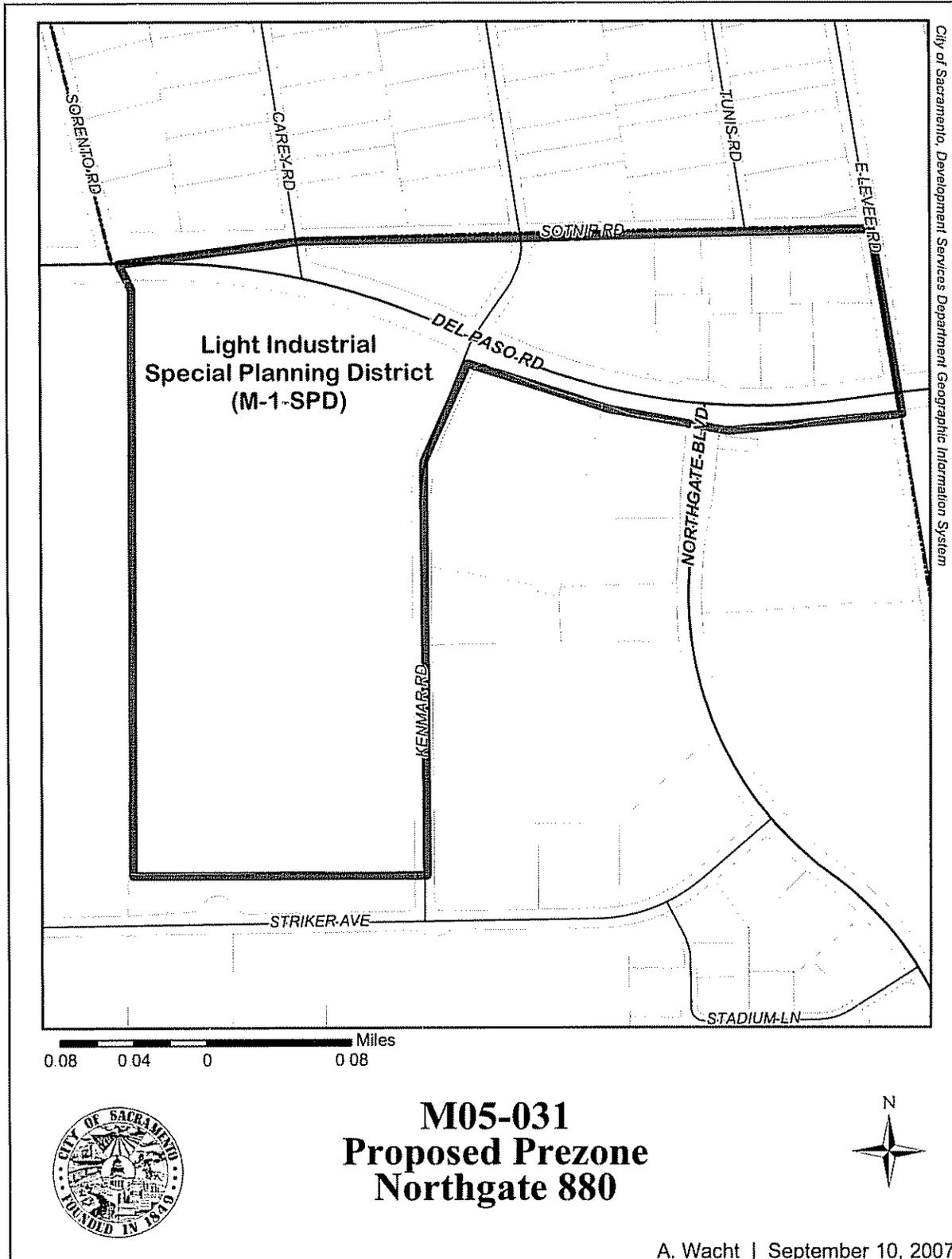
**Table of Contents:**

Exhibit A: Prezone Exhibit – 2 pages

Exhibit A – Prezone Exhibit



City of Sacramento, Development Services Department, Geographic Information System



**ATTACHMENT 12 – DEVELOPMENT AGREEMENT ORDINANCE (DUNMORE)**

**ORDINANCE NO. 2007-XXXX**

Adopted by the Sacramento City Council

Date

**APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND DUNMORE LAND COMPANY, LLC., THE J. ROSE RICHTER TRUST, THE RICHTER-KAZER 1993 IRREVOCABLE TRUST, BD PROPERTIES, LLC, AND TASSO PETER CONONELOS, FOR PROPERTY LOCATED AT THE NORTHWEST CORNER OF DEL PASO ROAD AND SORENTO ROAD.**

(P05-077) (APN: 201-0320-020; 225-0050-003, -016, -020, -021, and -022; 225-0060-021)

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 Dunmore Land Company, LLC., the J. Rise Richter Trust, the Richter-Kazer 1993 Irrevocable Trust, BD Properties, LLC, and Tasso Peter Cononelos (collectively, "the landowner"), a copy of which is attached hereto.

SECTION 2

The City Council finds:

1. The agreement is consistent with the city general plan and the goals, policies, standards and objectives of any applicable specific or community plan;
2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of any applicable specific or community plan;
3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;

5. The landowner will participate in all programs established and/or required under the general plan 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 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 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.

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Exhibit A: Development Agreement – 88 Pages

Exhibit A – Development Agreement

**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

SPACE ABOVE THIS LINE FOR RECORDEES USE ONLY

**PANHANDLE PUD  
DEVELOPMENT AGREEMENT**



**Panhandle PUD  
Project # P05-077**

**Dummore Land Company, LLC  
BD Properties, LLC  
The J. Rise Richter Trust  
The Richter-Kazer 1993 Irrevocable Trust  
Tasso Peter Cononelos**

Panhandle Development Agreement - Dummore Land Company, et al  
1/10/07 - 4/10/07

**FOR CITY CLERK USE ONLY**

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

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

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

**PANHANDLE PUD  
DEVELOPMENT AGREEMENT**

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Panhandle Development Agreement - Summit Land Company, et al  
11/05/07

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- Exhibit "C"           Special Conditions
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- Exhibit "E"           Panhandle Land Acquisition Program
- Exhibit "F"           Protest Waiver Provisions Agreed to by Landowner
- Exhibit "G"           Irrevocable Offer of Dedication Form
- Exhibit "H"           Map and Categorical Listing of Land and Infrastructure
- Exhibit "I"           Public Agency Radio and Microwave Communication System

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**FOR CITY CLERK USE ONLY**

CITY AGREEMENT NO \_\_\_\_\_ ORDINANCE NO \_\_\_\_\_

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

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF SACRAMENTO  
AND  
DUNMORE LAND COMPANY, LLC;  
BD PROPERTIES, LLC;  
THE J. RISE RICHTER TRUST;  
THE RICHTER-KAZER 1993 IRREVOCABLE TRUST; AND  
TASSO PETER CONONELOS**

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 Dunmore Land Company, LLC, a Delaware Limited Liability Company, BD Properties, LLC, a California Limited Liability Company, The J. Rise Richter Trust, The Richter-Kazer 1993 Irrevocable Trust, and Tasso Peter CononeLOS (hereinafter collectively, the "LANDOWNER").

**RECITALS**

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted section 65864 et seq. of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the Property.
- B. LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the CITY. The Property consists of lands designated as **Assessor Parcels Nos. 225-0050-016, 225-0050-020, 225-0050-021, 225-0050-003, 225-0050-022, 225-0060-021 and 201-0320-020**. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, the 1994 North Natomas Community Plan, the Zoning Ordinance, and the Panhandle Planned Unit Development Schematic Plan and Guideline, as they exist on the Effective Date.
- C. The City Council has held duly noticed public hearings on the CITY's General Plan, the 1994 North Natomas Community Plan and the Environmental Impact Reports

Panhandle Development Agreement - Dunmore Land Company, LLC

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prepared therefor. At the conclusion of these hearings, the City Council, on January 19, 1988, certified the Environmental Impact Report on the City General Plan Update as adequate and complete, and on May 3, 1994, certified the Environmental Impact Report on the 1994 North Natomas Community Plan Update as being adequate and complete.

The City Council on January 19, 1988, after making specific findings and adopting a Statement of Overriding Considerations, approved a revised General Plan by Resolution No. 88-058 (hereinafter the "General Plan"). The City Council on May 3, 1994, after making specific findings and adopting a Statement of Overriding Considerations, approved the 1994 North Natomas Community Plan by Resolution No. 94-259. (hereinafter the "NNCP"). The uses allowed under the General Plan, NNCP, and the applicable zoning ordinances provide for a balanced mix of residential housing and employment opportunities as well as provide for the protection of major open space and recreational resources. The City Council on June 26, 2007, after a duly noticed public hearing, approved the Panhandle PUD Public Facilities Finance Plan (hereinafter the "Panhandle Finance Plan") to provide a plan for the financing of the Infrastructure and public improvements needed to successfully implement the Panhandle PUD portion of the NNCP over time.

- D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code section 65865 et seq. in order to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan and the NNCP.
- E. The coordinated and orderly development of the Property, and LANDOWNER's commitment to the implementation of the Panhandle Finance Plan in order to assure the timely and properly-phased construction of all required Infrastructure and facilities, are essential to the proper implementation of the General Plan and the NNCP.
- F. LANDOWNER desires to facilitate implementation of the General Plan, the NNCP and the Panhandle Finance Plan, and LANDOWNER therefore agrees to develop the Property in a manner consistent with the policies of the General Plan, the NNCP, the Panhandle Finance Plan and the Special Conditions, provided that LANDOWNER is assured that no subsequent changes in the General Plan, the NNCP, the Panhandle Finance Plan, the Zoning Ordinance or the Special Conditions shall apply to the Property during the term of this Agreement.

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- G. The City Council, on March 7, 1995, adopted the Procedural Ordinance, by which CITY will, inter alia, consider, adopt, amend and subsequently review the development agreements by and between CITY and a given landowner.
- H. Development of the Property, in accordance with the conditions of this Development Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan and the NNCP. At the same time, it will assure that LANDOWNER is committed to funding its appropriate share of the cost of Infrastructure and other facilities which are the subject of the Panhandle Finance Plan, and that the funding for acquisition and construction of those facilities will be available to CITY as and when required under the Infrastructure phasing program.
- I. An integral part of the Panhandle Finance Plan is the Panhandle Land Acquisition Program ("PLAP"), with the associated Land Acquisition Fee ("LAF"). The PLAP is designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of certain lands within the NNCP area (as those lands are specified in the PLAP) which are designated to be held publicly. Such lands, if any, are identified under the Panhandle Finance Plan. The purpose of the PLAP is to provide a method whereby all of such lands will be transferred or acquired with funds from the private development community without cost to the CITY general fund, or any of its other funds, and at the time when needed. The purpose of the LAF is to provide a means, through the fee program, of equalizing the cost of the PLAP among the various landowners within the NNCP area, inasmuch as certain landowners will be required to relinquish land to public ownership in amounts in excess of their fair share as defined by the Panhandle Financing Plan. The LAF also provides a means for reimbursing landowners who have advanced funds to CITY for the purpose of acquiring land required for Infrastructure, where eminent domain or other procedures are needed, or where it is otherwise required to enable a particular landowner to develop its property. One of the purposes of this Agreement is to provide LANDOWNER's commitment to the provisions of the PLAP and the LAF.
- J. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan, the NNCP and the Panhandle Finance Plan, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, the NNCP, and the Panhandle Finance Plan and in consideration of the agreements and undertakings of LANDOWNER hereunder. But

Panhandle Development Agreement - Dunmore Land Company, et al

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for LANDOWNER's contribution to and participation in programs to mitigate the impacts of the development of the Property and the cumulative impacts of development in the NNCP area, and to the implementation of the Panhandle Financing Plan, the CITY would not approve development of the Property.

- K. The authority for this Agreement is contained in the City Charter of CITY, the Procedural Ordinance, other applicable CITY ordinances, resolutions and procedures and Government Code section 65864 et seq.
- L. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all requirements set forth in the Procedural Ordinance for the adoption of this Agreement by the City Council.
- M. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, the NNCP, the Panhandle Finance Plan, and all other applicable CITY ordinances, rules and regulations. The implementation of this Agreement is in the best interest of CITY and the health, safety and welfare of its residents. The environmental impacts of the development contemplated herein were adequately considered in the environmental documentation prepared by CITY and adoption of the ordinance and approval of this Agreement complies in all respects with the California Environmental Quality Act.

**AGREEMENT**

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

I

**DEFINITIONS**

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.

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- **Allocation Procedures:** those procedures set forth in section 5.H. of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions thereof, comprising the Property.
- **Annual Review:** the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNER with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in section 17 of this Agreement.
- **Assessment:** a special assessment levied on real property within the North Natomas Community Plan area, for the purpose of financing Infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.
- **Assessment District Policy Manual:** the document entitled "Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure, Public Facilities, Programs and Services," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.
- **Assignee:** a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit D.
- **Assignment:** the sale or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement.
- **Assumption Agreement:** the agreement prescribed in Exhibit D, whereby an Assignee undertakes to perform all obligations, and other terms and conditions of this Agreement, as a condition of release of the Assignee's predecessor in interest from the responsibility for performance of such obligations and other terms and conditions, with respect to the portion of the Property assigned to the Assignee.
- **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.

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- **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.
- **Comprehensive Drainage Plan:** the RD-1000 Drainage System for North Natomas, prepared by the Ensign & Buckley Consulting Engineers, or other consulting firm for the City of Sacramento and Reclamation District 1000, and adopted by the City Council, as it may be amended from time to time.
- **Comprehensive Flood Management Plan:** that plan required to be prepared, and that was adopted by the City Council by Resolution No. 96-073.
- **Dedication:** the transfer of real property, or a defined interest therein, to CITY or another public agency, free of all encumbrances and other matters affecting the title except as may otherwise be agreed to by CITY or such other public agency, and at no cost to CITY or such other public agency, as specifically set forth in the PLAP, within the Panhandle Finance Plan, as it may exist from time to time.
- **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. Default shall include, but not be limited to failure to comply with all provisions of the Panhandle Finance Plan and/or failure to pay any fee, tax or assessment enacted pursuant to that Plan.
- **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.
- **Development Plan:** LANDOWNER's plan for development of the Property, as set forth in Exhibit B. Where LANDOWNER, at the time of execution of this Agreement, does not propose a specific development project, the Development Plan shall be deemed to be development consistent with the Land Use and Development Regulations

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- **Drainage Phasing Plan:** that portion of the Comprehensive Drainage Plan which identifies the sequence of construction of the Drainage System.
- **Drainage System:** that drainage system constructed to drain the Panhandle Sub-basin.
- **Drainage Sub-basin:** the individual drainage sub-areas served by facilities identified in the Comprehensive Drainage Plan. The Panhandle Drainage Sub-basin is bounded on the north by Elkhorn Boulevard, on the east by the Natomas East Main Drainage Canal and Sorento Road, on the south by Del Paso Road, and on the west by Northpointe Park and Regency Park.
- **Effective Date:** The date on which the Property is annexed to the City of Sacramento, provided that such annexation occurs within three (3) years of the date on which the ordinance approving this Development Agreement takes effect. Failure to annex within this time period shall result in this Agreement being null and void, pursuant to Section 65865 of the Government Code.
- **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.
- **Habitat Conservation Plan:** that plan, which must be adopted and implemented by the City Council, pursuant to which measures are taken to implement the provisions of the federal and state Endangered Species Acts, and pursuant to which incidental take permits will be issued to the City of Sacramento, to Landowner, or to others under said Acts.
- **Infrastructure:** all public facilities and improvements needed to serve urban development, as identified in the NNCP and the Panhandle Finance Plan, or in subdivision maps, parcel maps, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street and freeway improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.
- **Irrevocable Offer of Dedication:** an unconditional and irrevocable offer by LANDOWNER to transfer real property to CITY in accordance with the provisions of the PLAP and/or any condition of any land use entitlement applicable to the Property, in the form specified in Exhibit G.

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

- **Land Acquisition Program (PLAP):** the plan, also called the Panhandle Land Acquisition Program, which as an integral part of the Panhandle Finance Plan, is designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of all lands within the North Natomas Community Plan area which are designated to be held publicly, at no cost to CITY. A copy of the plan is attached hereto as Exhibit E and incorporated herein by this reference.
- **Land Acquisition Fee (LAF):** the fee/reimbursement program, which is an integral part of the Panhandle Finance Plan, and which is designed to equalize the cost of the PLAP among the various landowners within the Panhandle Finance Plan area.
- **Land Use and Development Regulations:** the General Plan, the North Natomas Community Plan, the CITY's Subdivision Map Act Ordinance, and Zoning Ordinances, 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 North Natomas Community Plan area.
- **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.
- **North Natomas Community Plan (NNCP):** the Community Plan for development of the North Natomas area, as adopted by the City Council on May 3, 1994, as said plan exists on the Effective Date. The NNCP includes, without limitation, a Land Use Diagram and Policy Statements.
- **Panhandle Finance Plan:** the plan, as it may be amended from time to time, which establishes methods for financing required Infrastructure and public facilities through a combination of land transfers, dedications, contributions, fees, assessment districts, community facilities districts, and other measures.
- **Panhandle Finance Plan Area:** the lands within the area covered by the Panhandle Finance Plan, and which are obligated thereby, as that area may exist from time to time.

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

- **Parties:** the City of Sacramento and LANDOWNER.
- **Person:** any person, firm, association, organization, partnership, business trust, corporation or company.
- **Procedural Ordinance:** Ordinance No. 95-012, adopted by the City Council on March 7, 1995, and which sets forth procedures for execution, approval, implementation, amendment, and related matters, with respect to development agreements for lands within the NNCP area
- **Project:** part or all of the elements set forth in LANDOWNER's 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 LANDOWNER, as set forth in Exhibit A
- **Protest Waiver:** the agreement set forth in Exhibit F, executed by LANDOWNER pursuant to this Agreement, or in connection with the conditions of any required entitlement
- **Purchaser:** an assignee.
- **Reconfiguration:** the reconfiguration, adjustment or alteration of property lines through parcel or subdivision mapping, or lot line adjustment.
- **Reimbursement:** the reimbursement of monies to a Person who has advanced funds for Infrastructure required for development of the Property, or who has advanced funding for Infrastructure or other improvements which are required by the NNCP, the Panhandle Finance Plan, or other document, and which have benefit to land beyond the Property, in accordance with a reimbursement agreement approved by CITY. Any such agreement will be limited to the portion of the funding advanced which is in excess of the allocable share of the cost of the Infrastructure or improvement attributable to the Property.

