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the City of Sacramento, a Government Entity –
No Fee Required per Government Code 6103*

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

FOR

SACRAMENTO RAILYARDS PROJECT

Project No. P-05-097

Between

CITY OF SACRAMENTO

and

S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

Approved on:

Railyards Development Agreement

Revision Date: 12-05-07

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SACRAMENTO RAILYARDS PROJECT DEVELOPMENT AGREEMENT

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

FOR THE

SACRAMENTO RAILYARDS PROJECT**

This DEVELOPMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2007, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and S. THOMAS ENTERPRISES OF SACRAMENTO, LLC, a Delaware Limited Liability Company (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

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

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

B. **Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, in 1979 the Legislature of the State of California adopted Article 2.5 of Chapter 4 of Division 1 of the Government Code, commencing at Section 65864 (the "Statute"), which authorizes the CITY to enter into this binding Agreement with LANDOWNER in order to establish certain rights and obligations of the Parties relative to Development of

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the Property for the Project. The authority for the CITY's approval of this Agreement is contained in the Statute, the City Charter, the Procedural Ordinance, other applicable City ordinances, resolutions and procedures. CITY and LANDOWNER desire to enter into this Agreement pursuant to the provisions of the Statute in order to provide for the orderly Development of the Project on the Property.

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

D. **Procedural Requirements.** The City Planning Commission and the City Council held duly noticed public hearings on the approval of the General Plan and Community Plan amendments, adoption of the Specific Plan and the Special Planning District, approval of the other Project Entitlements, and approval of this Agreement. The City Design Commission and the City Council held duly noticed public hearings on the approval of the Design Guidelines. The City Preservation Commission and the City Council held duly noticed public hearings on the formation of the Central Shops Historic District and approval of the Design Guidelines as they apply to the District.

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

F. **Financing Plan.** The City Council, after a duly noticed public hearing, approved the Financing Plan to provide a plan for the financing of the Public Facilities needed to successfully implement the Specific Plan and for the Development and operation of the Project in the future. The Parties' are committed to implement the Financing Plan, which is essential to assure the coordinated and orderly Development of the Property for the Project, the investment of private capital for the Project, and the timely and properly-phased construction of all required Public Facilities needed for the Project. Implementation of the Financing Plan is also essential to the proper implementation of the General Plan, Community Plan and Specific Plan, and the Parties' commitment to participate in the implementation of the Financing Plan was a material factor in making the finding of consistency of the Project and this Agreement with the General Plan, Community Plan and Specific Plan.

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G. **Plan Compliance.** LANDOWNER and CITY desire to facilitate implementation of the General Plan, Community Plan, Specific Plan, Financing Plan (collectively "Plans"), and LANDOWNER therefore intends to develop the Property for the Project consistent with the Development Plan, provided that LANDOWNER is assured that no subsequent changes in the Plans after the Effective Date which would affect LANDOWNER's Vested Rights shall apply to the Property or the Project during the term of this Agreement, except as expressly provided herein.

H. **Project Entitlements.** Development of the Property for the Project substantially consistent with the Development Plan and the terms and conditions of this Agreement will provide for the orderly growth and Development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan, Community Plan, Specific Plan, and the Zoning Ordinance, Subdivision Ordinance and other applicable provisions of the City Code. This Agreement limits the CITY's rights to revoke, terminate, change, impair or amend the Project Entitlements, or to require the LANDOWNER to comply with any ordinances or resolutions enacted after the Effective Date that encompass, affect, or limit Development of the Property for the Project, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

I. **City Infill Strategy.** This Agreement and Development of the Property for the Project substantially consistent with the Development Plan are in furtherance of and consistent with the City of Sacramento Infill Strategy adopted on May 14, 2002, by City Resolution 2002-277. The adopted General Plan includes the following goals and policies for infill development: 1) promote infill development, rehabilitation, and reuse that contributes positively to the surrounding area and assists in meeting neighborhood and other CITY goals; 2) revise CITY plans and ordinances to support infill development goals; 3) remove regulatory obstacles and create more flexible development standards for infill development; 4) provide improvements to infrastructure to allow for increased infill development potential; 5) provide financial incentives and project assistance to assist in infill development that provides the greatest infill opportunity in terms of number of vacant lots, total potential for new infill development, or overall economic or environmental benefit; and 6) engage the community to ensure new infill development addresses neighborhood concerns and to gain greater acceptance and support for infill development.

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

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Procedural Ordinance, and as it may be amended in the future after the Effective Date in accordance with the Statute, shall apply to the review, amendment and enforcement of this Agreement. CITY and LANDOWNER have taken all actions mandated by, and have fulfilled all requirements set forth in, the Procedural Ordinance for the adoption of this Agreement by the City Council.

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

L. **Consideration.** Development of the Property in accordance with the terms of this Agreement requires major investment by LANDOWNER in Public Facilities, as well as Dedications and Reservations of land for public benefit and purposes, and a substantial commitment of the resources of LANDOWNER to achieve the public purposes and benefits of the Project for the CITY. By entering into this Agreement, CITY will receive such benefits, the assurances of implementation of the General Plan, Community Plan and Specific Plan as applied to the Property, and the Development of the Property, which is currently vacant, environmentally degraded, lacking in urban infrastructure, blighted and underutilized, that will generate net new tax revenues for the CITY after payments for Public Services as identified in the Fiscal Impact Analysis. By entering into this Agreement, LANDOWNER will obtain a Vested Right to proceed with Development of the Property for the Project in accordance with the Agreement's terms and conditions, and CITY's approval of the Specific Plan and Project Entitlements may increase the value of LANDOWNER's Property.

M. **Consistency Findings.** The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, Specific Plan, and the Land Use and Development Regulations. The implementation of this Agreement is in the best interest of CITY because it promotes the health, safety and general welfare of its existing and future residents. The environmental impacts of Development of the Project on the Property were adequately considered in the environmental documentation prepared by CITY and adoption of the

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Adopting Ordinance complies in all respects with the CEQA. This Agreement provides assurances that implementing the General Plan, Community Plan and Specific Plan, and Development of the Property for the Project will not proceed without the timely provision of Public Facilities and Public Services required to serve the Project. This Agreement is just, reasonable and fair and equitable under the circumstances facing the CITY, and it provides sufficient benefits to the community to justify entering into this Agreement.

AGREEMENT

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

[The remainder of this page intentionally left blank.]

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1.0 DEFINITIONS AND EXHIBITS.

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

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

1.1 **Adopting Ordinance:** The ordinance pursuant to which the City Council approves this Agreement in accordance with Ordinance No. 95-063, which applies to development agreements within the Railyards Specific Plan area.

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

1.3 **Annual Review:** The process and procedures whereby CITY reviews, pursuant to Government Code Section 65865.1, the nature and extent of compliance by LANDOWNER and Assignee(s) with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in Section 5.13 of this Agreement.

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

1.5 **Assessment District Policy Manual:** The document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as

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adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.