**FOR CITY CLERK USE ONLY**

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

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- **Reimbursable Infrastructure Costs:** those costs paid by LANDOWNER, and which are identified as reimbursable pursuant to CITY's Assessment District Policy Manual (as defined in section 8 D.(1) of this Agreement).
- **Special Conditions:** those conditions, terms and requirements specified in Exhibit C.
- **Special Permit:** any discretionary permit required pursuant to the Land Use and Development Regulations, and issued by CITY for development of the Property, upon proper application therefor by LANDOWNER.
- **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 Ordinance.
- **Zoning Ordinance:** the Comprehensive Zoning Ordinance of the City of Sacramento, as that ordinance exists on the Effective Date.

II

**TERMS AND CONDITIONS OF AGREEMENT**

1. **Property Description and Binding Covenants.** The Property is that certain real property owned by LANDOWNER and described in Exhibit "A." The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the parties and, subject to section 4 below, to their successors-in-interest.
2. **Interests of Landowner.** LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, have executed and are bound by this Agreement.

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

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

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

3. Term.

A. **Initial 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.

B. **Failure to Annex in a Timely Manner.** If the property is not annexed to the City within three years of the date on which the ordinance approving this Development Agreement takes effect, this Agreement shall be null and void, pursuant to Government Code Section 65865.

C. **Renewal Options.** Subject to the provisions of this subsection, LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, taking into account any amendments hereto mutually agreed upon after the Effective Date. The term of this Agreement shall mean and include the initial term, plus any renewal periods. The specific conditions for exercise of the renewal options are as follows:

(1) On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of section 20 hereof.

(2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.

(3) LANDOWNER shall be limited to three (3) renewal periods of five (5) years each; the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond twenty-five (25) years, unless this Agreement is amended in accordance with the procedures set forth herein for Agreement amendments.

4. **Assignment** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without

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the consent of CITY; provided, however, that LANDOWNER shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, as signee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to CITY an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve LANDOWNER of the obligations expressly assumed only if (a) LANDOWNER is not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNER has provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNER's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "D" 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.

**5. Development of the Property.**

**A. Permitted Uses and Development Standards.** Subject to the Special Conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference (herein the "Special Conditions"), any reserved discretionary approvals specified in this Agreement, and all other terms and conditions of this Agreement, LANDOWNER may develop the Property in accordance with and subject to the terms and conditions specified in the Land Use and Development Regulations in effect on the Effective Date, or, where applicable, the Development Plan, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Specifically, the permitted uses, density or intensity

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of use, height or size of buildings and provisions for reservation and dedication of land for public purposes shall be as set forth in the Development Plan.

**B. Discretionary Approvals.**

(1) **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 NNCP and the Panhandle Finance Plan, and as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such reserved discretionary approvals.

(2) **Rezoning of the Property.** Upon proper and complete application by LANDOWNER, CITY agrees to rezone the Property in accordance with the provisions of the NNCP in effect on the Effective Date.

**C. Development Timing.** This Agreement contains no requirement that LANDOWNER must initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the Property in accordance with LANDOWNER's own schedule; provided, however, that to the extent that phasing is required by the NNCP, or by the Special Conditions, 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 LANDOWNER 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. Special Conditions.** Development of the Property shall be subject to the Special Conditions, as specified in Exhibit C.

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

- (1) Subject to the Special Conditions specified in Exhibit C and the terms and conditions of 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 subsection 5E(1) above, the terms and conditions of this Agreement shall 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 NNCP area or any

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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 NNCP, 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
- (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 NNCP 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 5E(4), 5E(5) and 5E(6) of this Agreement.
- (9) (a) To the extent that CITY enacts flood protection regulations after the Effective Date, such regulations shall apply to the Property to the extent provided therein, and to the extent that such regulations apply to other properties that may be similarly situated as to flood safety issues.

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(b) If LANDOWNER is allowed to build before 100-year level of flood protection is achieved for the Property, LANDOWNER shall be required to do the following:

(i) provide written notice to residential homebuyers at the model home sites and in the sales contracts notifying them that they are purchasing in a flood plain that does not have 100-year flood protection; and

(ii) provide paid flood insurance for the homebuyer's property until 100-year flood protection is achieved for the Property, but not to exceed two years.

(10) To the extent that CITY adopts a Green Ordinance after the Effective Date, such ordinance shall apply to the Property. For purposes of this subsection 5E(10), a Green Ordinance may, for example, include the regulation of construction practices or the use of building materials for the purpose of promoting energy efficiency, indoor and outdoor air quality, and/or conservation of water and other resources, the resulting goal of which is increasing the environmental sustainability of the community.

(11) If any new regulation or ordinance described in this subsection 5E is subjected to a legal challenge, the Property shall remain subject to such regulation or ordinance until such time that the subject regulation or ordinance is suspended by CITY or invalidated by such legal challenge.

F. **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 LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law.

G. **Extension of Entitlements.** Pursuant to Government Code section 66452.6 all vesting tentative subdivision maps, master parcel tentative maps, parcel maps, subdivision tentative maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a

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minimum term equal to the full term of this Agreement (including the initial term, and any renewal period resulting from exercise by LANDOWNER of the options provided for in section 3 hereof), or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of section 25 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this subsection. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

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

**(1) Allocation.** Unless otherwise identified in the Development Plan, which is attached as Exhibit B to this Agreement, the allocation of building square footage shall be as identified in subsequent entitlements for the Property, including but not limited to parcel maps, subdivision maps, PUD schematic plans and development guidelines. The appropriate entitlement to address the allocation of building square footage shall be determined by City. Allocations for residential development shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

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

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**6. 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.

**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 for the NNCP area;
- (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; 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, LANDOWNER shall nevertheless be responsible therefor. Nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law: the formation of any 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.

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**C. Implementation of the Panhandle Finance Plan** The Panhandle Finance Plan establishes a method for financing of required Infrastructure and public facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land within the Panhandle Finance Plan Area pays for its share of the cost of such Infrastructure and facilities. The plan also recognizes that there is a regional cost associated with certain portions of Infrastructure and facilities, and that that share will ultimately have to be paid from other sources, even though developers within the area, including LANDOWNER, acknowledge that they may have to participate in funding regional costs on a fair share basis. LANDOWNER shall participate in the Panhandle Finance Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof, including but not limited to the PLAP, the Land Acquisition Fee, assessments, special taxes, and other development fees and exactions set forth therein. Without limiting the foregoing, applications for special permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the Panhandle Finance Plan, and performance of all obligations imposed thereby.

**D. LANDOWNER's Waivers**

- (1) LANDOWNER hereby agrees to the provisions of Exhibit F, which (without limitation) contains a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of development and impact fees; CITY's actions in forming assessment districts and community facilities districts, and in levying assessments and taxes pursuant thereto; and CITY's actions in implementing any provision of the Panhandle Finance Plan. As set forth in Exhibit F, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Finance Plan.
- (2) LANDOWNER has reviewed the Panhandle Finance Plan and acknowledges that a nexus study was not done for certain features of the Finance Plan. LANDOWNER further acknowledges that certain

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facilities costs allocated as specified in the Finance Plan are not nexus-based costs, but rather are extrapolations from the established nexus-based costs under the North Natomas Finance Plan for the adjacent North Natomas Finance Plan area and are imposed for purposes of implementation of the General Plan and the NNCP. With such knowledge, LANDOWNER waives any and all administrative or judicial challenges it can legally make to the Panhandle Finance Plan or this Agreement based on insufficient nexus for any facilities costs specified in the Finance Plan.

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

8. **Infrastructure.**

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

B. **Construction by LANDOWNER.** When required by conditions of approval, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct Infrastructure

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required for implementation of the Development Plan (Exhibit B). LANDOWNER shall further comply with all required funding requirements specified in the Panhandle Finance Plan, and the real property transfer provisions of the PLAP.

**C. Drainage Infrastructure.** As of the Effective Date, it is contemplated that permanent drainage for the Property, and the entire Panhandle Finance Plan Area, will be provided by the Drainage System. Construction of the Drainage System will require land transfers to CITY pursuant to Irrevocable Offer of Dedication, the PLAP, or acquisition of required land by CITY through the use of eminent domain procedures, and funding for the required improvements, all on a timely basis and in accordance with the Panhandle Finance Plan, together with the Drainage Sub-basin agreement, or substitute therefore, as specified in the Special Conditions. In recognition of the need for retention of flexibility and CITY discretion with respect to decisions relating to the ultimate solution to drainage for the NNCP area, and the need for unconditional provision of financing by LANDOWNER and other owners of land in the Panhandle Finance Plan Area through the mechanisms specified in the Panhandle Finance Plan, the parties agree as follows:

- (1) **Establishment of Financing Mechanisms.** CITY shall, as soon as feasible following the adoption of the Panhandle Finance Plan by the City Council and the annexation of the Panhandle Finance Plan Area to the City, establish public financing mechanisms as identified in the Panhandle Finance Plan, applicable to lands within the NNCP area which will benefit from the Drainage System.
- (2) **Issuance of Bonds.** Decisions as to whether to issue bonds pursuant to such financing mechanisms, and the timing and manner of issuance thereof, shall be within the sole and exclusive discretion of CITY; provided, however, that CITY shall exercise its discretion in a good faith manner, so as to provide for timely construction of Infrastructure in order not to stop or slow development.
- (3) **Linkage of Development to Completion of Drainage System.** CITY has established a performance standard that requires (inter alia) that the Drainage System be completed and in operation no later than the point in time when building permits have been issued for fifty percent (50%) build-out of the Panhandle Finance Plan Area, as measured by

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developable acreage as defined in the Panhandle Finance Plan. In the event that a different phasing plan is adopted and implemented by CITY, LANDOWNER shall comply with all provisions of such a plan, and shall execute any agreement or other document, or participate in any mechanism as is required by CITY to implement such a plan.

**D. Infrastructure Financing Proceedings**

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

- (a) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application;
- (b) otherwise complies with the Land Use and Development Regulations and applicable law, as it exists on the date of the application, including but not limited to the Assessment District Policy Manual;
- (c) is consistent with CITY's policies and procedures; (iv) provides for a value to lien ratio and other financial terms that are reasonably acceptable to CITY;
- (d) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion; and
- (e) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be

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necessary under the circumstances) shall be selected by CITY in its sole discretion.

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

- (2) **Proceedings Initiated by CITY.** In the event that pursuant to the Panhandle Finance Plan, CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar mechanism, is required in order to implement the Panhandle Finance Plan, LANDOWNER's participation obligations set forth hereunder (including but not limited to Exhibit C), in the Panhandle Finance Plan, or in any condition of approval, shall apply.
- (3) **Maintenance Districts.** LANDOWNER may, following the procedures specified in subsection 8D(1) above, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the improvements and their maintenance are assessed for a proportionate share of the maintenance cost. LANDOWNER will be required to annex to existing CITY maintenance CFD's (e.g., the North Natomas Landscaping District) for residential

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properties unless otherwise provided through a Home Owners Association.

**E. Reimbursement to LANDOWNER.**

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

(2) **Reimbursement From Others Benefitted** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of improvements required for development by the Panhandle Finance Plan, in excess of or beyond those required for development of the Property, or, where required by the Panhandle Finance Plan, to make dedications, provide mitigation or incur costs in connection with public improvements or the planning of the North Natomas area in excess of or beyond those required for development of the Property, and the provisions of the preceding subsection do not apply, CITY shall utilize its best efforts to require that

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all other Persons benefitted by the improvements shall reimburse (through fee districts, agreements, conditions of approval, or otherwise) LANDOWNER for such Person's proportionate share of such costs as determined in accordance with the Panhandle Finance Plan, or by CITY. For purposes of this Agreement, the term "in excess of or beyond those required for development of the Property" shall mean requirements which exceed LANDOWNER's fair proportionate share, as determined in accordance with the provisions of the Panhandle Finance Plan and any associated documents or studies. Under no circumstances shall CITY be liable for reimbursement of such excess costs.

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

- (3) **Reimbursement of Planning, Engineering and Staff Costs.** In accordance with the provisions of the Panhandle Finance Plan, and as soon as feasible following City Council adoption of the said Plan, CITY shall enact a fee ordinance which imposes a fee upon the Panhandle Finance Plan area of the NNCP area landowners, including LANDOWNER, to pay the planning, engineering, staff and related costs (including but not limited to CITY staff and related costs), as specified in the Panhandle Finance Plan, and which relate to development of the NNCP, the Finance Plan, the general form of the Development Agreement, the Comprehensive Drainage Plan, and all related documents. The fee shall be spread across lands within the NNCP area in the same fashion as the public facilities fees. Credits shall be given to those landowners who have paid some or all of their share of the said costs, for the amounts so paid. The fee shall be payable prior to issuance of the first discretionary entitlement for the land as to which an application has been filed with CITY.

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**9. LANDOWNER Obligations.**

**A. Transfer of Land to CITY.** As set forth elsewhere in this Agreement, LANDOWNER has agreed to transfer lands needed for Infrastructure or public facilities to CITY, or to such other public agency as is appropriate, pursuant to the provisions of the PLAP. Set forth in Exhibit H, attached hereto and incorporated herein by this reference, is a map depicting the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, together with a categorical listing of the types of Infrastructure and public facilities which are covered by the terms of this subsection. LANDOWNER shall transfer the said required lands to CITY, utilizing the Irrevocable Offer of Dedication form set forth in Exhibit G, attached hereto and incorporated herein by this reference, at such time as is:

- (1) required pursuant to a condition or term of any entitlement for use or development of the Property; or
- (2) requested by CITY, where LANDOWNER has not applied for an entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.

In the event that, at the time of the required transfer to CITY, the location of, or the quantity of land required for the Infrastructure or public facilities has changed from that depicted on Exhibit H, to such a significant degree or extent that the location or quantity is inconsistent with both the NNCP as it exists on the effective date of this Agreement, and the Panhandle Finance Plan, the parties shall meet and negotiate, and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow development of the Property in a reasonable manner, taking into account the changes in Infrastructure and public facilities. If agreement is reached between the parties, the procedures specified herein and in the Procedural Ordinance shall apply to amendments to this Agreement. If agreement is not reached, either party shall have the right to terminate this Agreement by providing the other party sixty (60) days notice.

**B. Participation in Land Acquisition Fee Program.** The applicant may be required to participate in the North Natomas Public Lands Acquisition Fee Program, which provides a monetary mechanism designed to equalize among

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developers the proportional cost of extraordinary land dedications. Potential lands for inclusion in this fee program are shown on a map and table included in Exhibit H. Participation in a fee program will be determined following further equity analysis between the LANDOWNER and developers in the balance of the North Natomas Community Plan area and will be implemented through an update to the Panhandle Finance Plan.

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

**10. Litigation/Indemnification.**

**A. Challenge to Agreement or Entitlements**

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

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

(b) In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, 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 LANDOWNER, LANDOWNER shall defend the action on its behalf and on behalf of CITY, and shall bear all attorney

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fees and costs associated with such defense from and after the date of the tender. Provided, however, that CITY may at any time after the tender elect to assume representation of itself; in that event, from and after the date CITY gives notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

- (2) If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any entitlement issued during the term of this Agreement and pursuant to its terms, the following shall apply:
  - (a) if the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. Provided, however, that if the litigation relates entirely, solely and exclusively to a challenge to the NNCP in general, or to the Panhandle Finance Plan in general, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.
  - (b) CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein, and in the Procedural Ordinance, shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement by giving the other party sixty days' notice of termination.
  - (c) In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further

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proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously.

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

**11. Effect of Subsequent Laws**

**A. Laws of Other Agencies**

- (1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner pursuant to Exhibit B.
- (2) In the event that the parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either party shall have the right to terminate this Agreement by giving the other party sixty (60) days' written notice of termination.
- (3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, CITY shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined

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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 11A(1) and 11A(2) above shall apply.

**B. Laws Passed by CITY.** Subject to the provisions of section 5 of 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 on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

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

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

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

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

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

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

**15. 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 General Plan, the NNCP and this Agreement.

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

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**16. Default, Remedies, Termination.**

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

- (1) **LANDOWNER Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by LANDOWNER is alleged, CITY shall not be obligated to issue any building permit, or grant any entitlement as to which an application has been filed.
- (2) **CITY Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by CITY is alleged, any resulting delays in LANDOWNER's performance caused by CITY's default shall not constitute a LANDOWNER default, or be grounds for termination or cancellation of this Agreement.
- (3) **Successors in Interest.** Where the Property, following the Effective Date, has been lawfully conveyed in whole or in part to one or more successors in interest, in such a manner as to invoke the provisions of section 4 of this Agreement, and one or more of such successors in interest is in default with respect to the portion of the Property owned by it, neither LANDOWNER nor any other non-defaulting successor in interest shall be liable for the default, if the provisions of section 4 have been complied with, and in accordance with the terms and conditions of that section.

**B. Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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

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- (1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or
- (2) give the other party notice of intent to terminate this Agreement pursuant to Government Code section 65868 and the Procedural Ordinance. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

**17. Annual Review.**

- A. General Provisions.** In accordance with Government Code section 65865.1, and the Procedural Ordinance, CITY shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future annual review or to otherwise enforce the provisions of this Agreement, nor shall a party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement.
- B. Scope of Review.** The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.
- C. Proceedings.** The procedures specified in the Procedural Ordinance for conduct of the annual review by the City Manager, and by the City Council, shall apply to each annual review of this Agreement. At least ten (10) days prior to the commencement of any annual review, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance

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by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects.

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

- 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.

**18. Termination Upon Completion of Development**

A. **General Provisions** This Agreement shall terminate as to each parcel of property contained within the Property when that parcel of property has been fully developed and all of LANDOWNER'S obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY'S Department of 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 LANDOWNER'S obligations therewith are satisfied. CITY shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including but not limited to CITY'S administrative and legal expenses. Upon termination of this Agreement, CITY shall upon LANDOWNER'S request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and LANDOWNER agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement, by the Panhandle Financing Plan or any of the measures implementing said plan, and shall have the effect as set forth in section 18C.

B. **Multi-family and Single Family Residential Projects.** This Agreement shall automatically terminate and be of no further force and effect as to any single

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family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when it has been approved by CITY for occupancy.

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

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

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

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

Notice to the Lenders: Mike Pavao  
Comerica Bank  
1331 N. California Boulevard, Suite 400  
Walnut Creek, CA 94596

Carl Brothers  
Brothers Electric  
2340 Gold River Road, Suite D  
Rancho Cordova, CA 95670

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Notice to the LANDOWNER: Dunmore Land Company, LLC  
8781 Sierra College Boulevard, Suite 100  
Granite Bay, CA 95746  
Attn: Sid Dunmore

BD Properties  
8570 Elm Avenue  
Orangevale, CA 95662  
Attn: Orin Bennett

J. Rise Richter  
3017 Douglas Boulevard # 300  
Roseville, CA 95661

Tasso Peter Cononelos  
2505 Del Monte Street  
West Sacramento, CA 95691

with copies to:

Law Offices of George E. Phillips  
2306 Garfield Avenue  
Carmichael, CA 95608

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.