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

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

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

1.9 **Backbone Infrastructure**: Those Public Facilities, public improvements, or items of public benefit as identified in the Financing Plan, Funding Agreement Business Terms, Funding Agreement and Project Entitlements, including without limitation, roads and freeway improvements, parks and open space improvements, wet and dry utilities, police and fire stations, and public parking garages which are required to be constructed in or for the benefit of Development of the Project and that may also benefit adjacent areas that are within the Community Plan area, including the adjacent redevelopment project areas. Backbone Infrastructure may also include the Central Shops if one or more of the buildings are publicly owned and used to provide Public Services.

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

1.11 **Central Shops**: The nine (9) existing historic buildings and structures that are contained within, or to be relocated to, the Central Shops District as denoted in the Specific Plan and the Central Shops Historic District, located on lots 20, 21c, 24b, 25, 26, 27, 28 and 29 on the Tentative Map, and consisting of the following: Erecting Shop, Masonry Water Closet (privy), Blacksmith Shop, Car Shop No. 3, Planing Mill, Paint Shop, Boiler Shop, Turntable, and Car Machine Shop. In addition, the water tower to be relocated to within the Central Shops Historic District and the turntable and transfer table within lot 30a shall also be considered as part of the Central Shops.

1.12 **Central Shops Historic District**: The area which encompasses the Central Shops and the immediate area between and surrounding the Central Shops located on lots 12, 13, 14, 21a, 21b, 22, and 23 on the Tentative Map as the boundaries of said

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District approved by the City Council and as said boundary may be amended. The formation of the Central Shops Historic District establishes the process for the review and approval of the rehabilitation and adaptive reuse of the Central Shops and the area between and surrounding the Central Shops in accordance with Chapter 17.134 of the City Code.

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

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

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

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

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

1.18 **City Deal Points MOU:** The agreement between LANDOWNER and CITY dated October 26, 2006, which LANDOWNER relied upon in purchasing the Property from the Union Pacific Railroad Company.

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

1.20 **DTSC:** The State Department of Toxic Substances Control.

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

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1.22 **Dedication:** The transfer of real property, including an easement or other defined interest less than a fee interest therein, under an Offer of Dedication to CITY, City Agency or Public Agency, subject to limitations on use and reserved access and other rights to LANDOWNER as set out herein and in the Tentative Map conditions, and with regard to remediation of the real property pursuant to the terms of the Tri-Party MOU and a DTSC deed restriction, and free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency, at no cost as specifically set forth in the Financing Plan or Project Entitlements.

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

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

1.25 **Development (or Develop):** The use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements in accordance with the Railyards Special Planning District, Zoning Ordinance and Subdivision Ordinance, Building Permits for the Project, and all other Project Entitlements.

1.26 **Development Fee:** All fees now or in the future collected by the CITY from LANDOWNER or Assignees as a condition of Development of the Property for the funding of Public Facilities, including Backbone Infrastructure, as specified in the Financing Plan and/or City Code Chapter 18.36, as may be amended or renumbered. Development Fees also include any lawfully imposed fees by another Public Agency having jurisdiction and which CITY is required or authorized to collect pursuant to State law or local ordinance.

1.27 **Development Plan:** The LANDOWNER's plan for Development of the Property for the Project pursuant to the Specific Plan and based on the EIR Analysis Scenario as modified in terms of the schedule of development in the Initial Phase Development Plan by the Phase 1 Development Plan.

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

1.29 **Draft Environmental Impact Report**: The report dated August 2007 and released for public review on August 20, 2007, that was prepared to analyze the potential environmental impacts of the Project based on the EIR Analysis Scenario in accordance with CEQA.

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

1.31 **EIR Analysis Scenario**: An illustrative land use plan prepared by LANDOWNER that was the basis of the evaluation of the envelope of environmental impacts associated with the Project and the Development Plan based on the Phasing Plan, which was included as Appendix C in the Draft Environmental Impact Report. The EIR Analysis Scenario is more particularly described in Exhibit B-2.

1.32 **Environmental Impact Report**: The Draft Environmental Impact Report and the Final Environmental Impact Report that was certified by the City Council by its resolution as more particularly described in Exhibit D.

1.33 **Final Environmental Impact Report**: The report (including addenda and errata) dated November , 2007, that included the response to comments on, and corrections to, the Draft Environmental Impact Report that was prepared for the Project based on the EIR Analysis Scenario in accordance with CEQA.

1.34 **Financing Plan**: The Railyards Specific Plan Public Facilities Financing Plan dated November, 2007 that encompasses the Property and the Project as approved by the City Council by its resolution, as more particularly described in Exhibit E.

1.35 **Fiscal Impact Analysis**: The Railyards Specific Plan Fiscal Impact Analysis dated November, 2007 that addresses the Project's Public Service costs and the estimated Project revenues, which was relied upon in development of the Funding Agreement Business Terms, as accepted by the City Council, as more particularly described in Exhibit Q.

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1.36 **Funding Agreement:** The agreement to be developed after the Effective Date between the Parties that will specify the sources, schedules and terms and conditions for the CITY's financing assistance for a portion of the Backbone Infrastructure for the Phase 1 Development Plan based on the Financing Plan and the Fiscal Impact Analysis, consistent with the Funding Agreement Business Terms.

1.37 **Funding Agreement Business Terms:** The outline of the conditions under which CITY will fund a portion of the Public Facilities for the Initial Phase Development Plan, commit funding for implementation of the Inclusionary Housing Plan, and provide credits toward development impact fees as more particularly described in Exhibit P.

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

1.39 **Inclusionary Housing Agreement:** The agreement between CITY or City Agency and LANDOWNER that specifies the terms and conditions for LANDOWNER's implementation of the Inclusionary Housing Plan.

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

1.41 **Inclusionary Housing Plan:** The plan prepared by LANDOWNER and approved by the City Council by its resolution as part of the Project Entitlements, that specifies the percentage, number, type, location and phasing of development of housing affordable to very low and low income households for compliance with the Inclusionary Housing Ordinance, as more particularly described in Section 3.8 and Exhibit E.

1.42 **Initial Phase Development Plan:** The land use plan prepared by LANDOWNER for the Project containing phases 1 and 2, which was referred to as the Initial Phase in the Environmental Impact Report and the Financing Plan. The Initial Phase Development Plan is part of the Phasing Plan and more particularly described in Exhibits B-3, B-4 and B-5 and consists of subphases.

1.43 **Land Use and Development Regulations:** The Zoning Ordinance, Subdivision Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with any other City ordinances, resolutions, rules, regulations and official policies of the City as they exist on the

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Effective Date (including without limitation, any variations thereto or amendments thereof as the Effective Date), the Special Planning District, Design Guidelines and the Central Shops Historic District, which govern or regulate land use and/or development in the Community Plan and/or Specific Plan area which encompasses the Property.

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

1.45 **Millennia MOU:** The Memorandum of Understanding Regarding the Planning Process for Development of the Downtown UP Railyards Site (MOU) between CITY and Millennia Associates, LLC dated October 14, 2003, and the First Amendment to the MOU between CITY and Millennia Associates, LLC and Millennia Sacramento, III, LLC dated October 26, 2004, collectively City Agreement No. 2003-176, which is referenced in the City Deal Points MOU.

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

1.47 **Mitigation Measures:** The measures adopted by the City Council as part of the certification of the Final Environmental Impact Report as of the Effective Date which apply to Development of the Property for the Project and as may be referenced in the Project Entitlements.

1.48 **Mitigation Monitoring Program:** The plan for implementation of the Mitigation Measures adopted by the City Council as of the Effective Date and as may be referenced in the Project Entitlements.

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

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

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

1.52 **Owner Participation Agreement or Redevelopment Agency Agreement:** The agreement between LANDOWNER and the Redevelopment Agency of the City of Sacramento (City Agency) regarding the provision, under the current Richards Boulevard Redevelopment Plan or the provisions of the proposed Railyards Redevelopment Plan, of tax increment revenues generated from the Property, as more particularly described in the Financing Plan and Funding Agreement, and as consistent with the applicable redevelopment law, that may be paid to LANDOWNER for Development of the Project including, without limitation, reimbursement of the costs for Public Facilities and Backbone Infrastructure, rehabilitation of the Central Shops, construction of affordable housing, and for private development funded by LANDOWNER.

1.53 **Park Development Impact Fees:** The fees as specified in City Code Chapter 18.84 which fund the cost of development of parks and open spaces on land dedicated to CITY or acquired by CITY to serve the Project.

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

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

1.56 **Phasing Plan:** The LANDOWNER's schedule for implementation of the Development Plan, which was the basis of the EIR Analysis Scenario as more particularly described in Exhibit B-4.

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1.57 **Phase 1 Development Plan**: The LANDOWNER's plan for the initial Development of the Property that is specified as phases 1A, 1B.1 and 1B.2, which is less than the amount of development specified as Phase 1 in the Phasing Plan and the EIR Analysis Scenario, as more particularly described in Exhibit B-3.

1.58 **Plans**: The General Plan, Community Plan, Specific Plan, and Financing Plan, and including the Development Plan as applicable.

1.59 **Procedural Ordinance**: The applicable provisions of the City Code which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review and related matters with respect to development agreements and which will apply to the Specific Plan.

1.60 **Project**: The permitted uses, location, density or intensity of use, height or size of buildings as set out in the Plans and Project Entitlements including, without limitation, the provisions for Dedication and Reservation of land for Public Facilities and Backbone Infrastructure, implementation of the Mitigation Measures, the financing of Public Facilities and Backbone Infrastructure, the development of affordable housing, and the rehabilitation of the Central Shops.

1.61 **Project Entitlements**: The actions, plans, ordinances, resolutions, maps, plan review, design review, preservation review, and permits and approvals which have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which are set out in Exhibit C. The Project Entitlements include the Plans, this Agreement, the Tentative Map and its conditions of approval, Zoning Map, the Inclusionary Housing Plan, the Mitigation Measures, Special Planning District, Design Guidelines and Central Shops Historic District, and all other official actions in furtherance of Project approval including modifications to the City Code as set out in this Agreement, as well as modifications and amendments to the Plans and Project Entitlements subsequent to the Effective Date as set out in any Subsequent Approval.

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

1.63 **Proposition 1C Agreement**: The agreement between LANDOWNER and the State Department of Housing and Community Development or other State agency for receipt of funding under the Infill Incentive Grant Program of 2007 and the Transit Oriented Development Implementation Development Program that were funded under Proposition 1C, which was approved by the electorate in November 2006 and

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implemented under Senate Bill 86 (Peralta) and Assembly Bill 1091 (Bass), Statutes of 2007.

1.64 **Protest Waiver:** The waiver set forth in Exhibit G which binds LANDOWNER pursuant to the terms of this Agreement to participate in implementation of the Financing Plan.

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

1.66 **Public Facilities:** All public infrastructure, facilities, improvements and amenities, including historic rehabilitation of the plazas within the Central Shops Historic District, needed to serve the Project as identified in the Plans, Development Plan, Project Entitlements, Financing Plan or Subsequent Approvals; or as may otherwise be constructed or owned by, or conveyed to, CITY, City Agency or Public Agency, including, without limitation: (i) streets, alleys, bridges, pedestrian and bicycle paths, surface and structure parking facilities, and interchanges and freeway improvements; (ii) heavy and light rail and trolley tracks, lines, stations, platforms, tunnels, and passenger facilities; (iii) bus rapid transit lanes and bus transfer facilities, turnouts and stops; (iv) surface and storm drainage improvements, including replacement of the secondary levee; (v) sanitary sewer improvements; (vi) water storage and transmission facilities; (vii) flood control improvements; (viii) solid waste facilities; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire stations; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins and cistern; (xv) schools and educational facilities; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork.

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

1.68 **Public Services:** All services provided by CITY, City Agency and Public Agency to serve the residents and the businesses to be located on the Property, as may be identified in the Plans; or in the Development Plan, Project Entitlements, Special Conditions or Subsequent Approvals; including, without limitation, the maintenance,

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operation or the provision of, as the context implies: (i) streets, alleys, bridges, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) surface and storm drainage improvements and pollution control services; (iii) sanitary sewer improvements and pollution control services; (iv) water collection, storage, treatment and transmission facilities; (v) flood control improvements; (viii) solid waste services; (ix) street lighting; (x) police and fire services, (xi) parks, plazas, open space, greenbelts, trails, and landscaping; (xii) drainage retention and flood control systems; (xiii) community centers, performing arts centers, and museums; and (xiv) publicly owned artwork.

1.69 **Purchase and Sale Agreement**: The agreement between CITY and LANDOWNER dated December 13, 2006 (City Agreement No. 2006-1405) that specifies the obligations of the Parties in regards to the sale and purchase of Parcels A and B as defined therein, and as said agreement may be amended from time to time.

1.70 **Quimby In-Lieu Fees**: The fees referenced in City Code Chapter 16.64 relating to the Quimby Parkland Dedication Requirement, and as said ordinance is modified as specified herein.

1.71 **Quimby Parkland Dedication Requirement**: The obligation to dedicate land pursuant to City Code Chapter 16.64, and as said ordinance is modified as specified herein.

1.72 **Radio or Microwave System**: The Sacramento Regional Radio Communications System (SRRCS), the Automated Local Evaluation in Real Time (ALERT) system, the State of California Public Safety Microwave Network system, or another emergency or weather communication facility that is owned, operated by, or used by the federal, state, county, CITY, City Agency or other Public Agency to protect the public health, safety or welfare.

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

1.74 **Reimbursement**: The reimbursement of monies to LANDOWNER who has advanced funds for Public Facilities, including Backbone Infrastructure, required for Development of the Property for the Project, or the entity who has advanced funding for particular Public Facilities and Backbone Infrastructure which are required by the Plans

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and Project Entitlements, and where such Public Facilities have benefit to land beyond the final map parcels and the Property in accordance with the terms of the Financing Plan, Funding Agreement, Special Conditions, Assessment District Policy Manual, and/or a reimbursement agreement approved by CITY and executed by the Parties and as may more particularly be described herein and in the Funding Agreement Business Terms and the Owner Participation Agreement.

1.75 **Reservation**: In accordance with the provision of Government Code Section 66479 et seq., the transfer of real property, including an easement or other defined interest less than a fee interest therein, under a reservation to CITY, City Agency or Public Agency, subject to the limitations on use and reserved access and other rights to LANDOWNER as set out herein and in the Tentative Map conditions, and with regard to remediation of the real property pursuant to the terms of the Tri-Party MOU and a DTSC deed restriction, free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency at a purchase price set out in the Reservation Agreement, the form of which is provided as Exhibit J.