- 21. **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 Procedural Ordinance. Provided, however, that if such holding affects a material provision of this Agreement, LANDOWNER shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to CITY; provided further, however, that in the event LANDOWNER so elects to terminate, such election shall not affect in any manner the terms and conditions of any entitlement theretofore granted by CITY with respect to the Property, or any portion thereof.

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22. **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.

23. **Reimbursement to CITY.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY'S review, consideration and execution of this Agreement. Such expenses include 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 LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses

24. **Provisions Relating to Lenders.**

**A. Lender Rights and Obligations.**

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

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

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

- B. Notice of LANDOWNER's Default Hereunder.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNER, any notice given to LANDOWNER with respect to any claim by CITY that LANDOWNER has committed a default, and if CITY makes a determination of non-compliance, CITY shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on LANDOWNER.
- C. Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or the areas of non-compliance set forth in CITY's notice. Such action shall not entitle a Lender to develop the property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder.
- D. Other Notices Given By City.** A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in section 20 hereof.

**25. 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

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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.

- 26. **Construction.** All parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Development Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.
- 27. **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.
- 28. **Time.** Time is of the essence of each and every provision hereof.
- 29. **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.
- 30. **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.
- 31. **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.
- 32. **Covenant of Good Faith.** CITY and LANDOWNER agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement.

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

- A Description of Landowner's Property
- B Landowner's Development Plan
- C Special Conditions
- D Assignment and Assumption Agreement
- E Panhandle Land Acquisition Program
- F Protest Waiver Provisions Agreed to by Landowner
- G Irrevocable Offer of Dedication Form
- H Map and Categorical Listing of Land and Infrastructure
- I Public Agency Radio and Microwave Communication System

**34. Entire Agreement.** This Agreement, together with its Exhibits A to I, 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 LANDOWNER. The provisions of subsection 10B of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever against CITY, its officers, employees and agents, arising out of or in any way relating to any prior development agreement relating to the Property.

[Remainder of this page intentionally left blank]

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35. **City Attorney Costs.** Landowner shall pay to the City of Sacramento the sum of \$5,000.00 as and for reimbursement of the costs of the City Attorney in preparation and processing of this Agreement.

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

**CITY OF SACRAMENTO**

**ATTEST:**

By: \_\_\_\_\_  
Mayor

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

**APPROVED FOR LEGAL FORM:**

\_\_\_\_\_  
Lawrence J. Duran  
Senior Deputy City Attorney

**Dunmore Land Company, LLC,  
a Delaware Limited Liability Company**

**J. Rise Richter Trust  
Dated March 9, 1994**

By: \_\_\_\_\_  
Name: Sidney B. Dunmore  
Title: Manager

By: \_\_\_\_\_  
Name: J. Rise Richter  
Title: Trustee

**BD Properties, LLC,  
a California Limited Liability Company**

**The Richter-Kazer 1993 Irrevocable  
Trust**

By: \_\_\_\_\_  
Name: Orin Bennett  
Title: Managing Member

By: \_\_\_\_\_  
Name: Jill A. Richter  
Title: Trustee

**Tasso Peter Cononelos**

By: \_\_\_\_\_  
Name: Robert C. Kazer  
Title: Trustee

By: \_\_\_\_\_  
Name: Tasso Peter Cononelos

**(ATTACH APPROPRIATE ACKNOWLEDGMENT)**

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**EXECUTION PAGE FOR LENDER**

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Dated: \_\_\_\_\_

LENDER: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**(ATTACH APPROPRIATE ACKNOWLEDGMENT)**

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**EXHIBIT A**

**DESCRIPTION OF LANDOWNER'S  
PROPERTY**

SEE ATTACHED

NOTE: UPON RECORDATION OF FINAL MASTER PARCEL MAP, THIS EXHIBIT A WILL BE REPLACED BY THE SAID MAP, WITHOUT NEED FOR AMENDMENT OF THIS AGREEMENT.

**Exhibit A  
Legal Description**

**APN 225-0050-003**

Lot 87 of Natomas East Side Subdivision, according to the Official plat thereof, filed in the office of the Recorder of Sacramento County, on January 18, 1924, in Book 17 of Maps, Map No. 34.

**APN 201-320-020**

Lots 75 and 76, as shown on the "Plat of Natomas East Side Subdivision," recorded in Book 17 of Maps, Map No. 34, records of said County.

**APN 225-0050-016**

South one-half of Lots No. 82 and 83 as said lots are delineated on that certain map entitled "Natomas East Subdivision" filed in the office of the County Recorder of the County of Sacramento on January 18, 1924, in Book 17 of maps, Map No. 34.

**APN 225-0050-020**

The North one-half of Lots 82 & 83, as shown on the "Plat of Natomas East Side Subdivision," filed January 18, 1924 in Book 17 of Maps, Map No. 34, Sacramento County Records, excepting therefrom the east 660 feet thereof.

**APN 225-0060-021 and APN 225-0050-022**

Lots 88, 92, 93, 97 and 98, as shown on the official "Map of Natomas East Side Subdivision", file din the office of the County Recorder of Sacramento County, January 18, 1924, in Book 17 of Maps, Map No. 34.

**EXHIBIT B**

**LANDOWNER'S DEVELOPMENT PLAN**

SEE ATTACHED



Exhibit B .

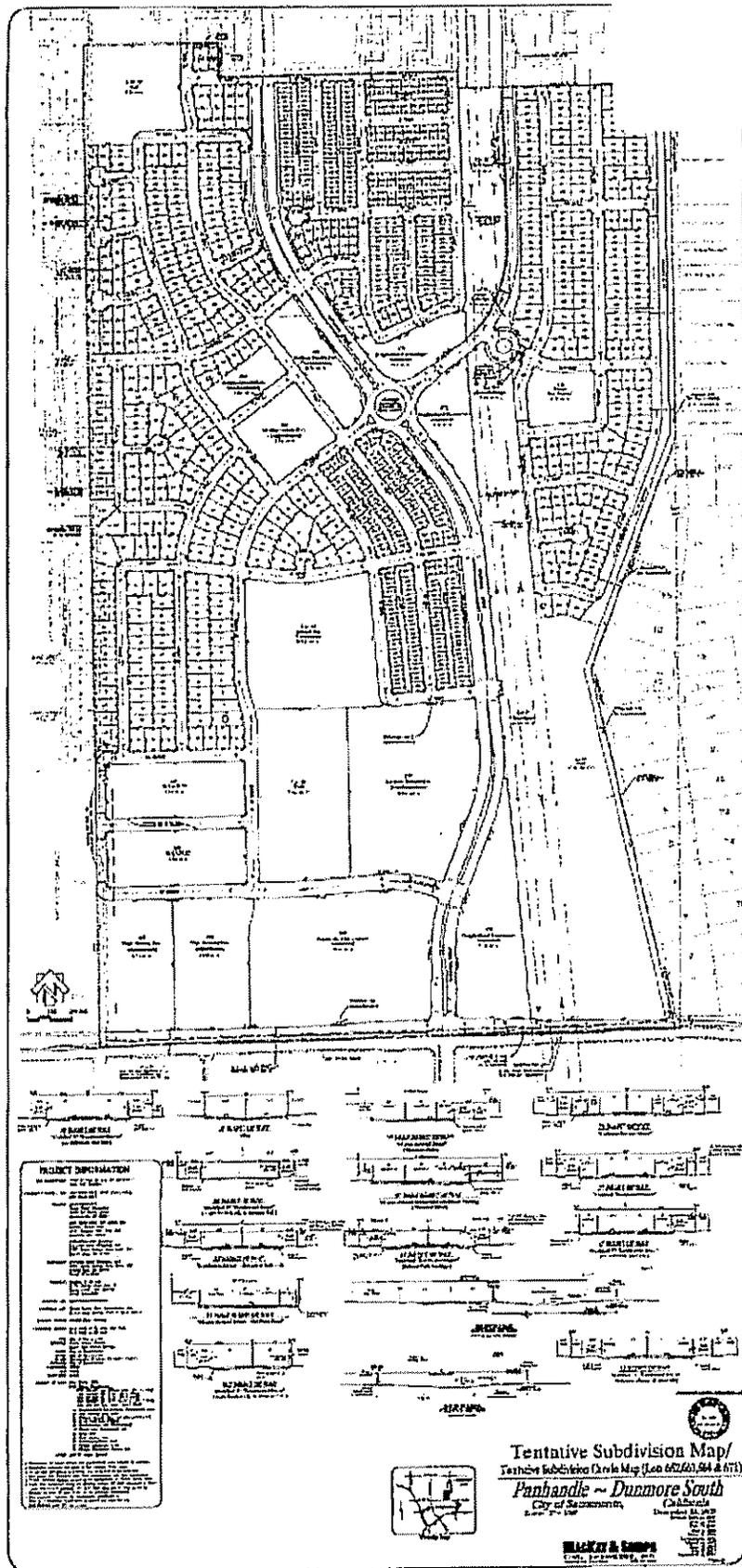
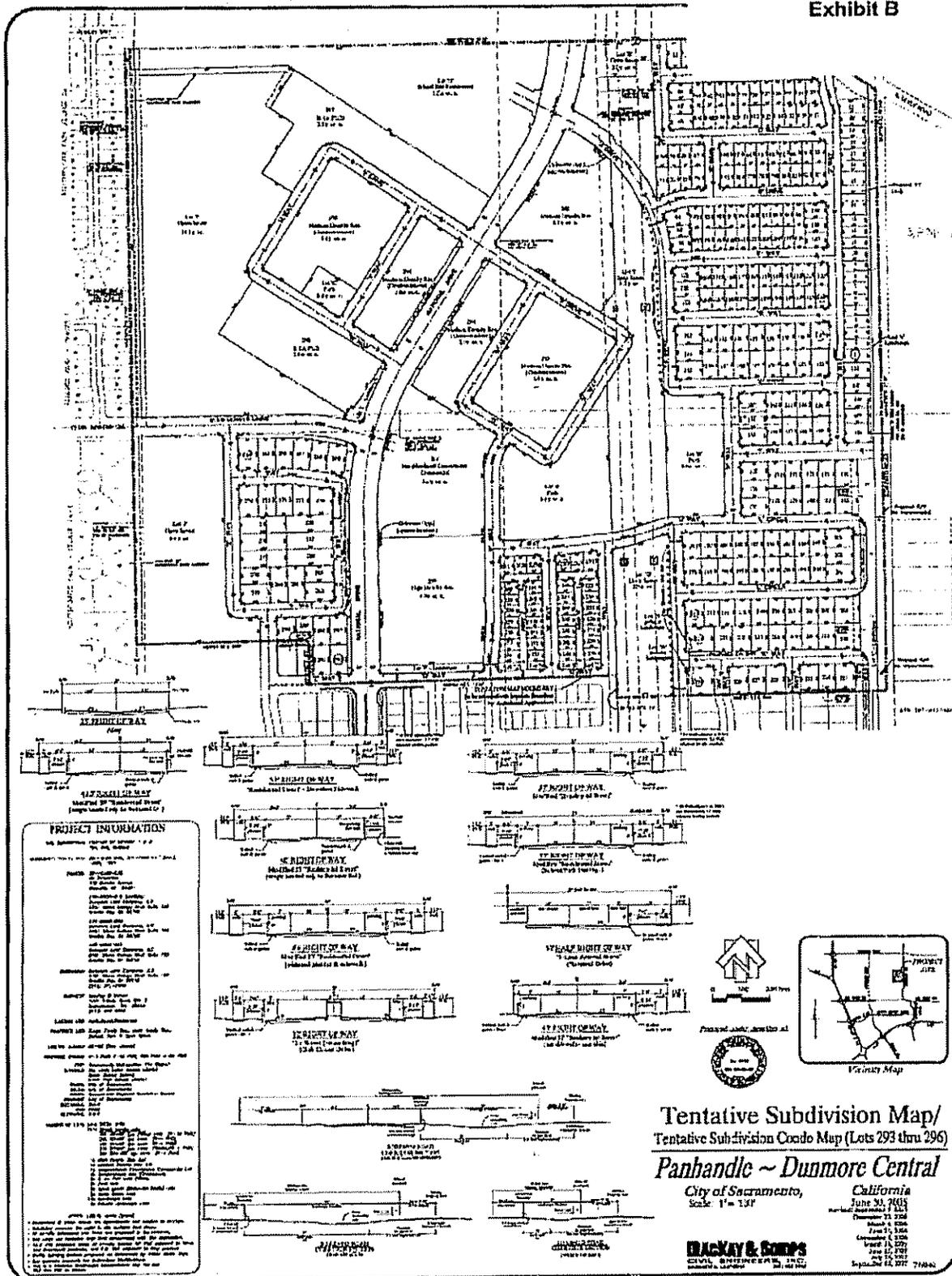


Exhibit B



## **EXHIBIT C**

### **SPECIAL CONDITIONS**

#### **I. PURPOSE AND INTENT**

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

In order to achieve its objectives, and in order to obtain from each LANDOWNER and developer, all required contributions, fees, land transfers, agreements, and other mechanisms required to implement its terms, the NNCP provides that all rezoning and development shall occur through the planned unit development process. Development agreements should be entered into with LANDOWNERS whenever feasible under the circumstances.

Under no circumstances can development of the Property proceed without satisfaction of the conditions specified in this exhibit. These Special Conditions shall constitute binding and legally enforceable obligations of LANDOWNER and its successors and assigns, and binding and legally enforceable requirements and conditions for the development of the Property, in addition to other obligations, requirements and conditions imposed during the rezoning, special permit, subdivision map and other land use entitlement processes.

#### **II. LANDOWNERS' OBLIGATIONS**

##### **A. Mitigation Monitoring; Habitat Conservation Plan.**

1. **Mitigation Monitoring.** When required in order to obtain entitlements, LANDOWNER shall execute a mitigation monitoring agreement, and such other agreements as may be necessary in CITY's judgment in order to implement any mitigation measure relating to the NNCP and any mitigation monitoring plans applicable to the Property, and shall fully cooperate with CITY in implementing any mitigation monitoring plan adopted as part of the approval process for development of the Property.

##### **2. Habitat Conservation Plan.**

a. Relative to the Habitat Conservation Plan that has been adopted by CITY, LANDOWNER shall be obligated to undertake and exercise one of the following options:

(i) participate in that Plan by payment of the fees applicable to LANDOWNER and/or the Property or provide required proportionate land dedications, at the time specified in the Plan

for payment of fees or dedication of required proportionate lands;  
or

- (ii) obtain and present to CITY a duly issued, executed and effective incidental take permit issued by federal and state agencies charged with implementation of the provisions of federal and state Endangered Species Acts, which would allow development of the Property; or
- (iii) obtain and present to CITY a duly issued, executed, and effective form of document from said federal and state agencies that development of the Property may proceed without the need for an incidental take permit; or
- (iv) participate in such other plan or program which has been approved by said federal and state agencies; or
- (v) take any other action required by CITY in its sole discretion, relating to satisfaction of all applicable laws, including but not limited to CEQA and the federal and state Endangered Species Acts, where none of the provisions of subsections (i), (ii), (iii) or (iv) are applicable.

- b. The Natomas Basin Habitat Conservation Plan Fee is payable by Landowner at the time of and as a condition of issuance of a grading or building permit. The dollar amount of such fee shall be the per-acre fee in effect at the time the grading or building permit is issued for the Property. In addition to the payment of that sum, Landowner shall be subject to the provisions of any "catch-up fee" ordinance, resolution, rule or regulation in effect at the time of issuance of the grading or building permit. The requirement specified in this subsection 2b shall be included in each entitlement issued with respect to the Property. Landowner understands and agrees that the provisions of Government Code sections 66000 through 66025, as those sections are amended, renumbered or reconstituted, shall not apply to the fees covered by this subsection 2b.

**B. Agreements With Other Agencies.** As required by CITY, LANDOWNER shall enter into agreements with other affected agencies, including but not limited to:

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

2. Reclamation District 1000, if in CITY's sole and exclusive discretion and judgment such an agreement is in fact required, or any other agreement which is required in CITY's sole and exclusive discretion and judgment for the implementation of the Comprehensive Drainage Plan and the construction and operation of the Drainage System.
- C. **Drainage Sub-basin Agreement** LANDOWNER shall enter into an agreement with each of the other landowners within the Drainage Sub-basin within which the Property lies, which provides the manner in which the Infrastructure required for development of all of the lands within said Drainage Sub-basin shall be constructed and financed. As an alternative form of compliance with this provision, LANDOWNER may enter into an agreement with CITY, satisfactory to the City Attorney, which provides that LANDOWNER shall finance all costs associated with the Infrastructure required for development of all of the undeveloped lands within said Drainage Sub-basin. Any such agreement shall additionally provide for reimbursement in accordance with the terms of this Agreement, and the Panhandle Finance Plan, for LANDOWNER's payment of Infrastructure costs in excess of or beyond those required for development of the Property, as that term is defined in Section 8 of this Agreement. As a further alternative, CITY may impose a Drainage Sub-basin assessment district for purposes of financing the required Infrastructure. The provisions of subsection 6D of this Agreement shall apply in such a case.
- D. **Inclusionary Housing Requirements.** CITY has enacted a mixed income housing policy ("Policy"), as set forth in title 17, chapter 17.190 of the Sacramento City Code. If and to the extent that the Property is subject to the Policy, certain project entitlements for the Property will contain conditions which implement the Policy, including but not limited to conditions requiring an inclusionary housing plan ("IHP") and an inclusionary housing agreement ("IHA"). The IHP for the property, where the Policy is applicable, is attached to this Exhibit C as **Exhibit C-1**, and incorporated herein by this reference. The requirements specified in the IHP shall be implemented by LANDOWNER, and LANDOWNER shall execute the required IHP.
- E. **Public Agency Radio and Microwave Communications System.** Notwithstanding LANDOWNER's Vested Rights and anything contained herein to the contrary, CITY may deny or condition an application for a Building Permit or impose a height restriction as a condition of approval of a tentative map or design review, even though that development application would otherwise be permitted under the Land Use and Development Regulations, in order to avoid interference with the radio and microwave communications systems operated by the Sacramento Regional Radio Communications Systems (SRRCS), the Automated Local Evaluation in Real Time (ALERT) system and the State of California Public Safety Microwave Network. In addition, Building Permits may be conditioned on

compliance with the provisions contained in Exhibit "I", Public Safety Radio Communication Requirements for Buildings.

These systems are emergency and weather communication facilities that serve federal, state, county, CITY and other Public Agencies and are used to protect the public health, safety and welfare. These systems are in existence as of the Effective Date, the systems' radio and microwaves cross the Property, and the operations of one or more of these systems could experience interference if the Project is developed as permitted under the Land Use and Development Regulations. In addition, any other radio or microwave communications systems that may be installed by one or more of the foregoing agencies after the Effective Date may be similarly protected by the CITY from interference from Development of the Project by denying or conditioning any Subsequent Approvals.