1.76 **Roadway and Parking Phasing Plan**: The Roadway and Parking Phasing Plan, which is based on the Phase 1 Development Plan and contingent on the timing of construction of public or private structured parking garages, is more particularly described in Exhibit B-5.

1.77 **Sacramento Intermodal Transportation Facility**: The planned expansion of the existing Sacramento Valley Station for intercity passenger rail, light rail and bus transportation services, the development of Depot Park, and ancillary joint development as described in concept in the Draft Environmental Impact Report.

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

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

1.80 **Special Planning District**: The Railyards Special Planning District as set out in Chapter 17.124 of the Zoning Code as approved by the City Council by ordinance on December 11, 2007. The Special Planning District sets forth specific allowed uses, development standards, approval process and scope of review for the Subsequent Approvals.

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1.80 **Specific Plan:** The Sacramento Railyards Specific Plan as approved by the City Council by resolution on December 11, 2007, and as said plan may be amended from time to time.

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

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

1.83 **Subsequent Rule:** All City ordinances, resolutions, rules, regulations and official policies in effect at the time a Subsequent Approval is to be taken, which are adopted after the Effective Date.

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

1.85 **Tentative Map:** The "tentative master parcel map" as defined in City Code Section 16.32.160 that subdivides LANDOWNER's Property into legal parcels pursuant to the Subdivision Map Act (commencing at Section 66410 of the Government Code) as approved by the City Council as part of the Project Entitlements, as more particularly described in Exhibit C.

1.86 **Track Relocation Agreement:** The agreement between CITY and LANDOWNER dated December 13, 2006 (City Agreement No. 2006-1406) that specifies the obligations of the Parties to fund and undertake relocation of the Union Pacific Railroad Company's mainline freight and passenger tracks and passenger facilities as defined therein, and as said agreement may be amended from time to time.

1.87 **Tri-Party MOU:** The Memorandum of Understanding dated December 11, 2007 between CITY, DTSC and LANDOWNER regarding oversight of the remediation of hazardous materials on the Property that sets forth the rights and obligations among the Parties and DTSC regarding remediation of the Property, and as said Memorandum of Understanding may be amended from time to time.

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

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

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

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

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2.0 GENERAL TERMS AND CONDITIONS.

2.1 **Term.** The term of this Agreement shall mean and include the Initial Term plus the First through the Fourth Extensions (individually an "Extension Period") as made applicable below, unless it is sooner cancelled by a Party for default as provided in Section 7.5, or terminated for convenience or for other reasons as provided in Section 7.7.

2.1.1 **Initial Term and Extensions.** The term of this Agreement shall commence on the Effective Date and may extend for specified periods thereafter based on the length of the Initial Term and each Extension Period and the LANDOWNER's completion of the various levels of development as defined below (Development Milestones) relating to each Extension Period. Each Extension Period shall consist of five years, commencing as of the last day of any prior Extension Period. Upon the a failure to achieve the Development Milestone, there shall be no further extensions of the Term and the Agreement shall expire as of the ending date of the last Extension Period provided hereunder.

2.1.1.1 **Initial Term:** Ten (10) years after the completion of the Track Relocation Project, as defined in Section 2.2.3.

2.1.1.2 **First Extension:** Additional five (5) year extension if at least the following amount of Development has been constructed, based on occupancy permits or certificates issued, (1st Development Milestone) as of end of the Initial Term. For this First Extension only, additional retail built can be credited against office requirement (square foot for square foot).

<u>Retail Sq. Ft.</u>	<u>Office Sq. Ft.</u>	<u>Residential Units</u>
350,000	200,000	700

2.1.1.3 **Second Extension:** Additional five (5) year extension if at least the following additional amount of Development has been constructed, based on occupancy permits or certificates issued, (2nd Development Milestone) as of end of the First Extension. For this Second Extension only, up to an additional 150,000 sq. ft. of retail built can be credited against the office requirement (square foot for square foot).

<u>Retail Sq. Ft.</u>	<u>Office Sq. Ft.</u>	<u>Residential Units</u>
150,000	500,000	1,000

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2.1.1.4 **Third Extension:** Additional five (5) year extension if at least the following additional amount of Development has been constructed, based on occupancy permits or certificates issued, (3rd Development Milestone) as of end of the Second Extension. For this Third Extension only, office built can be credited against the retail requirement (square foot for square foot).

<u>Retail Sq. Ft.</u>	<u>Office Sq. Ft.</u>	<u>Residential Units</u>
20,000	400,000	2,700

2.1.1.5 **Fourth Extension:** Additional five (5) year extension if at least the following additional amount of Development has been constructed, based on occupancy permits or certificates issued, (4th Development Milestone) as of end of the Third Extension. For this Fourth Extension only, retail and office requirements are interchangeable (square foot for square foot).

<u>Retail Sq. Ft.</u>	<u>Office Sq. Ft.</u>	<u>Residential Units</u>
50,000	80,000	3,000

2.1.1.6 **Total Development:** If LANDOWNER develops more than the Development Milestone as required for commencement of the next Extension Period, that additional amount of Development may be credited only for the purpose of determining whether the Development Milestone has been met for the next Extension Period. For example, if LANDOWNER constructs 170,000 sq. ft. of retail during the Second Extension Period, the excess of 20,000 sq. ft. above the minimum required under the 2nd Development Milestone will be credited for the purpose of determining whether the required minimum amount of retail has been developed to meet the 3rd Development Milestone for commencement of the Third Extension Period, but not for the 4th Development Milestone. However, additional Development within one Extension Period cannot be credited beyond the next subsequent Extension Period. Over the potential term of this Agreement, the cumulative minimum amount of Development required for the term extensions is summarized below:

<u>Retail Sq. Ft.</u>	<u>Office Sq. Ft.</u>	<u>Residential Units</u>
570,000	1,180,000	7,400

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

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2.1.2.1 On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto, as determined by the CITY and subject to a default hearing pursuant to Section 7.6.1 if LANDOWNER's protests CITY's determination. For purposes of this subsection, "Exercise Date" shall mean the date that CITY receives LANDOWNER's written notice of intention to exercise the option to extend the term of this Agreement, in accordance with the provisions of Sections 2.1.1 and 9.2.

2.1.2.2 The option to extend the term shall be exercisable by delivering to CITY written notice of LANDOWNER's intention to exercise the option to extend the term not later than one hundred eighty (180) days prior to expiration of the Initial Term and each Extension Period as defined in Section 2.1.1, above.

2.1.3 **Maximum Term.** The Parties specifically intend that under no circumstances shall the term of this Agreement extend beyond thirty (30) years after completion of the Track Relocation Project as described in Section 2.2.3, or this Agreement is amended in accordance with Section 2.4.