### III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

- A. In addition to other findings and conditions as may be deemed applicable, no special permit, subdivision map or other land use entitlement for the Property shall be approved unless the approving body either: (1) makes the following findings; or (2) expressly waives such findings, in whole or in part, as not applicable to the Property and stating the reasons therefor with such waiver and the reasons therefor appear in the record or document of approval. These findings are:
1. The approval of the proposed project is consistent with the policies, goals, standards and objectives of the NNCP and other relevant factors and circumstances, including but not limited to:
    - a. The adequacy of the required interim and permanent Infrastructure needed to support the project planned for the Property;
    - b. The extent of participation required of LANDOWNER under the Panhandle Finance Plan has been secured;
    - c. The extent to which LANDOWNER has complied with the provisions of the PLAP
    - d. The extent to which LANDOWNER has complied with the provisions of the Policy.
  2. The Panhandle Finance Plan has been adopted by the City Council.
  3. All transfers of land, owned by or under the control of LANDOWNER, which are specified in the PLAP as being necessary for public purposes, have been transferred to CITY or to the appropriate public agency. For this purpose, a transfer will be deemed to occur upon delivery to CITY of an

Irrevocable Offer of Dedication in form and manner approved by the City Department of Public Works and the City Attorney. These dedications include, but are not limited to streets, utilities, drainage facilities and public transit.

4. LANDOWNER has, where applicable, demonstrated that the proposed project as designed meets or exceeds the jobs to housing ratio of the NNCP, either actually or through the medium of the Housing Trust Fund, or through assisting housing starts in North Sacramento, or a combination thereof.
  5. LANDOWNER has entered into all agreements required pursuant to sections IIA, IIB, and II C above.
  6. Appropriate environmental review of the proposed project has been completed, and any suggested mitigation measures resulting therefrom have been included in the approval of the project to the extent feasible.
- B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the proposed project if all of the following conditions can be satisfied with respect to each such special finding not made:
1. Practicable and feasible requirements or mitigation measures can be imposed upon the project, the implementation of which would allow such special finding to be made;
  2. The applicant has agreed to be bound (through written agreement satisfactory to the City Attorney) by and to implement such requirements or mitigation measures, and has posted such security for compliance therewith as may be required by the City Manager; and
  3. It is in the public interest and consistent with the policies, goals, standards and objectives of the Community Plan for the project to be approved with such requirements and mitigation measures.

# **EXHIBIT C-1**

## **INCLUSIONARY HOUSING PLAN**

**Inclusionary Housing Plan  
Panhandle – Central and Panhandle-South Tentative Maps  
Within the Panhandle PUD  
Dunmore Homes  
September 19, 2007**

**Proposed Project**

Dunmore Homes, LLC owns or has the right to acquire and is the developer ("Developer") of that certain real property in the City of Sacramento (upon annexation) in which the Developer proposes to develop and construct the Panhandle-Central and Panhandle-South tentative maps ("Development Project") within the larger Panhandle Planned Unit Development project area. The Panhandle Central Tentative Map and Panhandle South Tentative Map include 390± acres. The Panhandle PUD Schematic Plan is shown in Exhibit A and the Panhandle Central and Panhandle South tentative maps are shown on Exhibits B and C, respectively.

The 390± acre (gross) Development Project is located north of Del Paso Road and west of Sorento Road in the North Natomas Community. The Development Project consists of 2,272 dwelling units (the "Residential Project") in a mix of residential unit types (detached and attached units), an elementary school, commercial sites, park sites, open space detention and an open space parkway.

**Mixed Income Housing Policy**

The Development Project site is located in a new growth area and the Development Project is subject to the City's Mixed Income Housing Policy. The Mixed Income Housing Policy adopted in the City of Sacramento Housing Element and required by the City's Mixed Income Housing Ordinance, City of Sacramento City Code Chapter 17.190 requires that ten percent (10%) of the total units in a Residential Project be affordable to very low income households and five percent (5%) for low income households (the "Inclusionary Requirement" and "Inclusionary Units"). The Developer proposes that this inclusionary obligation be met on-site.

Pursuant to the City Code Section 17.190.110 (B), an Inclusionary Housing Plan ("Plan") must be approved prior to or concurrent with the entitlements for the Project. City Code Section 17.190.110 (A) sets forth the number, unit mix, location, structure type, affordability and phasing of the Inclusionary Units in the Project. This document constitutes the Plan, and, as supplemented and amended from time to time, is intended to begin implementation of the Inclusionary Requirement for the Project. All future

approvals (i.e. special permits, site development plans, etc.) for the Project shall be consistent with this Inclusionary Housing Plan.

The Inclusionary Requirement for the Project will be set forth in more detail in the Inclusionary Housing Agreement executed by the Developer and the Sacramento Housing and Redevelopment Agency ("SHRA") and recorded against all the residential lots in the Development Project. The Inclusionary Housing Agreement shall be executed and recorded no later than the approval of the first final map for the subdivision or construction phase, or, in the case of an amendment, immediately upon execution by SHRA and Developer. The Inclusionary Housing Agreement will describe with particularity the site and building schematics and financial arrangements for the construction and financing of the Inclusionary Units, pursuant to Section 17.190.110(C). The Inclusionary Housing Agreement shall be consistent with this Plan.

**Residential Numbers**

The Developer, or its successors and assignees, shall construct or cause to be constructed a number of dwelling units affordable to Very Low Income Households ("Very Low Income Units") and Low Income Households ("Low Income Units") as defined in the Sacramento City Code Section 17.190.020, equal to ten percent (10%) and five percent (5%) of the total number of housing units approved for the Residential Project, respectively.

Based on the current Development Project proposal of 2,272 units in the Residential Project, the Inclusionary Requirement for the Project is 341 units consisting of 227 units for Very Low Income (10%) and 114 units for Low Income (5%).

**Table 1  
Inclusionary Housing Obligation**

Total Number of Units within the Project	2,272
Very Low Income Units (10% of units)	227
Low Income Units (5% of units)	114
Total Number of Inclusionary Units	341

If the Development Project approvals or entitlements are amended to increase or decrease the number of units in the Project, this Plan will be amended to reflect a number equal to ten percent (10%) of the new total residential units in the amended entitlements for Very Low Income units and five percent (5%) for Low Income units. However, after a building permit has been issued for a structure to contain Inclusionary Units, those Units will be constructed and maintained as Inclusionary Units pursuant to the terms of Chapter 17.190 of the City Code, regardless of any subsequent reduction in the number of approved total residential units in the Development Project.

**Receiver Site for Grant Joint Union High School District's Units**

Planning Area 16 of the Development Project will be the receiver site for Inclusionary Units from the Grant Joint Union High School District (Grant) property located within the Panhandle PUD project area. Planning Area 16 will accommodate seven (7) Inclusionary Units from Grant consisting of five (5) units for Very Low Income and two (2) units for Low Income, as shown in Table 2.

**Table 2  
Inclusionary Units from Grant Property**

Planning Area	Housing Type	Total Units in Planning Area	Inclusionary Units			Type of Unit
			Very Low Income Units	Low Income Units	Total	
16	Apartments	112	5	2	7	Rental
Total			5	2	7	

**Units by Type and Tenure**

232 Very Low Income multifamily rental units and 93 Low Income multifamily rental units will be constructed on-site and will be located in the following planning areas of the Development Project:

**Table 3  
Distribution of Multifamily Rental Inclusionary Units**

Planning Area	Housing Type	Total Units in Planning Area	Very Low Income Units	Low Income Units	Market Rate Units	Unit Distribution	Unit Type
9	Family Apartments	87	31	44	12	0% to 30%	1 Bedroom
						30% to 70%	2 Bedroom
						20% to 40%	3 Bedroom
16	Family Apartments	112	76	24	12	0% to 30%	1 Bedroom
						30% to 70%	2 Bedroom
						20% to 40%	3 Bedroom
29	Senior Apartments	150	125	25	0	50% to 75%	1 Bedroom
						25% to 50%	2 Bedroom
Total		349	232	93	24		

Planning Area 16 includes Inclusionary Units from Grant Property.

Twenty-three (23) multifamily ownership inclusionary units will be constructed on-site and will be located in Planning Area 26, as shown on Exhibit D.

**Table 4  
Distribution of Multifamily Ownership Inclusionary Units**

Planning Area	Housing Type	Total Units in Planning Area	Very Low Income Units	Low Income Units	Market Rate Units	Unit Distribution	Unit Type
26	Condominiums	181	0	23	158	0% to 30%	1 Bedroom
						30% to 70%	2 Bedroom

**Location of Inclusionary Units within Development Project**

Multifamily Rental Inclusionary Units

The 232 Very Low Income Inclusionary Units shall be rental units located within the Development Project in three multi-family developments located in Planning Areas 9, 16 and 29, as shown on Exhibit D. As part of the Development Project, the three sites (Planning Areas) that contain Very Low Income units will be zoned High Density Residential which allows the development of multi-family residential units. The Very Low Income units shall be dispersed throughout the three multi-family communities and include a mix of unit sizes proportional to the sizes.

Ninety-three (93) Low Income Inclusionary Units will be offered as rental units within three multi-family developments in Planning Areas 9, 16 and 29, as shown on Exhibit D. As part of the Development Project, the three sites (Planning Areas) that contain Low Income units will be zoned High Density Residential, which allows the development of multi-family residential units. The Low Income units shall be dispersed throughout the three multi-family communities and include a mix of unit sizes.

Affordable housing developer(s) will develop, construct, own and manage the multi-family community that contains the Very Low Income and Low Income rental Inclusionary Units.

Multifamily Ownership Inclusionary Units

Multi-family ownership Inclusionary Units shall be located within the Development Project in Planning Area 26 located west of National Drive, as shown on Exhibit D. A builder will construct condominium units on Planning Area

26 that will contain the ownership units. Twenty-three (23) Low Income ownership units will be constructed in Planning Area 26 and will be comprised of unit numbers 2, 10, 14, 27, 39, 43, 51, 64, 70, 76, 79, 84, 91, 127, 134, 139, 143, 151, 157, 160, 166, 171 and 180.

The location of the Inclusionary Units within the Development Project are subject to Amendment, consistent with Section 17.190.110 B(1) of the Mixed Income Ordinance.

### **Affordability Requirements**

The 232 multi-family rental units affordable to Very Low Income households will be restricted to occupancy by households with incomes that, at the time of occupancy, do not exceed fifty percent (50%) of the Sacramento area median income, adjusted for family size. Monthly rents for these units shall not exceed one twelfth of thirty percent (30%) of fifty percent (50%) of the Sacramento area median income, adjusted for family size.

The 93 multi-family rental units affordable to Low Income households will be restricted to occupancy by households with incomes that, at the time of occupancy, do not exceed eighty percent (80%) of the Sacramento area median income, adjusted for family size. Monthly rents for these units shall not exceed one twelfth of thirty percent (30%) of eighty percent (80%) of the Sacramento area median income, adjusted for family size.

The 23 multi-family ownership units affordable to Low Income households will be restricted to ownership by households with incomes that, at the time of purchase, do not exceed eighty percent (80%) of the Sacramento area median income, adjusted for family size. Affordable sale prices shall be calculated where the low income households do not pay more than 35% of its household income for all housing costs (which include mortgage principal and interest payments, taxes, insurance, assessments, and homeownership fees, if applicable).

### **Term of Affordability**

The term of affordability for the Inclusionary Housing Units will be a minimum of 30 years from the date of recordation of the Inclusionary Housing Agreement.

### **Fee Waiver Incentives**

Pursuant to Section 17.190.040 of the Ordinance, the City may make available a variety of incentives to offset the cost of providing Inclusionary

Housing Units. Subsection A allows the provision of fee waivers or deferrals for Inclusionary Housing Units. Depending on fund availability, the City of Sacramento provides development fee reductions for the Inclusionary Units in the amount of \$4,000 for Very Low Income Inclusionary Housing Units and \$1,000 for Low Income Inclusionary Housing Units.

### **Financing Incentives**

Sacramento Housing and Redevelopment Agency (SHRA) administers a Multi-family Lending Program (Program). The Program offers "gap" financing, in the form of a loan, for the development of multifamily rental housing in the City of Sacramento (City). Gap financing is defined as the difference between total development cost and the maximum potential equity and debt raised from private and public sources other than the Agency. In the case of a multi-family development meeting an inclusionary housing obligation, the master developer(s) is required to provide the land at no cost plus an average per unit contribution of approximately \$15,000. Only after these conditions are met, and a gap remains, is financial assistance considered.

The Panhandle inclusionary housing requirement is an obligation of the master developer(s) and SHRA is in no way required to assist the developer in meeting this obligation. A funding priority under the Program is new construction of housing, in which at least fifty percent (50%) of the units are subject to a city inclusionary housing program. A mix of housing types within new developments is encouraged by the City and SHRA.

Ownership housing is encouraged by the City and Dunmore has agreed to provide ownership housing within the development as part of their inclusionary obligation.

A financing gap consistently exists between the construction costs and sales prices for affordable ownership homes even with a land dedication; and due to available funding source requirements and regulations, SHRA is not able to offer financial assistance in filling this gap as can be provided in affordable multifamily developments.

Dunmore is meeting their inclusionary housing obligation through the construction of 341 multifamily units. The affordable multi-family units being created as part of the Dunmore's inclusionary housing obligation in the Panhandle PUD are eligible for gap funding through the Program. Dunmore will be required to provide the land, at no cost, for the projects that contain the inclusionary units. In the event that an additional developer contribution of \$15,000 is required for the rental inclusionary units, Dunmore shall only be responsible for the subsidy of 295 (318 inclusionary rental units less 23 inclusionary ownership units) of those units and SHRA shall be responsible for the subsidy on the remaining 23 units.

**Phasing/Linkages of the Development Project to the Inclusionary Units**

The Inclusionary Units shall be developed concurrently with the development of the remaining units within the Residential Project in the Development Project, as defined in Sacramento City Code Section 17.190.020. The nature of the concurrency is defined by a series of linkages between approvals of the market rate units and the development of the Inclusionary Units.

The following describes the relationship of market rate development activity to the activity of Inclusionary Unit development activity. These milestones are outlined to ensure that development of Inclusionary Units occur concurrent with development of market rate units.

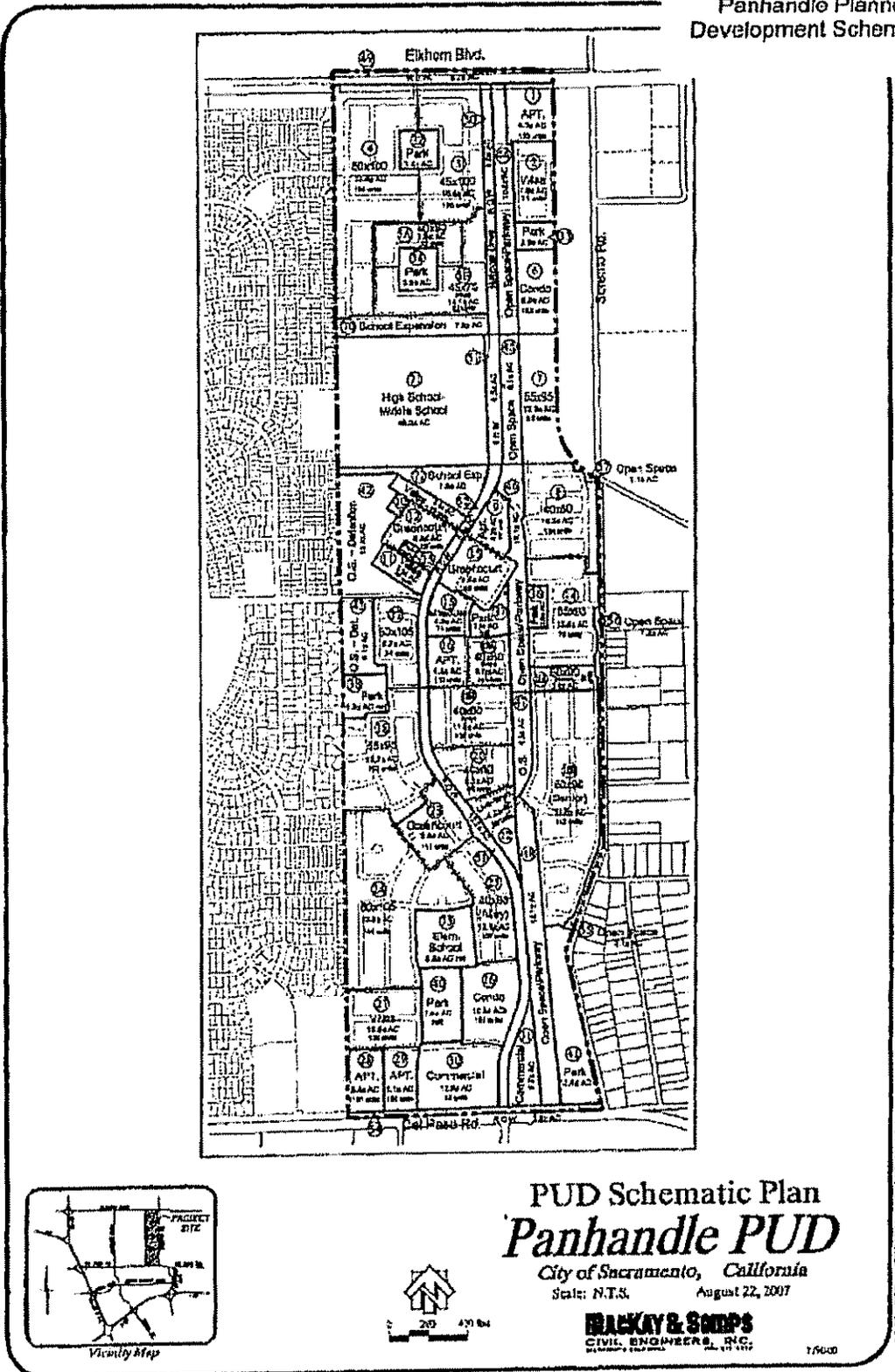
<b>Market Rate Activity</b>	<b>Inclusionary Approval Linkage</b>
Approval of legislative entitlements (rezone, community plan amendment, general plan amendment, tentative maps) for Panhandle PUD.	Approval of Inclusionary Housing Plan.
Approval of Panhandle South large lot final map or Panhandle Central large lot final map.	Execution of Inclusionary Housing Agreement.
Recordation of large lot final map for Development Project.	Recordation of Inclusionary Housing Agreement AND transfer of Planning Areas 9, 16 and 28 to affordable housing developer.
Issuance of building permits in excess of 50% of market rate units in Development Project.	Issuance of building permits for 100% of all of the Inclusionary Housing Units.
Remaining 50% of building permits for market rate units in the Development Project may be issued.	After issuance of all building permits for the Inclusionary Housing Units.
Marketing of the market rate units in Development Project.	Marketing of Inclusionary Housing Units.

**Amendment and Administration of the Inclusionary Housing Plan**

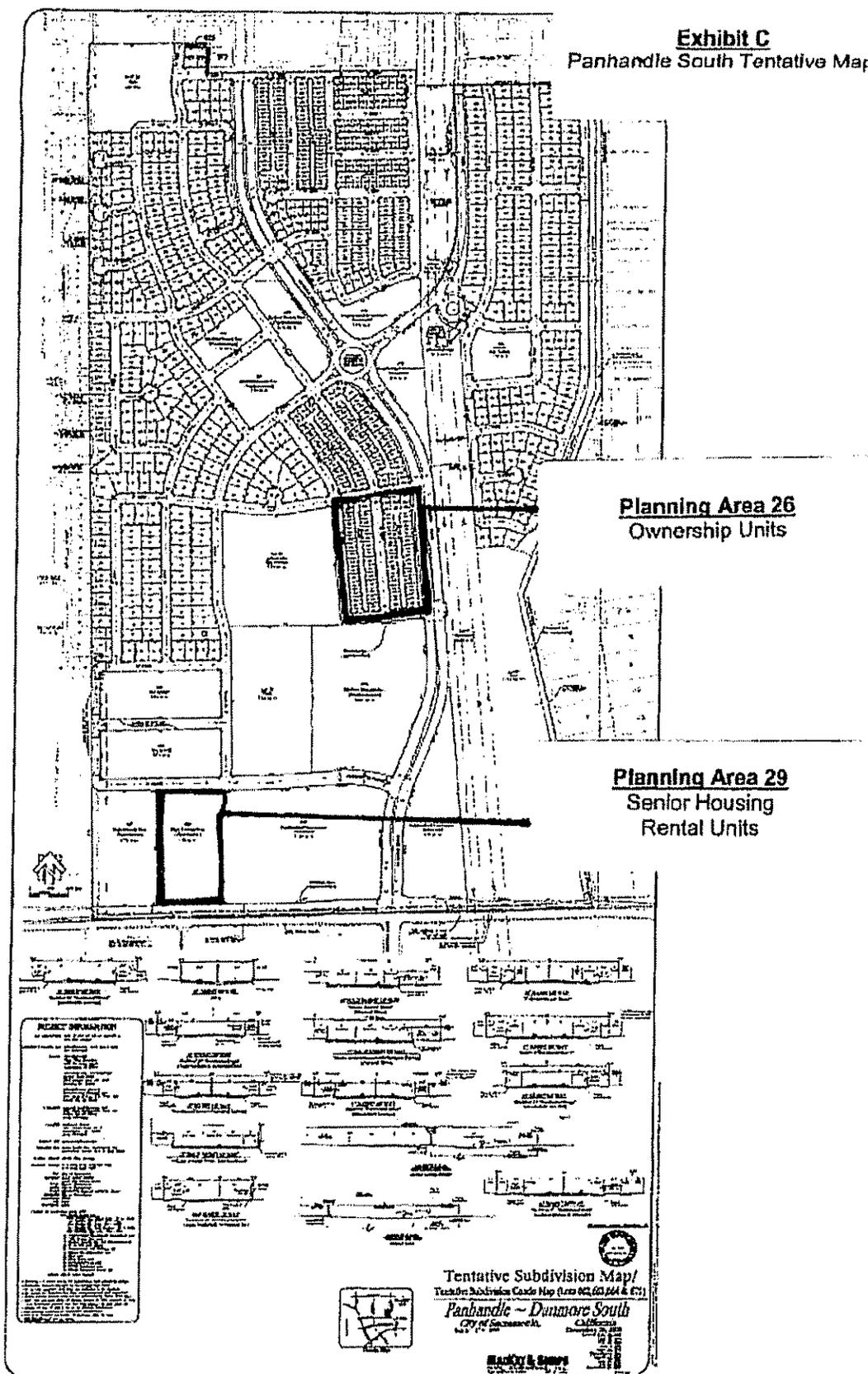
The Planning Director, with the advice of the Executive Director of SHRA, shall administer this Inclusionary Housing Plan. The Planning Director may make minor administrative amendments to the text of this Plan as provided in Sacramento City Code Section 17.190.110B(1).

- Exhibit A Panhandle Planned Unit Development Plan Schematic Plan
- Exhibit B Panhandle - Central Tentative Map
- Exhibit C Panhandle -- South Tentative Map
- Exhibit D Location of Inclusionary Units in Development Project

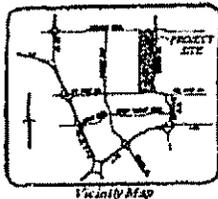
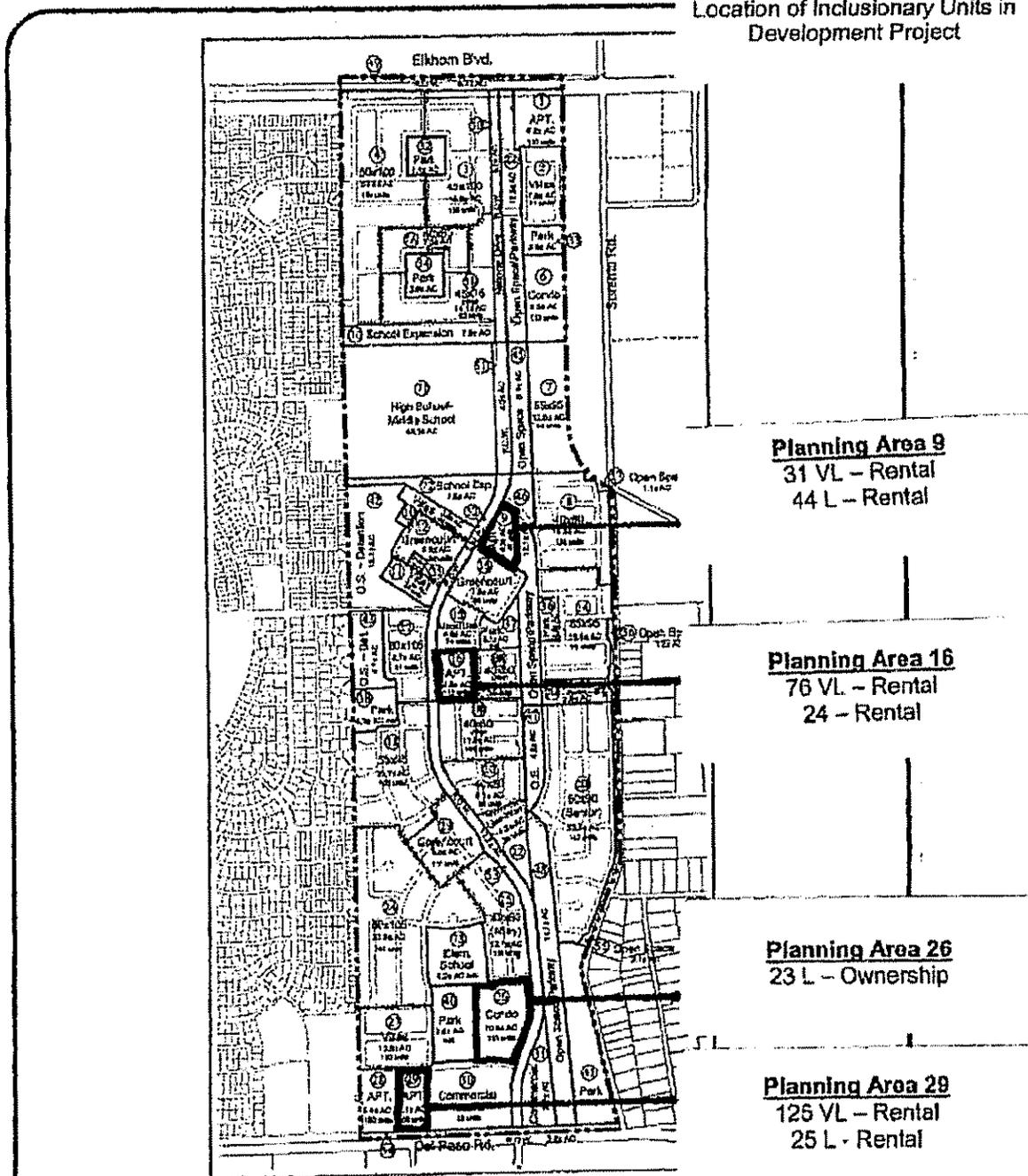
**Exhibit A**  
Panhandle Planned Unit  
Development Schematic Plan







**Exhibit D**  
Location of Inclusionary Units in  
Development Project



PUD Schematic Plan  
**Panhandle PUD**

City of Sacramento, California  
Scale: N.T.S. August 22, 2007

**TRACKAY & SORNS**  
CIVIL ENGINEERS, INC.

779-10

# EXHIBIT D

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "this Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_ (herein "LANDOWNER") 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 North Natomas Community 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 LANDOWNER 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 LANDOWNER and ASSIGNEE that, upon the execution of this Agreement, ASSIGNEE shall become substituted for LANDOWNER 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:

**Assignment.** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous

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

4. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s).
5. 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.
6. 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) LANDOWNER has furnished ASSIGNEE with a copy of the North Natomas Community Plan, the Comprehensive Drainage Plan, the Panhandle Finance Plan, the RD-1000 Agreement (where applicable), the Habitat Conservation Plan, and all other documents

and materials containing or relating to terms and conditions of development in the NNCP area; (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"

**EXHIBIT E**  
**PANHANDLE LAND**  
**ACQUISITION PROGRAM**  
**(PLAP)**

[NOT APPLICABLE]

## EXHIBIT F

### Protest Waiver Provisions Agreed to by LANDOWNER

LANDOWNER understands and agrees that financing of the Infrastructure, public improvements and facilities (including the land covered by the PLAP) and other programs required under the NNCP will be accomplished through a variety of financing mechanisms, including but not limited to a combination of special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts) and developer fees, all of which mechanisms are designed to spread the cost of those items in accordance with benefit and other methodologies. LANDOWNER further understands and agrees that an important component of this Agreement is LANDOWNER's advance consent to the formation of, annexation into, or implementation of any such district or imposition of any such fee, and LANDOWNER's agreement not to protest or contest such formation, implementation or fee imposition.

Accordingly, LANDOWNER agrees for itself, its constituents, successors and assigns that it fully, finally and forever waives and relinquishes any right it may have to protest or contest the formation or implementation of, or participation in, any special assessment or tax district or any similar form of financing mechanism, or any combination thereof, together with any rights it may have to contest the imposition of any developer fee established or imposed pursuant to the Panhandle Finance Plan. Nothing in this Agreement, however, shall prevent LANDOWNER from presenting CITY any information or opinions regarding any financing mechanism CITY may from time to time consider establishing or imposing, which information or opinions relate to the dollar amount of any fees, assessments, taxes or other charges imposed by CITY pursuant to the Panhandle Finance Plan, or which information or opinions relate to the question of consistency of the financing mechanism with the Panhandle Finance Plan. If a financing mechanism is proposed for adoption by CITY, which mechanism directly and significantly conflicts with the language and the intent of the Panhandle Finance Plan, as it may be amended from time to time, LANDOWNER shall have the right to protest only the actual amount of the directly and significantly conflicting proposed fee, charge, special tax, or assessment proposed to be levied, charged, assessed or taxed against the Property by virtue of the proposed financing mechanism. Provided, however, that LANDOWNER's said right to protest, together with any right to object, shall be waived unless LANDOWNER's protest of objection is made at or before the time of the public hearing wherein the proposed financing mechanism, together with the fee, charge, special tax or assessment is established by the City Council. LANDOWNER's right to judicial challenge of any such mechanism, and the fees, charges, assessments or special taxes imposed or to be imposed in connection therewith, shall be limited to review of the decision of the City Council establishing the said mechanism and the said fees, charges, assessments or special taxes; LANDOWNER shall not have the right, in connection with any land use entitlement proceeding with respect to the Property, to judicially challenge the financing mechanism or the fees, charges, assessments or special taxes as applied to the Property, and waives any statutory or common law right to pay such fees, charges, assessment or special taxes under protest. For purposes of this Agreement, "fees, charges, assessments or special taxes" shall include any monetary exaction or payment required to be paid by LANDOWNER by virtue of or relating to development of the Property.

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

- (1) Waives, and hereby grants advance consent to the formation of, or annexation into, and implementation of any and all special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), fee districts or other financing mechanisms of a similar nature recommended or established by CITY for the purpose of financing Infrastructure, public improvements and facilities (including land transfers as set forth in the PLAP). Such financing mechanisms may include but are not limited to the following existing Community Facilities Districts: CFD No. 99-01 TMA (Transit), CFD No. 97-01 (Drainage), CFD No. 3 (Parks Maintenance), CFD No. 99-02 (Landscape Maintenance), CFD No. 2002-02 (Parks Maintenance), and the Citywide Lighting and Landscape District; and a new Panhandle Parks Maintenance CFD that will be formed to cover maintenance costs for Quimby dedications in excess of those covered by CFD No. 2002-02. Without limiting the generality of the foregoing, LANDOWNER specifically waives:
  - (i) the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (division 4 of the Streets and Highways Code, beginning at section 2800), together with associated provisions of the California Constitution;
  - (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism; and
  - (iii) the provisions of any procedure embodied in the Sacramento City Code designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism.
  
- (2) Waives, and hereby grants advance consent to the formation and implementation of any and all special fees, exactions, development fees, assessments, taxes or other charges established by CITY for the purpose of financing Infrastructure, public improvements and facilities (including land transfers as set forth in the PLAP). Without limiting the generality of the foregoing, LANDOWNER specifically waives:
  - (i) to the extent applicable, those statutory and constitutional provisions specified in paragraph (1) above; and
  - (ii) the provisions of Government Code section 66000 et seq. or any other provision of law providing a procedure for contest or protest of establishment or imposition of special fees, exactions, development fees, assessments, taxes or other charges of a similar nature.

(3) Agrees to:

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

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

## **EXHIBIT G**

# **IRREVOCABLE OFFER OF DEDICATION FORM**

**SEE ATTACHED**

RECORDED FOR THE BENEFIT OF  
THE CITY OF SACRAMENTO  
(Fee Exempt Under Gov. Code, § 6103)

WHEN RECORDED RETURN TO:

DEVELOPMENT SERVICES DEPARTMENT  
ATTN: JERRY LOVATO  
1231 "I" STREET, RM. 200  
SACRAMENTO CA 95814

**IRREVOCABLE OFFER TO DEDICATE**

The undersigned hereby certifies that we are the legal owners of, or are parties having an interest in, the hereinafter-described real property; and the undersigned, for themselves and their heirs, successors, and assigns, do hereby irrevocably offer to dedicate to the **City of Sacramento**, a municipal corporation, [in fee title] [an easement for public road and public utilities on, under, over, and across] the hereinafter-described real property located in the City of Sacramento, County of Sacramento, State of California, described as follows:

**SEE EXHIBIT "A," LEGAL DESCRIPTION, AND EXHIBIT "B," PLAT, ATTACHED HERETO AND MADE A PART HEREOF.**

Reserving, however, unto the undersigned and their heirs, successors, and assigns any and all present lawful uses of the above-described real property until such time as the City Engineer of the City of Sacramento gives written notice that the above-described real property will be improved for public purposes; and it is also hereby understood and agreed by the undersigned and their heirs, successors, and assigns that any improvements hereinafter placed by them in or upon the above-described real property shall be removed without cost or expense to the City of Sacramento. Until such notice is given by the City Engineer, the undersigned and their heirs, successors, and assigns agree to assume full responsibility or liability for any injury or damage to any person or property on the above-described real property or arising out of its use or occupancy by them. It is also hereby understood that all work to be done in or upon the above-described real property shall be done under permit and done in accordance with plans to be furnished by the principal and approved by the City Engineer of the City of Sacramento, and in accordance with the specifications of the City Engineer of the City of Sacramento.

The dedication offered hereunder shall be complete upon its acceptance by the City Engineer of the City of Sacramento.