2.2. **Development Timing.**

2.2.1 **Project Schedule.** Other than for the purpose of determining whether the Term of the Agreement shall be extended as described in Section 2.1, above, and the requirements set out in the Funding Agreement; this Agreement contains no requirement that LANDOWNER must complete Development of the Project or any phase thereof, or Development of the Property or any portion thereof, within the Term of this Agreement or within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to develop the Property for the Project in accordance with LANDOWNER's own schedule; provided, however, that Development of the Property is substantially consistent with the Development Plan, as evaluated in the Environmental Impact Report, or pursuant to further environmental review in the event that such further review is required by law, and is in compliance with the Project Entitlements and the Land Use and Development Regulations. Any act which is required to be completed within a specific time period, as set out in the Project Entitlements, shall be timely completed as provided therein.

2.2.2 **Exclusions.** Except as provided in Section 3.4.1, no Subsequent Rule which impairs in any measure the Vested Rights or otherwise limits the rate, size, intensity or density of development over time shall be applicable to the Property or the Project. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions or schedule compliance with the Project Entitlements or to excuse the

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timely completion of any act which is required to be completed within a time period as set out in (i) the Mitigation Measures, Funding Agreement, or Special Conditions; (ii) any other provision of the Exhibits or terms of this Agreement; (iii) any applicable City Code provision in effect as of the Effective Date; or (iv) any applicable Subsequent Rule.

2.2.3 Track Relocation. Nothing contained in this Agreement or in the Specific Plan, Environmental Impact Report, Project Entitlements or Track Relocation Agreement shall be construed as an obligation of CITY to ensure that the existing Union Pacific Railroad Company freight and passenger tracks, related passenger platforms and facilities and the 5th Street and 6th Street overcrossings of the relocated tracks (collectively "Track Relocation Project") is completed by CITY by a specified date to allow for Development of the Property in accordance with the Phasing Plan; provided, however, that CITY shall make a good faith effort to accomplish such relocation in a timely and expeditious manner to facilitate Development of the Property substantially consistent with the Development Plan. The term "completion" shall mean that date that the CITY records the notice of completion of construction of the Track Relocation Project.

The Track Relocation Agreement sets forth the Parties' obligations, and the terms and conditions thereof, including, without limitation: (i) reimbursement obligations for relocation of passenger facilities and freight main line track relocation, (ii) payment for track relocation work, (iii) grant of a temporary construction easement and rights of access and egress as required to perform track relocation work; and (iv) fulfillment of all conditions precedent thereto, including without limitation, approval of the implementation and funding of track relocation, environmental review under CEQA and NEPA. Nothing in this Agreement shall be deemed to modify, impair or vary the terms of the Track Relocation Agreement.

2.2.4 Purchase and Sale Agreement. The Purchase and Sale Agreement sets forth the Parties obligations, among other things, with respect to the purchase and sale of the properties defined therein. Nothing in this Development Agreement shall be deemed to modify, impair or vary the terms thereof.

2.2.5 Tri-Party MOU. The Parties recognize that remediation of the Property by LANDOWNER to remove hazardous substances in compliance with enforcement orders of DTSC, and LANDOWNER's and CITY's compliance with the terms and conditions of the Tri-Party MOU, may govern the timing, uses and extent of LANDOWNER's Development of the Property for the Project substantially consistent with the Development Plan. Nothing contained herein or in the Specific Plan or Special Planning

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District is intended to alter or modify the terms and conditions of the Tri-Party MOU or to allow LANDOWNER to Develop the Property in a manner that is inconsistent with DTSC's enforcement orders and deed restrictions. In the Tri-Party MOU, LANDOWNER has committed to continue remediation of the Property and undertake the work required for DTSC to permit Development of the Property substantially consistent with the Development Plan. Nothing in this Development Agreement shall be deemed to modify, impair or vary the terms thereof.

2.3 **Sacramento Intermodal Transportation Facility.** As of the Effective Date of this Agreement, CITY has acquired Parcel A, which is the location of the Sacramento Valley Station, and has an option to purchase Parcel B in accordance with the terms of the Purchase and Sale Agreement. Parcel B encompasses lots 38 and 39 on the Tentative Map. CITY intends to develop Parcels A and B for the future Sacramento Intermodal Transportation Facility. Nothing contained herein or in the Specific Plan, Environmental Impact Report or the Project Entitlements shall be construed as a commitment by CITY to LANDOWNER that the concept plan for the Sacramento Intermodal Transportation Facility will be developed in accordance with the Phasing Plan or during the term of this Agreement. CITY commits to LANDOWNER to make a good faith effort to develop the Sacramento Intermodal Transportation Facility during the term of this Agreement, subject to receipt of the necessary federal and state funding, permits and approvals.

2.3.1 **Consistency with Specific Plan.** The Specific Plan and the Environmental Impact Report were prepared on the assumption that the Sacramento Intermodal Transportation Facility would be developed by the CITY in accordance with the concept plan then in existence. The CITY intends to develop the Sacramento Intermodal Transportation Facility in a manner consistent with the Specific Plan and Environmental Impact Report, subject to further environmental review under CEQA and NEPA. However, the CITY has no obligation under this Agreement to develop Depot Park or the Chinese Garden as shown in the Specific Plan and described in the Design Guidelines, or to construct parking facilities or an extension of 3rd Street within Parcels A and B. In the exercise of its proprietary capacity and legislative authority to cause or allow the private development of any portion of the Sacramento Intermodal Transportation Facility, the CITY will take into consideration the Design Guidelines in developing and reviewing the design plans for joint or private development within Parcels A and B.

2.3.2 **Intermodal Related Improvements.** In consideration for the CITY's financial commitments set out in the Funding Agreement Business Terms which are to be further detailed in the Funding Agreement, LANDOWNER shall be obligated to

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undertake improvements to Develop the Market Plaza, the gateway structure on lot 22 that is to serve Intermodal passengers, and the rehabilitation of the Paint Shop building so that these improvements are completed and open to the public no later than at the time of opening of the 5th and 6th Street garage as referenced in Section 5.12 and to be further defined in the Funding Agreement.

2.3.3 Development of Parcel B. If the CITY does not exercise its option to purchase Parcel B as provided for in the Purchase and Sale Agreement, the Transportation Corridor (TC) zoning designation of that parcel would allow for LANDOWNER's Development of lot 39 of the Tentative Map in accordance with the provisions of Chapter 17.44 of the Zoning Ordinance.

2.4 Amendment, Suspension or Termination of Agreement.

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

2.4.2 Plan Changes. The Parties acknowledge that in the future it may be feasible to propose Development of the Property at a density which exceeds the Development Plan but which is consistent with the Specific Plan. Nothing contained herein is intended to limit LANDOWNER or an Assignee's right to request CITY to consider amending the Plans, Project Entitlements and Land Use and Development Regulations to allow for additional Development or for a reduction in the level of Development from that set out in the EIR Analysis Scenario, subject to compliance with CEQA and applicable state and City laws and regulations and the applicable provisions of this Agreement.