Witness \_\_\_\_\_ hand this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

By: \_\_\_\_\_

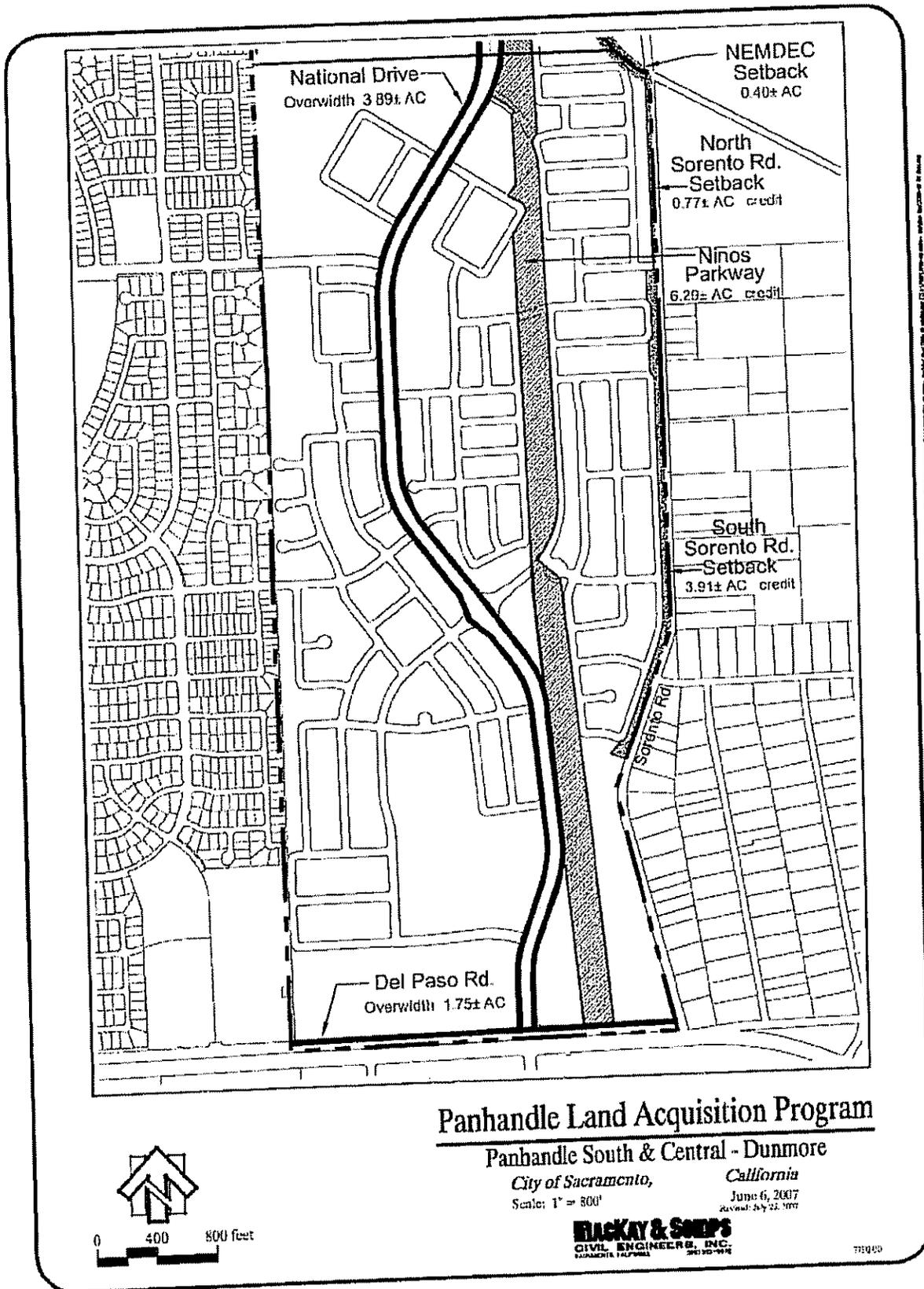
By: \_\_\_\_\_

(ATTACH NOTARY ACKNOWLEDGMENT)

## **EXHIBIT H**

# **MAP AND CATEGORICAL LISTING OF LAND AND INFRASTRUCTURE**

**SEE ATTACHED**



### Panhandle Land Acquisition Program

Panhandle South & Central - Dunmore

City of Sacramento,

California

Scale: 1" = 800'

June 6, 2007  
Revised: July 21, 2007

**RACKAY & SORP**  
CIVIL ENGINEERS, INC.  
SACRAMENTO, CALIFORNIA

77900



**Panhandle  
Land Acquisition Program  
September 10, 2007**

**Street Overwidth (per North Natomas Nexus Study, Figure VI-4)**

Street	Overwidth (feet)	Length (feet)	Acreage	Ownership
Elkhorn Blvd (136' ROW)	58	2,241	3.0	Krumenacher
National Drive (100' ROW)	24	2,530	1.4	Krumenacher
National Drive (100' ROW)	24	1,320	0.7	Grant
National Drive (100' ROW)	24	7,060	3.9	Dunmore
Del Paso Road (110' ROW)	29	2,632	1.8	Dunmore
TOTAL OVERWIDTH			10.7	

**NEMDEC Setback**

Ownership	Acreage
Krumenacher	1.6
Grant	1.1
Dunmore	0.4
TOTAL	3.1

**Ninos Parkway**

Ownership	Acreage	LAP Credit
Krumenacher	9.8	2.40
Grant	6.1	1.30
Dunmore	27.9	6.30
TOTAL	43.8	10.00

**Sorento Road Interface**

Ownership	Acreage	LAP Credit
Dunmore	4.7	4.7
TOTAL	4.7	4.7

## EXHIBIT I

# PUBLIC AGENCY RADIO AND MICROWAVE COMMUNICATION SYSTEM

The following requirements may be imposed at the time of application for a Building Permit.

- A. **General.** Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to, any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage for the Sacramento Regional Radio Communications System (SRRCS), including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following: (1) a minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest Sacramento Regional Radio Communications System site; (2) a minimum signal strength of -95 dBm received at the closest Sacramento Regional Radio Communications System site when transmitted from 90% of the area of each floor of the building; (3) the frequency range that much be supported shall be the current band of frequencies used by either the City or County sub-systems; and (4) a 100% reliability factor. When measuring the performance of a bi-directional amplifier, signal strength measurements are based on one input signal adequate to obtain a maximum continuous operating output level.
- B. **Amplifications Systems Allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned so that they will be 35 db below the SRRCS frequencies.
- C. **Testing Procedures**
1. **Acceptance Test Procedure.** When an in-building radio system is required, and upon completion of installation, it will be the building owner's responsibility to have the radio system tested to ensure that two-way coverage on each floor of the building is a minimum of 90%. Each floor of the building shall be divided into a grid of approximately 20 equal areas. A maximum of two non-adjacent areas will be allowed to fail the test. In the event that three of the areas fail the test, in order

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

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

2. Annual Tests. When an in-building radio system is required, the building owner shall test all active components of the system, including but not limited to amplifiers, power supplies and backup batteries, a minimum of once every 12 months. Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance. Backup batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one hour test period, in the opinion of the testing technician, the battery exhibits symptoms of failure; the test shall be extended for additional one hour periods until the testing technician confirms the integrity of the battery. All other active components shall be checked to determine that they are operating within the manufacturer's specifications for the intended purpose.
3. Five-Year Tests In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five years to ensure that the radio system continues to meet the requirements of the original acceptance test. The procedure set forth above shall apply to these tests.
4. Qualifications of Testing Personnel. All tests shall be conducted, documented and signed by a person in possession of a current FCC license, or a current technician certification (minimum Associate level) issued by the Electronics Technicians Association. All original test records shall be retained on the inspected premises by the building owner and copies of the records shall be submitted to the Sacramento Fire Department via the the "Self-Help Inspection Process".

5. **Field Testing:** Police and Fire personnel, after providing reasonable notice to the owner or his representative, shall have the right to enter onto the property to conduct field-testing to be certain that the required level of radio coverage is present.
- D. **Permits:** A permit fee of \$100.00 shall be submitted to the Sacramento Fire Department along with copies of all test records.
- E. **Implementation:** Although not a condition of occupancy, the building shall be in compliance of this ordinance within 90 days of occupancy.
- F. **Penalties:** Pursuant to section 8.04.080 of the Sacramento City Code, a violation of this ordinance is a misdemeanor criminal offense and a civil penalty up to \$25,000.00 per day (for each and every day that the violation exists) can be imposed.
- G. **Exemptions:** The requirements of this Exhibit I shall not apply to buildings less than 5,000 square feet or buildings zoned for Residential 1 & 2 Family Units.
- H. **Required Path Availability of SRRCS Microwave System & Mitigation Issues:**

The SRRCS Microwave System is designed for a minimum of 99.999% availability which takes into consideration existing structures along the microwave system transmission path, obstruction from natural terrain, and environmental factors.

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

**ATTACHMENT 13 – DRAFT DEVELOPMENT AGREEMENT ORDINANCE (VAQUERO)**

**ORDINANCE NO. 2007-XXXX**

Adopted by the Sacramento City Council

Date

**APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND THE MARIE KRUMENACHER TRUST, THE ALICE KRUMENACHER TRUST, AND VAQUERO LAND HOLDINGS, LLC FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF ELKHORN BOULEVARD AND EAST LEVEE ROAD.**

(P05-077) (APN: 203-0320-016; 201-0320-025)

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 the Marie Krumenacher Trust, the Alice Krumenacher Trust, and Vaquero Land Holdings, LLC. (collectively, "the landowner"), a copy of which is attached hereto.

SECTION 2

The City Council finds:

1. The agreement is consistent with the city general plan and the goals, policies, standards and objectives of any applicable specific or community plan;
2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of any applicable specific or community plan;
3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;
5. The landowner will participate in all programs established and/or required under the general plan 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 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 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 – 82 Pages

Exhibit A – Development Agreement

**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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**PANHANDLE PUD  
DEVELOPMENT AGREEMENT**



**Panhandle PUD  
Project # P05-077**

**The Marie Krumenacher Trust  
The Alice Krumenacher Trust  
Vaquero Land Holdings, L.L.C**

Panhandle Development Agreement - Vaquero Land Holdings, et al  
11/05/07 - 43429.wpd

**FOR CITY CLERK USE ONLY**

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

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

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

# PANHANDLE PUD DEVELOPMENT AGREEMENT

## Table of Contents

### RECITALS

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

### I. DEFINITIONS

### II. TERMS AND CONDITIONS OF AGREEMENT

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

Panhandle Development Agreement - Vacuero Land Holdings, et al  
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#### FOR CITY CLERK USE ONLY

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

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

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

- E. Land Use and Development Regulations
  - (1) Regulations Applicable on Effective Date
  - (2) Future Changes in Regulations (Inconsistent)
  - (3) Future Changes in Regulations (Consistent)
  - (4) Mandated State or Federal Laws
  - (5) Effect on Agreement
  - (6) Health, Safety or Physical Risks
  - (7) Construction Standards and Permits
  - (8) City Modifications after Effective Date
- F. City Review of Applications
- G. Extension of Entitlements
- H. Allocation Procedures
- 6. Fees, Charges, Assessments and Special Taxes
  - A. City Fees
  - B. Levies Imposed by Other Jurisdictions
  - C. Implementation of the Panhandle Finance Plan
  - D. Landowner's Waivers
- 7. Reconfiguration of Parcels
- 8. Infrastructure
  - A. Construction by City
  - B. Construction by Landowner
  - C. Drainage Infrastructure
    - (1) Establishment of Financing Mechanisms
    - (2) Issuance of Bonds
    - (3) Linkage of Development to Completion of Drainage System
  - D. Infrastructure Financing Proceedings
    - (1) Landowner Initiated Proceedings
    - (2) Proceedings Initiated by City
    - (3) Maintenance Districts
  - E. Reimbursement to Landowner
    - (1) From Financing Proceeds
    - (2) Reimbursement From Others Benefitted

**FOR CITY CLERK USE ONLY**

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

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

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

- (3) Reimbursement of Planning, Engineering and Staff Costs
- 9. Landowner Obligations
  - A. Transfer of Land to City
    - (1) Condition of Entitlements
    - (2) Request by City
  - B. Participation in the North Natomas Land Acquisition Fee Program
  - C. Development Timing
- 10. Litigation/Indemnification
  - A. Challenge to Agreement or Entitlements
    - (1) City Discretion to Defend or Tender Defense
    - (2) Effect of Invalidation in Whole or Part
  - B. Indemnification
- 11. Effect of Subsequent Laws
  - A. Laws of Other Agencies
    - (1) New Laws by Other Agencies
    - (2) Termination of Agreement
    - (3) Landowner/City Right To Institute Litigation
  - B. Laws Passed by City
- 12. Enforced Delay; Extension of Times of Performance
- 13. Legal Actions; Applicable Law; Attorney Fees
  - A. Legal Actions
  - B. Applicable Law
  - C. Attorney Fees
- 14. Amendment of Agreement
- 15. City's Good Faith in Processing
- 16. Default, Remedies, Termination
  - A. General Provisions
    - (1) Landowner Default
    - (2) City Default
    - (3) Successors in Interest
  - B. Cure of Default

**FOR CITY CLERK USE ONLY**

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

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

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

- C. Remedies After Expiration of Cure Period
  - (1) Institution of Legal Proceedings
  - (2) Notice of Intent to Terminate Agreement
- 17. Annual Review
  - A. General Provisions
  - B. Scope of Review
  - C. Proceedings
  - D. Failure of Compliance
- 18. Termination Upon Completion of Development
  - A. General Provisions
  - B. Multi-family and Single Family Residential Projects
  - C. Effect of Termination on Landowner Obligations
- 19. No Joint Venture, Partnership, or Other Relationship
- 20. Notices
- 21. Severability
- 22. Recording
- 23. Reimbursement to City
- 24. Provisions Relating to Lenders
  - A. Lender Rights and Obligations
  - B. Notice of Landowner's Default Hereunder
  - C. Lender's Right to Cure
  - D. Other Notices Given by City
- 25. Estoppel Certificate
- 26. Construction
- 27. Counterparts
- 28. Time
- 29. Limitation of Actions
- 30. No Third parties Benefitted
- 31. Effect of Agreement Upon Title to Property
- 32. Covenant of Good Faith
- 33. Exhibits
- 34. Entire Agreement

**FOR CITY CLERK USE ONLY**

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

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

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

- 35. City Attorney Costs
- Execution Page for City and Landowner
- Execution Page for Lender

**LIST OF EXHIBITS**

- Exhibit "A"           Description of Landowner's Property
- Exhibit "B"           Landowner's Development Plan
- Exhibit "C"           Special Conditions
- Exhibit "D"           Assignment and Assumption Agreement
- Exhibit "E"           Panhandle Land Acquisition Program
- Exhibit "F"           Protest Waiver Provisions Agreed to by Landowner
- Exhibit "G"           Irrevocable Offer of Dedication Form
- Exhibit "H"           Map and Categorical Listing of Land and Infrastructure
- Exhibit "I"           Public Agency Radio and Microwave Communication System

Panhandle Development Agreement - Vantage Land Holdings, et al

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**FOR CITY CLERK USE ONLY**

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

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

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

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF SACRAMENTO  
AND  
THE MARIE KRUMENACHER TRUST;  
THE ALICE KRUMENACHER TRUST; AND  
VAQUERO LAND HOLDINGS, 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 the Marie Krumenacher Trust; the Alice Krumenacher Trust, and Vaquero Land Holdings, LLC, a California Limited Liability Company (hereinafter collectively, the "LANDOWNER").

**RECITALS**

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted section 65864 et seq. of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the Property.
- B. LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the CITY. The Property consists of lands designated as **Assessor Parcels Nos. 201-0320-025 and 201-0320-016**. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, the 1994 North Natomas Community Plan, the Zoning Ordinance, and the Panhandle Planned Unit Development Schematic Plan and Guideline, as they exist on the Effective Date.
- C. The City Council has held duly noticed public hearings on the CITY's General Plan, the 1994 North Natomas Community Plan and the Environmental Impact Reports prepared therefor. At the conclusion of these hearings, the City Council, on January 19, 1988, certified the Environmental Impact Report on the City General Plan Update as adequate and complete, and on May 3, 1994, certified the Environmental Impact Report on the 1994 North Natomas Community Plan Update as being adequate and complete.

The City Council on January 19, 1988, after making specific findings and adopting a Statement of Overriding Considerations, approved a revised General Plan by Resolution

Panhandle Development Agreement - Vaquero Land Holdings, et al

11/05/07

**FOR CITY CLERK USE ONLY**

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

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

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

No. 88-058 (hereinafter the "General Plan"). The City Council on May 3, 1994, after making specific findings and adopting a Statement of Overriding Considerations, approved the 1994 North Natomas Community Plan by Resolution No. 94-259. (hereinafter the "NNCP"). The uses allowed under the General Plan, NNCP, and the applicable zoning ordinances provide for a balanced mix of residential housing and employment opportunities as well as provide for the protection of major open space and recreational resources.

The City Council on June 26, 2007, after a duly noticed public hearing, approved the Panhandle PUD Public Facilities Finance Plan (hereinafter the "Panhandle Finance Plan") to provide a plan for the financing of the Infrastructure and public improvements needed to successfully implement the Panhandle PUD portion of the NNCP over time.

- D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code section 65865 et seq. in order to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan and the NNCP.
- E. The coordinated and orderly development of the Property, and LANDOWNER's commitment to the implementation of the Panhandle Finance Plan in order to assure the timely and properly-phased construction of all required Infrastructure and facilities, are essential to the proper implementation of the General Plan and the NNCP.
- F. LANDOWNER desires to facilitate implementation of the General Plan, the NNCP and the Panhandle Finance Plan, and LANDOWNER therefore agrees to develop the Property in a manner consistent with the policies of the General Plan, the NNCP, the Panhandle Finance Plan and the Special Conditions, provided that LANDOWNER is assured that no subsequent changes in the General Plan, the NNCP, the Panhandle Finance Plan, the Zoning Ordinance or the Special Conditions shall apply to the Property during the term of this Agreement.
- G. The City Council, on March 7, 1995, adopted the Procedural Ordinance, by which CITY will, inter alia, consider, adopt, amend and subsequently review the development agreements by and between CITY and a given landowner.
- H. Development of the Property, in accordance with the conditions of this Development Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan and the NNCP. At the same time, it will assure that LANDOWNER is committed to funding its appropriate share of the cost of Infrastructure and other facilities which are the subject of the Panhandle Finance Plan, and that the funding for acquisition and construction of those

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facilities will be available to CITY as and when required under the Infrastructure phasing program.

- I. An integral part of the Panhandle Finance Plan is the Panhandle Land Acquisition Program ("PLAP"), with the associated Land Acquisition Fee ("LAF"). The PLAP is designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of certain lands within the NNCP area (as those lands are specified in the PLAP) which are designated to be held publicly. Such lands, if any, are identified under the Panhandle Finance Plan. The purpose of the PLAP is to provide a method whereby all of such lands will be transferred or acquired with funds from the private development community without cost to the CITY general fund, or any of its other funds, and at the time when needed. The purpose of the LAF is to provide a means, through the fee program, of equalizing the cost of the PLAP among the various landowners within the NNCP area, inasmuch as certain landowners will be required to relinquish land to public ownership in amounts in excess of their fair share as defined by the Panhandle Financing Plan. The LAF also provides a means for reimbursing landowners who have advanced funds to CITY for the purpose of acquiring land required for Infrastructure, where eminent domain or other procedures are needed, or where it is otherwise required to enable a particular landowner to develop its property. One of the purposes of this Agreement is to provide LANDOWNER's commitment to the provisions of the PLAP and the LAF.
- J. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan, the NNCP and the Panhandle Finance Plan, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan, the NNCP, and the Panhandle Finance Plan and in consideration of the agreements and undertakings of LANDOWNER hereunder. But for LANDOWNER's contribution to and participation in programs to mitigate the impacts of the development of the Property and the cumulative impacts of development in the NNCP area, and to the implementation of the Panhandle Financing Plan, the CITY would not approve development of the Property.
- K. The authority for this Agreement is contained in the City Charter of CITY, the Procedural Ordinance, other applicable CITY ordinances, resolutions and procedures and Government Code section 65864 et seq.
- L. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all requirements set forth in the Procedural Ordinance for the adoption of this Agreement by the City Council.

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

**AGREEMENT**

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

**I**

**DEFINITIONS**

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.
- **Allocation Procedures:** those procedures set forth in section 5.H. of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions thereof, comprising the Property.
- **Annual Review:** the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNER with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in section 17 of this Agreement.
- **Assessment:** a special assessment levied on real property within the North Natomas Community Plan area, for the purpose of financing infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.

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- **Assessment District Policy Manual:** the document entitled "Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure, Public Facilities, Programs and Services" as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.
- **Assignee:** a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit D.
- **Assignment:** the sale or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement.
- **Assumption Agreement:** the agreement prescribed in Exhibit D, whereby an Assignee undertakes to perform all obligations, and other terms and conditions of this Agreement, as a condition of release of the Assignee's predecessor in interest from the responsibility for performance of such obligations and other terms and conditions, with respect to the portion of the Property assigned to the Assignee.
- **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.
- **Comprehensive Drainage Plan:** the RD-1000 Drainage System for North Natomas, prepared by the Ensign & Buckley Consulting Engineers, or other consulting firm for the City of Sacramento and Reclamation District 1000, and adopted by the City Council, as it may be amended from time to time.
- **Comprehensive Flood Management Plan:** that plan required to be prepared, and that was adopted by the City Council by Resolution No. 96-073.
- **Dedication:** the transfer of real property, or a defined interest therein, to CITY or another public agency, free of all encumbrances and other matters affecting the title except as may otherwise be agreed to by CITY or such other public agency, and at no cost to CITY or such other public agency, as specifically set forth in the PLAP, within the Panhandle Finance Plan, as it may exist from time to time.

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- **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. Default shall include, but not be limited to failure to comply with all provisions of the Panhandle Finance Plan and/or failure to pay any fee, tax or assessment enacted pursuant to that Plan.
- **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.
- **Development Plan:** LANDOWNER's plan for development of the Property, as set forth in Exhibit B. Where LANDOWNER, at the time of execution of this Agreement, does not propose a specific development project, the Development Plan shall be deemed to be development consistent with the Land Use and Development Regulations.
- **Drainage Phasing Plan:** that portion of the Comprehensive Drainage Plan which identifies the sequence of construction of the Drainage System.
- **Drainage System:** that drainage system constructed to drain the Panhandle Sub-basin.
- **Drainage Sub-basin:** the individual drainage sub-areas served by facilities identified in the Comprehensive Drainage Plan. The Panhandle Drainage Sub-basin is bounded on the north by Elkhorn Boulevard, on the east by the Natomas East Main Drainage Canal and Sorento Road, on the south by Del Paso Road, and on the west by Northpointe Park and Regency Park.
- **Effective Date:** The date on which the Property is annexed to the City of Sacramento, provided that such annexation occurs within three (3) years of the date on which the ordinance approving this Development Agreement takes effect. Failure to annex within this time period shall result in this Agreement being null and void, pursuant to Section 65865 of the Government Code.
- **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.

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- **Habitat Conservation Plan:** that plan, which must be adopted and implemented by the City Council, pursuant to which measures are taken to implement the provisions of the federal and state Endangered Species Acts, and pursuant to which incidental take permits will be issued to the City of Sacramento, to Landowner, or to others under said Acts.
- **Infrastructure:** all public facilities and improvements needed to serve urban development, as identified in the NNCP and the Panhandle Finance Plan, or in subdivision maps, parcel maps, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street and freeway improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.
- **Irrevocable Offer of Dedication:** an unconditional and irrevocable offer by LANDOWNER to transfer real property to CITY in accordance with the provisions of the PLAP and/or any condition of any land use entitlement applicable to the Property, in the form specified in Exhibit G.
- **Land Acquisition Program (PLAP):** the plan, also called the Panhandle Land Acquisition Program, which as an integral part of the Panhandle Finance Plan, is designed to provide a means for transfer to or acquisition by CITY, or such other public agency as is appropriate, of all lands within the North Natomas Community Plan area which are designated to be held publicly, at no cost to CITY. A copy of the plan is attached hereto as Exhibit E and incorporated herein by this reference.
- **Land Acquisition Fee (LAF):** the fee/reimbursement program, which is an integral part of the Panhandle Finance Plan, and which is designed to equalize the cost of the PLAP among the various landowners within the Panhandle Finance Plan area.
- **Land Use and Development Regulations:** the General Plan, the North Natomas Community Plan, the CITY's Subdivision Map Act Ordinance, and Zoning Ordinances, 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 North Natomas Community Plan area.
- **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

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performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.

- **North Natomas Community Plan (NNCP):** the Community Plan for development of the North Natomas area, as adopted by the City Council on May 3, 1994, as said plan exists on the Effective Date. The NNCP includes, without limitation, a Land Use Diagram and Policy Statements.
- **Panhandle Finance Plan:** the plan, as it may be amended from time to time, which establishes methods for financing required infrastructure and public facilities through a combination of land transfers, dedications, contributions, fees, assessment districts, community facilities districts, and other measures.
- **Panhandle Finance Plan Area:** the lands within the area covered by the Panhandle Finance Plan, and which are obligated thereby, as that area may exist from time to time
- **Parties:** the City of Sacramento and LANDOWNER.
- **Person:** any person, firm, association, organization, partnership, business trust, corporation or company.
- **Procedural Ordinance:** Ordinance No. 95-012, adopted by the City Council on March 7, 1995, and which sets forth procedures for execution, approval, implementation, amendment, and related matters, with respect to development agreements for lands within the NNCP area.
- **Project:** part or all of the elements set forth in LANDOWNER's 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 LANDOWNER, as set forth in Exhibit A
- **Protest Waiver:** the agreement set forth in Exhibit F, executed by LANDOWNER pursuant to this Agreement, or in connection with the conditions of any required entitlement.
- **Purchaser:** an assignee.
- **Reconfiguration:** the reconfiguration, adjustment or alteration of property lines through parcel or subdivision mapping, or lot line adjustment.

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- **Reimbursement:** the reimbursement of monies to a Person who has advanced funds for Infrastructure required for development of the Property, or who has advanced funding for Infrastructure or other improvements which are required by the NNCP, the Panhandle Finance Plan, or other document, and which have benefit to land beyond the Property, in accordance with a reimbursement agreement approved by CITY. Any such agreement will be limited to the portion of the funding advanced which is in excess of the allocable share of the cost of the Infrastructure or improvement attributable to the Property.
- **Reimbursable Infrastructure Costs:** those costs paid by LANDOWNER, and which are identified as reimbursable pursuant to CITY's Assessment District Policy Manual (as defined in section 8.D.(1) of this Agreement).
- **Special Conditions:** those conditions, terms and requirements specified in Exhibit C.
- **Special Permit:** any discretionary permit required pursuant to the Land Use and Development Regulations, and issued by CITY for development of the Property, upon proper application therefor by LANDOWNER.
- **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 Ordinance.
- **Zoning Ordinance:** the Comprehensive Zoning Ordinance of the City of Sacramento, as that ordinance exists on the Effective Date.

II

**TERMS AND CONDITIONS OF AGREEMENT**

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

Panhandle Development Agreement - Vantage Land Holdings, et al

11/20/07

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

3. **Term.**

A. **Initial 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.

B. **Failure to Annex in a Timely Manner.** If the property is not annexed to the City within three years of the date on which the ordinance approving this Development Agreement takes effect, this Agreement shall be null and void, pursuant to Government Code Section 65865.

C. **Renewal Options.** Subject to the provisions of this subsection, LANDOWNER shall have the right to renew this Agreement on its same terms and conditions, taking into account any amendments hereto mutually agreed upon after the Effective Date. The term of this Agreement shall mean and include the initial term, plus any renewal periods. The specific conditions for exercise of the renewal options are as follows:

(1) On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of section 20 hereof.

(2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.

(3) LANDOWNER shall be limited to three (3) renewal periods of five (5) years each; the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond twenty-five (25) years, unless this Agreement is amended in accordance with the procedures set forth herein for Agreement amendments.

4. **Assignment.** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or

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

**5. Development of the Property.**

**A. Permitted Uses and Development Standards.** Subject to the Special Conditions set forth in Exhibit C, attached hereto and incorporated herein by this reference (herein the "Special Conditions"), any reserved discretionary approvals specified in this Agreement, and all other terms and conditions of this Agreement, LANDOWNER may develop the Property in accordance with and subject to the terms and conditions specified in the Land Use and Development Regulations in effect on the Effective Date, or, where applicable, the Development Plan, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Specifically, the permitted uses, density or intensity of use, height or size of buildings and provisions for reservation and dedication of land for public purposes shall be as set forth in the Development Plan.

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**B. Discretionary Approvals**

- (1) **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 NNCP and the Panhandle Finance Plan, and as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such reserved discretionary approvals.
- (2) **Rezoning of the Property.** Upon proper and complete application by LANDOWNER, CITY agrees to rezone the Property in accordance with the provisions of the NNCP in effect on the Effective Date.

**C. Development Timing.** This Agreement contains no requirement that LANDOWNER must initiate or complete development of any phase of the development of the Property or any portion thereof within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the Property in accordance with LANDOWNER's own schedule; provided, however, that to the extent that phasing is required by the NNCP, or by the Special Conditions, 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 LANDOWNER 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. Special Conditions.** Development of the Property shall be subject to the Special Conditions, as specified in Exhibit C.

**E. Land Use and Development Regulations**

- (1) Subject to the Special Conditions specified in Exhibit C and the terms and conditions of 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

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conditions of this Agreement, including subsection 5E(1) above, the terms and conditions of this Agreement shall 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 NNCP 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 NNCP, 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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- (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 NNCP 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 5E(4), 5E(5) and 5E(6) of this Agreement.
- (9)
  - (a) To the extent that CITY enacts flood protection regulations after the Effective Date, such regulations shall apply to the Property to the extent provided therein, and to the extent that such regulations apply to other properties that may be similarly situated as to flood safety issues.
  - (b) If LANDOWNER is allowed to build before 100-year level of flood protection is achieved for the Property, LANDOWNER shall be required to do the following:
    - (i) provide written notice to residential homebuyers at the model home sites and in the sales contracts notifying them that they are purchasing in a flood plain that does not have 100-year flood protection; and
    - (ii) provide paid flood insurance for the homebuyer's property until 100-year flood protection is achieved for the Property, but not to exceed two years.
- (10) To the extent that CITY adopts a Green Ordinance after the Effective Date, such ordinance shall apply to the Property. For purposes of this subsection 5E(10), a Green Ordinance may, for example, include the regulation of construction practices or the use of building materials for the purpose of promoting energy efficiency, indoor and outdoor air quality, and/or conservation of water and other resources, the resulting goal of which is increasing the environmental sustainability of the community.
- (11) If any new regulation or ordinance described in this subsection 5E is subjected to a legal challenge, the Property shall remain subject to such regulation or ordinance until such time that the subject regulation or ordinance is suspended by CITY or invalidated by such legal challenge.

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- F. **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 LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law.
  
- G. **Extension of Entitlements.** Pursuant to Government Code section 66452.6 all vesting tentative subdivision maps, master parcel tentative maps, parcel maps, subdivision tentative maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a minimum term equal to the full term of this Agreement (including the initial term, and any renewal period resulting from exercise by LANDOWNER of the options provided for in section 3 hereof), or for a period of thirty-six (36) months, whichever is longer, but in no event for a shorter period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of section 25 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this subsection. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.
  
- H. **Allocation Procedures for Building Square Footage.** Procedures for allocating the uses or densities approved for the Property among the various parcels and/or portions thereof, and for resolution of any disputes regarding such allocations, shall be as follows:
  - (1) **Allocation.** Unless otherwise identified in the Development Plan, which is attached as Exhibit B to this Agreement, the allocation of building square footage shall be as identified in subsequent entitlements for the Property, including but not limited to parcel maps, subdivision maps, PUD schematic plans and development guidelines. The appropriate entitlement to address the allocation of building square footage shall be determined by City. Allocations for residential development shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.
  
  - (2) **Dispute Resolution.** Where a dispute exists between LANDOWNER, and/or any successor or successors in interest, with respect to any matter involving

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allocation of building square footage for or on the Property, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of the American Arbitration Association, or some other alternative dispute resolution procedure mutually agreed upon by the parties involved in the dispute. In no case shall CITY be a party to such dispute, or to the dispute resolution procedures. All of the provisions of this Agreement relating to indemnification and defense of CITY, and payment of CITY costs, shall apply to all disputes relating directly or indirectly to allocation.

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

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

**B. 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 for the NNCP area;
- (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; 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, LANDOWNER shall nevertheless be responsible therefor. Nothing in this Agreement

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shall be construed to limit LANDOWNER'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.

**C. Implementation of the Panhandle Finance Plan.** The Panhandle Finance Plan establishes a method for financing of required Infrastructure and public facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land within the Panhandle Finance Plan Area pays for its share of the cost of such Infrastructure and facilities. The plan also recognizes that there is a regional cost associated with certain portions of Infrastructure and facilities, and that that share will ultimately have to be paid from other sources, even though developers within the area, including LANDOWNER, acknowledge that they may have to participate in funding regional costs on a fair share basis. LANDOWNER shall participate in the Panhandle Finance Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof, including but not limited to the PLAP, the Land Acquisition Fee, assessments, special taxes, and other development fees and exactions set forth therein. Without limiting the foregoing, applications for special permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the Panhandle Finance Plan, and performance of all obligations imposed thereby.

**D. LANDOWNER's Waivers.**

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

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(2) LANDOWNER has reviewed the Panhandle Finance Plan and acknowledges that a nexus study was not done for certain features of the Finance Plan. LANDOWNER further acknowledges that certain facilities costs allocated as specified in the Finance Plan are not nexus-based costs, but rather are extrapolations from the established nexus-based costs under the North Natomas Finance Plan for the adjacent North Natomas Finance Plan area and are imposed for purposes of implementation of the General Plan and the NNCP. With such knowledge, LANDOWNER waives any and all administrative or judicial challenges it can legally make to the Panhandle Finance Plan or this Agreement based on insufficient nexus for any facilities costs specified in the Finance Plan.

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

8. **Infrastructure.**

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

B. **Construction by LANDOWNER.** When required by conditions of approval, and in accordance with CITY specifications and standards in effect as of the date of construction, LANDOWNER shall diligently construct Infrastructure required for implementation of the Development Plan (Exhibit B). LANDOWNER shall further

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comply with all required funding requirements specified in the Panhandle Finance Plan, and the real property transfer provisions of the PLAP.

**C. Drainage Infrastructure.** As of the Effective Date, it is contemplated that permanent drainage for the Property, and the entire Panhandle Finance Plan Area, will be provided by the Drainage System. Construction of the Drainage System will require land transfers to CITY pursuant to Irrevocable Offer of Dedication, the PLAP, or acquisition of required land by CITY through the use of eminent domain procedures, and funding for the required improvements, all on a timely basis and in accordance with the Panhandle Finance Plan, together with the Drainage Sub-basin agreement, or substitute therefore, as specified in the Special Conditions. In recognition of the need for retention of flexibility and CITY discretion with respect to decisions relating to the ultimate solution to drainage for the NNCP area, and the need for unconditional provision of financing by LANDOWNER and other owners of land in the Panhandle Finance Plan Area through the mechanisms specified in the Panhandle Finance Plan, the parties agree as follows:

- (1) **Establishment of Financing Mechanisms.** CITY shall, as soon as feasible following the adoption of the Panhandle Finance Plan by the City Council and the annexation of the Panhandle Finance Plan Area to the City, establish public financing mechanisms as identified in the Panhandle Finance Plan, applicable to lands within the NNCP area which will benefit from the Drainage System.
- (2) **Issuance of Bonds.** Decisions as to whether to issue bonds pursuant to such financing mechanisms, and the timing and manner of issuance thereof, shall be within the sole and exclusive discretion of CITY; provided, however, that CITY shall exercise its discretion in a good faith manner, so as to provide for timely construction of Infrastructure in order not to stop or slow development.
- (3) **Linkage of Development to Completion of Drainage System.** CITY has established a performance standard that requires (inter alia) that the Drainage System be completed and in operation before building permits may be issued for the Panhandle Finance Plan Area.

**D. Infrastructure Financing Proceedings**

- (1) **LANDOWNER-Initiated Proceedings.** In the event that LANDOWNER desires to initiate proceedings for the formation of an assessment district, community facilities district, or other similar form of improvement financing mechanism to fund the construction of Infrastructure required by conditions of approval or otherwise, LANDOWNER shall file an application with CITY for that purpose in

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accordance with CITY's Assessment District Policy Manual, as same may be amended from time to time, or such other policy document as may after the Effective Date be adopted by the City Council as a substitute therefor. CITY agrees to diligently process any such application, provided that such application:

- (a) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application;
- (b) otherwise complies with the Land Use and Development Regulations and applicable law, as it exists on the date of the application, including but not limited to the Assessment District Policy Manual;
- (c) is consistent with CITY's policies and procedures; (iv) provides for a value to lien ratio and other financial terms that are reasonably acceptable to CITY;
- (d) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion; and
- (e) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

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

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- (2) **Proceedings Initiated by CITY.** In the event that pursuant to the Panhandle Finance Plan, CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar mechanism, is required in order to implement the Panhandle Finance Plan, LANDOWNER's participation obligations set forth hereunder (including but not limited to Exhibit C), in the Panhandle Finance Plan, or in any condition of approval, shall apply.
- (3) **Maintenance Districts.** LANDOWNER may, following the procedures specified in subsection 8D(1) above, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the improvements and their maintenance are assessed for a proportionate share of the maintenance cost. LANDOWNER will be required to annex to existing CITY maintenance CFD's (e.g., the North Natomas Landscaping District) for residential properties unless otherwise provided through a Home Owners Association.

**E. Reimbursement to LANDOWNER.**

- (1) **From Financing Proceeds.** Subject to the Panhandle Finance Plan, where LANDOWNER has provided advance funding for public Infrastructure required by the Panhandle Finance Plan or has constructed such Infrastructure under the direction and control of CITY, LANDOWNER shall be reimbursed for Reimbursable Infrastructure Costs at such time as CITY has established a permanent financing mechanism in the form of an assessment district, community facilities district, or other similar mechanism through which permanent public financing for such improvements is established. Those items qualifying as Reimbursable Infrastructure Costs shall be determined pursuant to CITY policies in existence at the time of establishment of the permanent financing mechanism. Such policies may govern eligible expenditures at the time they are incurred. It is incumbent upon LANDOWNER to determine current CITY requirements at the time expenditures are made. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon grounds, including but not limited to consistency of application of its policies and the potential for establishing negative precedent. Nothing in this Agreement shall authorize reimbursement of any cost which, in the opinion of CITY's bond counsel, is not permissible for purposes of

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establishing or retaining tax free status of any bonds issued, or contemplated to be issued by CITY.

- (2) **Reimbursement From Others Benefitted.** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of improvements required for development by the Panhandle Finance Plan, in excess of or beyond those required for development of the Property, or, where required by the Panhandle Finance Plan, to make dedications, provide mitigation or incur costs in connection with public improvements or the planning of the North Natomas area in excess of or beyond those required for development of the Property, and the provisions of the preceding subsection do not apply, CITY shall utilize its best efforts to require that all other Persons benefitted by the improvements shall reimburse (through fee districts, agreements, conditions of approval, or otherwise) LANDOWNER for such Person's proportionate share of such costs as determined in accordance with the Panhandle Finance Plan, or by CITY. For purposes of this Agreement, the term "in excess of or beyond those required for development of the Property" shall mean requirements which exceed LANDOWNER's fair proportionate share, as determined in accordance with the provisions of the Panhandle Finance Plan and any associated documents or studies. Under no circumstances shall CITY be liable for reimbursement of such excess costs.