2.4.3 Phasing and Development Plan Changes. Substantive changes to the Development Plan by LANDOWNER in terms of the type, amount, density or location of Development that: (i) would require either (a) substantial changes to the Tentative Map conditions, (b) amendment of the Specific Plan, or (c) a revision of the Financing Plan due to a significant reduction in projected property taxes or assessments, sales taxes, or the timing of receipt thereof; or (ii) could impair or impede the ability of either Party to perform their respective obligations under this Agreement, the Funding Agreement, the Track Relocation Agreement or the Tri-Party MOU; will necessitate an amendment to this Agreement to incorporate the revised development plan and the applicable changes

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to the terms and conditions of the Project Entitlements, Mitigation Measures, Financing Plan, Funding Agreement and related documents and agreements. If either Party notifies the other Party that an amendment is needed due to the proposed substantive changes to the Development Plan, the Parties shall meet and negotiate in good faith the terms of an amendment to this Agreement. The scope of the good faith negotiation is limited to such amendment(s) necessary to effectuate the substantive changes to the Development Plan contemplated in this Section 2.4.3, and shall not reopen other provisions of this Agreement not effected by the proposed amendment(s). The CITY may suspend or withhold a Subsequent Approval if reasonably required by the circumstances then existing at the time of the proposed change in the Development Plan until the Parties can come to an agreement on the terms of such an amendment or mutually agree to the termination of this Agreement. This Section 2.4.3 does not apply to Development Plan changes that may be made by CITY after the Effective Date without LANDOWNER's consent which are expressly provided for in this Agreement, including, without limitation, the change in operation of 5th and/or 7th Streets as provided in Section 3.10.

2.4.4 Minor Changes. This Agreement need not be amended to allow for modifications in the Development Plan which are in compliance with the Plans and Project Entitlements, which do not require approval by the City Council, or which do not require an amendment of this Agreement as noted in Section 2.4.3, above. The Parties acknowledge that refinement and further implementation of the Development Plan may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement, and the Parties desire to retain a certain degree of flexibility with respect to such details and performances. If and when the Parties find and mutually agree that clarifications, minor changes or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, changes or adjustments through an operating written memorandum approved by the Parties.

After execution, the operating memorandum shall be attached to this Agreement and may be further changed and amended from time to time as necessary by subsequent written approval of the Parties, without the necessity of action by the City Council. Unless required by the Statute or the Procedural Ordinance, no operating memorandum shall require prior notice or public hearing, nor shall it constitute an amendment to or termination for convenience in whole or in part of this Agreement.

2.4.5 Suspension. Subject to prior notice and opportunity to review the factual basis therefore and further subject to a hearing of such facts, the CITY may suspend this Agreement, or a portion thereof, if the CITY finds and determines, based on specific

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findings of fact, and in the reasonable exercise of its discretion, that suspension is necessary to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property. Such suspension shall be limited only to that portion of this Agreement necessary to mitigate such risk. The Term of this Agreement shall be extended by the period of such suspension unless the Agreement is amended by the mutual written consent of the Parties.

2.4.6 Termination. This Agreement will terminate at the earlier of the date when (i) the Term expires, (ii) it is wholly terminated for convenience as provided in Section 7.7, or (iii) it is cancelled for default as provided in Section 7.5.

2.5 Interests of LANDOWNER. LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including the Lender, have executed and are bound by this Agreement. Lender's rights and obligations are subject to Article 8.0 of this Development Agreement. CITY has an option under the terms of the Purchase and Sale Agreement to acquire Parcel B (Tentative Map lots 38 and 39) and owns a security interest in Parcel D. Therefore, as an owner of an interest in the Property, CITY approves this Agreement by its execution.

2.6 Binding Covenants. The benefits and burdens of this Agreement shall be covenants that run with the land and shall be binding upon the owners of the Property including, without limitation, LANDOWNER, affiliates of LANDOWNER, Lender and Assignees. After CITY obtains title to Parcel B as defined in the Purchase and Sale Agreement, this Agreement will have no force or effect over that portion of the Property; however, CITY will remain obligated to comply with the provisions of Section 2.3. The benefits of this Agreement shall inure to the Parties and to their Assignees subject to compliance with Section 2.7.

2.7 Assignment.

2.7.1 Right to Assign. LANDOWNER shall have the right to freely sell, alienate, transfer, assign, lease, license and otherwise convey all or any portion of the Property and improvements thereon, and as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, without the consent of CITY; provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act (Government Code Section 66410 et seq.). LANDOWNER shall notify CITY of any sale, transfer or assignment of all of LANDOWNER's interests in all or any portion of the Property by providing written notice

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thereof to CITY in the manner provided in Section 9.2 not later than thirty (30) days before the effective date of such sale, transfer or assignment the assignment; provided, however, that LANDOWNER's failure to provide such notice shall not invalidate such sale, transfer or assignment and provided further that any successor in interest in ownership of all or a portion of the Property shall not benefit from the Vested Rights conferred herein without entering into an Assignment and Assumption Agreement with CITY.

2.7.2 Release of LANDOWNER. Such purchaser, assignee or transferee shall execute and deliver to CITY an Assignment and Assumption Agreement whereby such purchaser, assignee or transferee assumes all obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned, or transferred. Upon such execution and delivery, CITY shall release LANDOWNER from all duties, liabilities and obligations under the Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

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

2.8 Plan or Project Entitlement Amendments.

2.8.1 By Assignee. If an Assignee files an application with CITY that proposes to amend the Plans, Project Entitlements, or the Land Use and Development Regulations and such amendment could affect the Vested Rights of LANDOWNER or of another Assignee(s), CITY shall endeavor to provide reasonable notice to LANDOWNER before acting on such application. CITY shall not be required to obtain

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the prior approval of LANDOWNER or of the other Assignee(s) to approve such application notwithstanding the terms of this Agreement or an Assumption and Assignment Agreement.

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

2.8.3 Approval Rights. LANDOWNER shall be solely responsible for obtaining any prior approval rights over applications to amend the Plans, Project Entitlements or the Land Use and Development Regulations by an Assignee(s), and for obtaining any waivers of LANDOWNER's applications by an Assignee(s), at the time LANDOWNER sells or transfers a portion of the Property to a third party which may become an Assignee to this Agreement. The provisions in this Section 2.8 shall apply to LANDOWNER's successors in interest, to each initial Assignee(s) and its successors in interest, and to all property owners and affiliates of all or a portion of the Property during the term of this Agreement.

2.8.4 CITY Processing. In processing an application as described in this Section 2.8, CITY shall have the sole exclusive discretion to approve or deny a Discretionary Action or a Ministerial Action after the Effective Date, subject to Section 3.3, and consistent with the terms of this Agreement.

2.8.5 Indemnity. LANDOWNER and an Assignee(s) that files an application as described in this Section 2.8 shall defend and indemnify CITY in any third-party action claiming that CITY has violated LANDOWNER's and/or an Assignee(s)'s Vested Right under this Agreement in approving such application, in accordance with the provisions of Section 7.1; provided, however, that the indemnity provided in this Section 2.8.5 shall not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

2.9 School District Mitigation. Under the Specific Plan, all of the proposed residential development will be located within the boundaries of one or more School Districts. LANDOWNER is required under applicable state law (Government Code Chapter 4.7 of Division 1 commencing at Section 65970) to provide for school facilities

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funding to ensure that adequate school facilities will be available to serve the students who will reside at the Property in the future as the Project is developed, and the CITY is required to make certain findings and may condition the approval of the Project Entitlements to mitigate the effects of overcrowded schools. The Specific Plan and Tentative Map conditions provide for the reservation of one or more parcels within the Property for a future school site. LANDOWNER intends to comply with applicable law by the terms of an agreement with the Sacramento City Unified School District (District) to provide for siting and financing of the necessary school facilities needed to serve the Project students or will otherwise to comply with applicable state law including the payment of school impacts fees. CITY may condition or deny a Subsequent Approval if a School District provides written notice to CITY that either LANDOWNER is in default of its agreement with the District or has not paid the required impact fees. LANDOWNER shall defend and indemnify CITY in any action by any school district or a third party against CITY based on a claim that LANDOWNER has violated the terms of such an agreement or the applicable law imposing mitigation obligations on LANDOWNER; provided, however, that the indemnity provided in this Section 2.9 shall not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

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3.0 VESTED DEVELOPMENT RIGHTS.