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

- (3) **Reimbursement of Planning, Engineering and Staff Costs.** In accordance with the provisions of the Panhandle Finance Plan, and as soon as feasible following City Council adoption of the said Plan, CITY shall enact a fee ordinance which imposes a fee upon the Panhandle Finance Plan area of the NNCP area landowners, including LANDOWNER, to pay the planning, engineering, staff and related costs (including but not limited to CITY staff and related costs), as specified in the Panhandle Finance Plan, and which relate to development of the NNCP, the Finance Plan, the general form of the Development Agreement, the Comprehensive Drainage Plan, and all related documents. The fee shall be spread across lands within the NNCP area in the

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same fashion as the public facilities fees. Credits shall be given to those landowners who have paid some or all of their share of the said costs, for the amounts so paid. The fee shall be payable prior to issuance of the first discretionary entitlement for the land as to which an application has been filed with CITY.

**9. LANDOWNER Obligations.**

**A. Transfer of Land to CITY.** As set forth elsewhere in this Agreement, LANDOWNER has agreed to transfer lands needed for Infrastructure or public facilities to CITY, or to such other public agency as is appropriate, pursuant to the provisions of the PLAP. Set forth in Exhibit H, attached hereto and incorporated herein by this reference, is a map depicting the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, together with a categorical listing of the types of Infrastructure and public facilities which are covered by the terms of this subsection. LANDOWNER shall transfer the said required lands to CITY, utilizing the Irrevocable Offer of Dedication form set forth in Exhibit G, attached hereto and incorporated herein by this reference, at such time as is:

- (1) required pursuant to a condition or term of any entitlement for use or development of the Property; or
- (2) requested by CITY, where LANDOWNER has not applied for an entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.

In the event that, at the time of the required transfer to CITY, the location of, or the quantity of land required for the Infrastructure or public facilities has changed from that depicted on Exhibit H, to such a significant degree or extent that the location or quantity is inconsistent with both the NNCP as it exists on the effective date of this Agreement, and the Panhandle Finance Plan, the parties shall meet and negotiate, and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow development of the Property in a reasonable manner, taking into account the changes in Infrastructure and public facilities. If agreement is reached between the parties, the procedures specified herein and in the Procedural Ordinance shall apply to amendments to this Agreement. If agreement is not reached, either party shall have the right to terminate this Agreement by providing the other party sixty (60) days notice.

**B. Participation in Land Acquisition Fee Program.** The applicant may be required to participate in the North Natomas Public Lands Acquisition Fee Program, which

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provides a monetary mechanism designed to equalize among developers the porportional cost of extraordinary land dedications. Potential lands for inclusion in this fee program are shown on a map and table included in Exhibit H. Participation in a fee program will be determined following further equity analysis between the LANDOWNER and developers in the balance of the North Natomas Community Plan area and will be implemented through an update to the Panhandle Finance Plan.

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

**10. Litigation/Indemnification.**

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

- (1) In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including but not limited to, the proceedings taken for its approval (including the requirements of the California Environmental Quality Act – "CEQA") or any other act undertaken by the parties hereto in furtherance of this Agreement or its terms, or any action instituted by a third party challenging the validity of any of the entitlements specified herein (including CEQA challenges), the parties agree to cooperate in the defense of the action. In all such litigation brought to contest the validity of this Agreement or such entitlements, the following shall apply:
  - (a) City may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.
  - (b) In the event that CITY determines to defend the action itself, LANDOWNER shall be entitled, 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 LANDOWNER, LANDOWNER shall defend the action on its behalf and on behalf of CITY, and shall bear all attorney fees and costs associated with such defense from and after the date of the tender. Provided, however, that CITY may at any time after the tender elect to assume representation of itself, in that event, from and after the date CITY gives

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notice of its election to do so, CITY shall be responsible for its own attorney fees and costs incurred thereafter.

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

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

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

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

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

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**11. Effect of Subsequent Laws.**

**A. Laws of Other Agencies.**

- (1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the parties shall meet and confer in good faith to determine whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner pursuant to Exhibit B.
- (2) In the event that the parties, after having engaged in good faith negotiations, are unable to agree on such amendments, the parties shall consider whether suspension of the term of this Agreement is appropriate, and if so, what the terms and conditions of any such suspension should be. In the event that the parties, after having engaged in good faith negotiations are unable to agree on the suspension issues, either party shall have the right to terminate this Agreement by giving the other party sixty (60) days' written notice of termination.
- (3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, CITY shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subsections 11A(1) and 11A(2) above shall apply

**B. Laws Passed by CITY.** Subject to the provisions of section 5 of 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

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intensity of development on the Property, or the rate, timing or sequencing of the development or the construction on the Property on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

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

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

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

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

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

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section, and any other portion of this Agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Sacramento County

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

**15. 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 General Plan, the NNCP and this Agreement.

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

**16. Default, Remedies, Termination.**

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

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

**(2) CITY Default.** In addition to any other remedy specified herein, in the event that notice of default has been given in accordance with this section, wherein a default by CITY is alleged, any resulting delays in LANDOWNER's

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

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

**B. Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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

- (1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or
- (2) give the other party notice of intent to terminate this Agreement pursuant to Government Code section 65868 and the Procedural Ordinance. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing.

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**17. Annual Review**

- A. General Provisions.** In accordance with Government Code section 65865.1, and the Procedural Ordinance, CITY shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith compliance by LANDOWNER with the terms of this Agreement. Failure of CITY to conduct an annual review shall not constitute a waiver by CITY or LANDOWNER of the right to conduct future annual review or to otherwise enforce the provisions of this Agreement, nor shall a party have or assert any defense to such enforcement by reason of any such failure. The failure of CITY to undertake such review, shall not, in itself, invalidate the terms of this Agreement or excuse any party hereto from performing its obligations under this Agreement.
- B. Scope of Review.** The annual review shall be limited in scope to compliance with the terms and conditions of this Agreement.
- C. Proceedings.** The procedures specified in the Procedural Ordinance for conduct of the annual review by the City Manager, and by the City Council, shall apply to each annual review of this Agreement. At least ten (10) days prior to the commencement of any annual review, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects.

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

- 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.

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**18. Termination Upon Completion of Development.**

- A. General Provisions.** This Agreement shall terminate as to each parcel of property contained within the Property when that parcel of property has been fully developed and all of LANDOWNER'S obligations in connection therewith are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's Department of 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 LANDOWNER'S obligations therewith are satisfied. CITY shall be entitled to receive payment of a fee commensurate with the cost of processing the request and making such a determination, including but not limited to CITY's administrative and legal expenses. Upon termination of this Agreement, CITY shall upon LANDOWNER's request record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. The aforesaid notice may specify, and LANDOWNER agrees, that termination shall not affect in any manner any continuing obligation to pay any item specified by this Agreement, by the Panhandle Financing Plan or any of the measures implementing said plan, and shall have the effect as set forth in section 18C.
- B. Multi-family and Single Family Residential Projects.** This Agreement shall automatically terminate and be of no further force and effect as to any single family residence or multi-family building, and the lot or parcel upon which said residence or building is located, when it has been approved by CITY for occupancy.
- C. Effect Of Termination On Landowner Obligations.** Termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with CITY's General Plan, the NNCP, and all entitlements issued for the Property, nor shall it affect any other covenants of this Agreement specified in this Agreement to continue after the termination of this Agreement, including but not limited to those specified in sections 6 and 10 and subsection 13C.

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

**20. Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the CITY and LANDOWNER or LANDOWNER's assigns and

Panhandle Development Agreement - Vaquera Land Holdings, et al

11/05/07

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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:

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

Notice to the LANDOWNER: Marie Krumenacher Trust  
6301 E. Levee Road  
Rio Linda, CA 95673  
Attn: Marie Krumenacher  
  
Alice Krumenacher Trust  
6301 E. Levee Road  
Rio Linda, CA 95673  
Attn: Alice Krumenacher

Vaquero Land Holdings, LLC  
4855 Ketchum Court  
Granite Bay, CA 95746

with copies to:

Law Offices of George E. Phillips  
2306 Garfield Avenue  
Carmichael, CA 95608

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.

- 21. **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 Procedural Ordinance. Provided, however, that if such holding affects a material provision of this Agreement, LANDOWNER shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to CITY; provided further, however, that in the event LANDOWNER so elects to terminate, such election shall not affect in any manner the terms and conditions of any entitlement theretofore granted by CITY with respect to the Property, or any portion thereof.

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

**22. 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.

**23. Reimbursement to CITY.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY'S review, consideration and execution of this Agreement. Such expenses include 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 LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

**24. Provisions Relating to Lenders.**

**A. Lender Rights and Obligations.**

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

**(2) Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of LANDOWNER hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions

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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.

- B. Notice of LANDOWNER's Default Hereunder.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender, concurrently with service thereon to LANDOWNER, any notice given to LANDOWNER with respect to any claim by CITY that LANDOWNER has committed a default, and if CITY makes a determination of non-compliance, CITY shall likewise serve notice of such non-compliance on such Lender concurrently with service thereof on LANDOWNER.
- C. Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or the areas of non-compliance set forth in CITY's notice. Such action shall not entitle a Lender to develop the property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder.
- D. Other Notices Given By City.** A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in section 20 hereof.

**25. 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.

**26. Construction.** All parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Development Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the

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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.

27. **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.

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

29. **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.

30. **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.

31. **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.

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

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

- A Description of Landowner's Property
- B Landowner's Development Plan
- C Special Conditions
- D Assignment and Assumption Agreement
- E Panhandle Land Acquisition Program
- F Protest Waiver Provisions Agreed to by Landowner
- G Irrevocable Offer of Dedication Form
- H Map and Categorical Listing of Land and Infrastructure
- I Public Agency Radio and Microwave Communication System

34. **Entire Agreement.** This Agreement, together with its Exhibits A to I, inclusive, constitutes the entire agreement between the parties with respect to the subject matter of this

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Agreement. This Agreement is specifically intended by the parties hereto to supersede all prior development agreements, if any, for the Property which may exist between CITY and LANDOWNER. The provisions of subsection 10B of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever against CITY, its officers, employees and agents, arising out of or in any way relating to any prior development agreement relating to the Property.

**35. City Attorney Costs.** Landowner shall pay to the City of Sacramento the sum of \$5,000.00 as and for reimbursement of the costs of the City Attorney in preparation and processing of this Agreement.

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

**CITY OF SACRAMENTO**

**ATTEST:**

By: \_\_\_\_\_  
Mayor

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

**APPROVED FOR LEGAL FORM:**

\_\_\_\_\_  
Lawrence J. Duran  
Senior Deputy City Attorney

**Marie Krumenacher Trust**

**Vaquero Land Holdings, LLC**

By: \_\_\_\_\_  
Name: Marie Krumenacher  
Title: Trustee of the Marie Krumenacher Trust  
Dated August 27, 2004

By: \_\_\_\_\_  
Name: Jeff Jones  
Title: Member

**Alice Krumenacher Trust**

By: \_\_\_\_\_  
Name: Alice Krumenacher  
Title: Trustee of the Alice Krumenacher Trust  
Dated February 18, 2005

**(ATTACH APPROPRIATE ACKNOWLEDGMENT)**

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**EXHIBIT A**

**DESCRIPTION OF LANDOWNER'S  
PROPERTY**

**SEE ATTACHED**

**NOTE: UPON RECORDATION OF FINAL MASTER PARCEL MAP, THIS EXHIBIT A WILL BE REPLACED BY THE SAID MAP, WITHOUT NEED FOR AMENDMENT OF THIS AGREEMENT.**

October 1, 2007

**EXHIBIT A  
KRUMENACHER RANCH  
LEGAL DESCRIPTION**

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B.&M.

EXCEPTING, HOWEVER, THAT CERTAIN PARCEL OF LAND DESCRIBED AS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B.&M.; THENCE ALONG THE SOUTH LINE OF THE NORTH EAST QUARTER OF SAID SECTION 36, NORTH 89 DEGREES 9 MINUTES WEST 410 FEET TO A POINT 50 FEET DISTANT FROM AND AT RIGHT ANGLES TO THE CENTER LINE OF LEVEE OF RECLAMATION DISTRICT NO. 1000 AS NOW STAKED OUT AND LOCATED; THENCE BY A LINE PARALLEL TO AND 50 FEET DISTANT FROM SAID CENTER LINE OF LEVEE NORTH 0 DEGREES 19 MINUTES WEST 2643.9 FEET TO THE NORTH LINE OF SAID SECTION 36; THENCE ALONG THE NORTH LINE OF SAID SECTION 36 SOUTH 89 DEGREES 23 MINUTES EAST 414 FEET TO THE NORTHEAST CORNER OF SAID SECTION 36; THENCE ALONG THE EAST LINE OF SAID SECTION 36 WHICH EAST LINE IS THE CENTER OF THE MARYSVILLE ROAD AS IT RUNS ALONG ADJACENT TO THE EAST SIDE OF SAID SECTION 36, SOUTH 0 DEGREES 14 MINUTES EAST 2645.5 FEET TO THE PLACE OF BEGINNING.

ALSO EXCEPTING ALL THAT PORTION OF LAND LYING WITHIN THE NORTHEAST QUARTER SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF A FENCE LINE MARKING THE LINE BETWEEN SECTIONS 25 AND 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B.&M., WITH THE WESTERLY LINE OF THE EAST SIDE LEVEE RIGHT OF WAY OF RECLAMATION DISTRICT NO. 1000, RUNNING THENCE NORTH 89 DEGREES 52 MINUTES 30 SECONDS WEST 2246.70 FEET ALONG THE SAID SECTION LINE TO THE QUARTER CORNER THEREOF, THENCE SOUTH 00 DEGREES 20 MINUTES 00 SECONDS EAST 100.01 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 30 SECONDS EAST

1246.67 FEET; THENCE SOUTH 88 DEGREES 51 MINUTES 08 SECONDS EAST 1000.20 FEET TO SAID WESTERLY LINE OF SAID EAST SIDE LEVEE RIGHT OF WAY; THENCE ALONG SAID WESTERLY LINE NORTH 00 DEGREES 19 MINUTES 00 SECONDS WEST 110.01 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THERFROM THAT PORTION OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B &M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST 1/4 BEING THE CORNER COMMON TO LOTS 63 AND 64, OF NATOMAS EAST SIDE SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON JANUARY 18, 1924, IN BOOK 17 OF MAPS, MAP NO. 34; THENCE ALONG THE EAST LINE OF SAID LOT 64, SOUTH 0 DEGREES 20 MINUTES EAST 137.00 FEET; THENCE NORTH 89 DEGREES 40 MINUTES EAST 76.00 FEET THENCE NORTH 0 DEGREES 20 MINUTES WEST 135.80 FEET TO THE NORTH LINE OF SAID NORTHEAST 1/4 BEING THE CENTERLINE OF ELKHORN BOULEVARD; THENCE NORTH 89 DEGREES 25 MINUTES 30 SECONDS WEST 76.01 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THERFROM THAT PORTION OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 36, ALSO BEING THE NORTHWEST CORNER OF LOT 73 PER THE MAP RECORDED IN BOOK 17 OF MAPS AT PAGE 34 IN THE OFFICIAL RECORDS OF SACRAMENTO COUNTY.

THENCE FROM THE POINT OF BEGINNING NORTH 00 DEGREES 30 MINUTES 22 SECONDS WEST 190.34 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36; THENCE SOUTH 89 DEGREES 57 MINUTES 28 SECONDS EAST 103.35 FEET; THENCE NORTH 48 DEGREES 04 MINUTES 17 SECONDS EAST 18.29 FEET; THENCE NORTH 55 DEGREES 19 MINUTES 03 SECONDS EAST 15.70 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 28 SECONDS EAST 1416.86 FEET; THENCE SOUTH 01 DEGREES 44 MINUTES 41 SECONDS EAST 211.60 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 AND THE NORTH LINE OF LOT 74 PER SAID MAP RECORDED IN BOOK 17 OF MAPS AT PAGE 34; THENCE NORTH 89 DEGREES 57 MINUTES 28 SECONDS WEST 1551.49 FEET ALONG SAID SOUTH LINE AND THE NORTH LINE OF SAID LOTS 73 AND 74 TO THE POINT OF BEGINNING

**PARCEL TWO:**

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, M.D.B &M, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT LOCATED SOUTH 00 DEGREES 20 MINUTES EAST 100.00 FEET FROM THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER, BEING THE CORNER COMMON TO LOTS 63 AND 64 OF NATOMAS EAST SIDE SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE RECORDER OF SACRAMENTO COUNTY, CALIFORNIA, ON JANUARY 18, 1924, IN BOOK 17 OF MAPS, MAP NO. 34; THENCE ALONG THE EAST LINE OF SAID LOT 64, SOUTH 0 DEGREES 20 MINUTES EAST 37.00 FEET; THENCE NORTH 89 DEGREES 40 MINUTES EAST 76.00 FEET; THENCE NORTH 0 DEGREES 20 MINUTES WEST 35.80 FEET; THENCE NORTH 89 DEGREES 25 MINUTES 30 SECONDS WEST 76.01 FEET TO THE POINT OF BEGINNING.

APN: 201-0320-025 AND 016

THE ABOVE DESCRIBED LAND IS ALSO DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN A PORTION OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 10 NORTH, RANGE 4 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 36, THENCE SOUTH 00 DEGREES 30 MINUTES 22 SECONDS EAST 100.01 FEET TO THE POINT OF BEGINNING OF THE PROPERTY TO BE DESCRIBED, SAID POINT BEING ON THE SOUTHERLY LINE OF THAT PARTICULAR DEED TO THE COUNTY OF SACRAMENTO AS RECORDED IN THE OFFICIAL RECORDS IN BOOK 67 01 31, AT PAGE 19; THENCE , SOUTH 89 DEGREES 38 MINUTES 05 SECONDS EAST 1241.54 FEET ALONG SAID SOUTHERLY LINE; THENCE, SOUTH 89 DEGREES 03 MINUTES 43 SECONDS EAST 1000.20 FEET TO THE WESTERLY RIGHT OF WAY LINE OF RECLAMATION DISTRICT NO. 1000; THENCE, SOUTH 00 DEGREES 45 MINUTES 08 SECONDS EAST 2533.53 FEET ALONG SAID WESTERLY LINE TO THE NORTHEAST CORNER OF LOT 74 AS SHOWN ON THAT PARTICULAR MAP RECORDED IN BOOK 17 OF MAPS, AT PAGE 34 IN THE OFFICIAL RECORDS OF SACRAMENTO COUNTY; THENCE, NORTH 89 DEGREES 57 MINUTES 28 SECONDS WEST 700.79 FEET ALONG THE NORTH LINE OF SAID LOT 74 AND LOT 73 OF SAID BOOK 17 OF MAPS AT PAGE 34 TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE GRANT DEED TO GRANT JOINT UNION SCHOOL