3.1 Entitlement to Develop Project. Subject to the terms hereof, CITY grants LANDOWNER a Vested Right to develop the Property for the Project in a manner that is substantially consistent with the Development Plan and is consistent with the Plans and Project Entitlements, subject to all of the terms and conditions of this Agreement. In exercising its Vested Rights, LANDOWNER's Subsequent Approvals shall not be subject to any Subsequent Rule unless expressly set forth herein. The Plans, Project Entitlements and Vested Rights, which authorize and limit Development of the Property for the Project in accordance with their respective terms, are intended to be construed in harmony with each other.

3.1.1 Compliance with Project Entitlements. The Parties acknowledge that the Subsequent Approvals will apply the Design Guidelines, Mitigation Measures, Tentative Map conditions and the review requirements under the Special Planning District and the Central Shops Historic District. In addition, the location, size and type of land uses in the Development Plan may be conditioned or restricted as permitted under the Land Use and Development Regulations, the DTSC requirements as referenced in Section 3.1.3 and as otherwise provided herein. Nothing contained in this Agreement is intended or may be construed as an assurance or representation by CITY to LANDOWNER that the Development Plan can be fully implemented within the Term of this Agreement or that LANDOWNER will be able to fully exercise its Vested Rights.

3.1.2 Build-Out Consistent with Specific Plan. As provided in the Special Planning District, the type, amount and density of land uses specified in the Specific Plan may be adjusted by relocating uses to adjoining or nearby parcels. Significant changes in the Development Plan may require subsequent environmental review. To the extent that LANDOWNER submits applications to CITY for Development that differs from the Development Plan and such applications do not require preparation of a subsequent or supplemental environmental impact report or an amendment to this Agreement as referenced in Section 2.4.3, LANDOWNER's Vested Rights under this Agreement will be adjusted to include the additional amount of Development and/or the Development Plan changes as authorized under a Subsequent Approval, as long as the application does not require an amendment to the Plans, Project Entitlements or Land Use and Development Regulations. Such adjustment in the Vested Rights shall be considered and implemented as a minor change under Section 2.4.4 of this Agreement. If an application requires an amendment to the Plans, Project Entitlements or Land Use and Development Regulations, CITY may require that this Agreement be amended in order to adjust the LANDOWNER's Vested Rights accordingly.

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3.1.3 DTSC Requirements. As of the Effective Date and during the term of this Agreement, DTSC has or will record, or may cause LANDOWNER to record, land use covenants against the Property to limit the type of land uses that may be developed on the Property due to the past or continued presence of hazardous substances on or underneath the Property. Notwithstanding LANDOWNER's Vested Rights, the Parties agree that nothing contained herein or in the Plans and Project Entitlements is intended to alter or modify the terms and conditions of the DTSC enforcement order, recorded land use covenants, or the Tri-Party MOU, to allow LANDOWNER to Develop the Property in a manner that is inconsistent with DTSC's enforcement orders and recorded covenants. The Parties acknowledge, however, that LANDOWNER under the terms of the Tri-Party MOU is obligated to consult with DTSC to modify the land use covenants to allow for residential and park and open space development consistent with the Development Plan and Specific Plan, and that LANDOWNER may seek in the future to amend the Specific Plan and/or the Special Planning District based on removal of or changes to recorded covenants following remediation which would allow for Development of other land uses as permitted under the Development Plan.

3.1.4 Public Agency Radio and Microwave Communication Systems. Notwithstanding LANDOWNER's Vested Rights and anything contained herein to the contrary, in the event CITY finds and determines that a proposed Project building will materially interfere with a Radio or Microwave System, the CITY shall notify LANDOWNER regarding the interference and methods or means of mitigating such interference. CITY may condition a Subsequent Approval including, without limitation, an application for a Building Permit or approval of a tentative subdivision map to mitigate, in accordance with this Section 3.1.4, interference with a Radio or Microwave System that is in existence or has been approved, or the plan for such a System has been proposed as of the entitlement or permit application date.

LANDOWNER agrees to negotiate with CITY to eliminate any such interference by either (i) providing or assisting CITY in obtaining the funding necessary to purchase and install "repeaters" or other devices on Project buildings or apply other technology as necessary to re-route microwaves around the building, or (ii) pursuing other reasonable and commercially practicable means acceptable to the Parties and the affected owner or operator of the Radio or Microwave System. If the Parties and the affected owner or operator of the Radio or Microwave System are unable to agree on the means for eliminating the interference, CITY may condition a Subsequent Approval including, without limitation, reducing the permitted building height, if the interference would pose a risk to the public health and safety in regards to emergency and weather radio and microwave communications. In addition, Building Permits may be conditioned on compliance with the provisions set out in Exhibit N.

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3.2 Initial Phase and Phase 1 Development Plan. LANDOWNER has proposed to develop the Initial Phase, which is defined in the Environmental Impact Report and Financing Plan as Phases 1 and 2 of the Phasing Plan, in subphases of 1A, 1B.1, 1B.2, and 2. A portion of phase 1B.1 and 1B.2 as set out in the Phasing Plan (Exhibit B-4) will not be developed until Phase 2 is developed, in order to reduce the cost of the Public Facilities and Backbone Infrastructure that are identified in the Specific Plan and Financing Plan. LANDOWNER has developed the Phase 1 Development Plan (Exhibit B-3) and the Roadway and Parking Phasing Plan (Exhibit B-5), which specify the amount of and location of Development in subphases 1A, 1B.1 and 1B.2 and the Public Facilities and Backbone Infrastructure required for that level of Development, which was the basis for the Funding Agreement Business Terms. The Phase 1 Development Plan does not change the total amount of development and proposed timing of development of the Initial Phase as evaluated in the Draft Environmental Impact Report and specified in the Specific Plan and Project Entitlements. LANDOWNER's election to commence with Development of the Phase 1 Development Plan does not alter LANDOWNER's Vested Right to develop all of the land uses set out in the Development Plan during the Term of this Agreement.

3.2.1 Surface and Structured Parking Lots. As part of LANDOWNER's Phase 1 Development Plan, LANDOWNER may develop surface parking lots in lieu of the parking structures referenced in the Specific Plan, as set out in LANDOWNER's Roadway and Parking Phasing Plan. LANDOWNER intends to replace some or all of the surface parking lots developed in subphases 1A, 1B.1 and 1B.2 in Phase 2, as shown in the Roadway and Parking Phasing Plan for consistency with the Specific Plan. CITY may condition a Subsequent Approval to include replacement of a surface parking lot with structured parking and/or a development project so that the Development Plan remains consistent with the Specific Plan after completion of Development of the Phase 1 Development Plan. CITY desires to ensure that the surface parking lots are developed as interim parking facilities only and that such parcels are timely redeveloped as parking structures and for the land uses as specified in the Specific Plan. Pursuant to the terms of the Funding Agreement Business Terms, CITY will finance and construct the parking garage between 5th and 6th Streets. The CITY or City Agency may also finance and construct one or more of the other planned public parking garages during the Term of this Agreement. All temporary and permanent easements required for foundation construction, vertical construction and other Development above public parking garages to be owned by CITY or City Agency is subject to the provisions in Section 5.12 and the terms of the Funding Agreement.

3.3 Subsequent Approvals.

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3.3.1 **Scope.** Development of the Property for the Project is subject to all required Discretionary Actions and Ministerial Actions that have not otherwise been approved by CITY or City Agency prior to the Effective Date. Subsequent Approval would include, without limitation, approval of planning director urban development permits under the Special Planning District, final parcel and subdivision maps, additional tentative subdivision maps to further subdivide a parcel, special permits, variances, plan review, design review, preservation review, and grading permits and Building Permits required for Development of the Project.

3.3.2 **Processing.** Subsequent Approvals shall be processed in accordance with the Special Planning District provisions and the applicable provisions of the other Land Use and Development Regulations. CITY shall not unreasonably deny, delay, or condition any Subsequent Approval required for Development of the Project that is necessary or desirable to the exercise of LANDOWNER's Vested Rights under this Agreement, as long as the application is in compliance with the Plans, Project Entitlements, and the Land Use and Development Regulations.

3.3.2.1 CITY agrees to maintain the Planning Director's Urban Development Permit process as specified in the Special Planning District for the Initial Term of this Agreement unless the City Council makes a finding and determination, upon reasonable notice to LANDOWNER, that this permit process either (i) violates any applicable state or federal law or regulation, or (ii) has or may result in a significant adverse effect to the health or safety of the public. Notwithstanding the foregoing, after the first five years from the completion of the Track Relocation Project as defined in Section 2.2.3, the City Council may review and amend the Special Planning District to modify the process for review, approval and/or appeal of Subsequent Approvals so as to include (i) additional public notice, (ii) additional reviews or approvals by one or more commissions as currently constituted or as may be constituted in the future, and/or (iii) additional review, approval, appeals and/or call-ups by the City Council.

3.3.2.2 Any application that have been filed prior to the date of enactment of any ordinance that would modify or repeal the Planning Director's Urban Development Permit process shall be processed in accordance with then applicable provisions of the Special Planning District.

3.3.3 **Conditions.** In reviewing and approving applications for Subsequent Approvals that are Discretionary Actions, CITY may exercise its judgment, consistent with the provisions of the Plans, Project Entitlements and Land Use and Development Regulations, as applicable, in regard to CITY's scope of discretion, and may attach such terms, conditions, restrictions and requirements (collectively "Conditions") that are

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consistent with the policies, goals, standards and objectives of the Plans, Project Entitlements, Land use and Development Regulations or Subsequent Rules. Any Conditions imposed as a condition of approval of a Subsequent Approval shall be consistent with the provisions of this Agreement unless: (i) CITY and LANDOWNER mutually agree to such Conditions, (ii) the Conditions are imposed as a mitigation measure for compliance with CEQA, NEPA or a related environmental statute as described in Section 4.1, and/or (iii) additional Public Facilities or Backbone Infrastructure are reasonably necessary to serve the Development of the Property as proposed in LANDOWNER's entitlement application or changes in the location or size of Public Facilities or Backbone Infrastructure are required as described in Section 4.7.

3.3.4 Fees. Imposition of application and processing fees shall be based on the adopted fee schedule at the time the application is submitted. Development Fees in regard to Subsequent Approvals shall be as provided in the ordinance that enacts the Development Fees pursuant to the nexus study that is to be prepared to implement the Financing Plan. As set out in Sections 5.5 and 5.6, the amount of the Development Fees may differ from what is specified in the Financing Plan. The increase in the amount of the Development Fees during the Term of this Agreement may be limited, waived, deferred, modified or credited as referenced in Section 5.5 and as set out in the Funding Agreement.

3.3.5 Design Review. CITY shall review the design of buildings and structures to be developed in the Project in accordance with the Design Guidelines and the Special Planning District regulations. In conducting design review by applying the Design Guidelines, CITY shall exercise its review in such a manner that does not materially reduce the square footage or the floor area ratio for the subject site except as otherwise allowed under the Land Use and Development Regulations and the Project Entitlements, or otherwise materially impact LANDOWNER's Vested Rights. Increases in the cost of Development to comply with the Design Guidelines is not a material impact to LANDOWNER's Vested Rights. In the event of any conflict between the provisions of the Design Guidelines and the Sign Code, the provisions of the Sign Code shall prevail.

3.3.5.1 Design Guidelines Amendments. The Parties acknowledge that after the Effective Date CITY anticipates adopting a new Central City Urban Design Guidelines and Plan that will substantially change the existing Central City design guidelines and development standards. Notwithstanding Section 3.4.4, during the Initial Term CITY may amend the Design Guidelines after adoption of the Central City Urban Design Guidelines and Plan without LANDOWNER's consent unless the amendments (i) directly conflict or materially alter the provisions in the Design Guidelines, or (ii)

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impose new and substantive design obligations. The term “materially alter” means that compliance with the Design Guidelines amendments would require a significant reduction in the remaining amount of Development permitted under the Development Plan or would change the planned land uses as specified in the Development Plan. The CITY shall coordinate with LANDOWNER in identifying the proposed amendments and provide LANDOWNER with notice of the hearings for the Design Guidelines amendments.

Notwithstanding Section 3.4.4, after the Initial Term the Design Guidelines may be amended by CITY without LANDOWNER’s consent unless the amendments would “materially alter” the remaining amount of Development permitted under the Development Plan as defined above. Conflicting standards or the imposition of new and substantive design obligations would not be prohibited. The CITY shall coordinate with LANDOWNER in identifying the proposed amendments and provide LANDOWNER with notice of the hearings for the Design Guidelines amendments.

In regards to amendments to the Design Guidelines during the Initial Term and thereafter as permitted in this Section 3.3.5.1, increases in the cost of Development to comply with the Design Guidelines as amended does not constitute a conflict or a material alteration in the amount of Development permitted under the Development Plan.

3.3.6 Interpretative Walk Plan. Within the Design Guidelines, LANDOWNER is to develop an interpretative walk within the Project that will traverse or border the Central Shops Historic District and which is to be located and designed in such a manner to be respectful of the historic transcontinental railroad. Prior to CITY approval of the first final map or first building permit within the Central Shops Historic District, LANDOWNER shall prepare and submit for approval by the Preservation Commission the Interpretative Walk design plan which is to be consistent with the Design Guidelines and include markers or other means to denote the history of the transcontinental railroad, the Central Shops, and the Alkali Flat neighborhood.

3.4 Subsequent Rule.

3.4.1 Limitation. During the Initial Term, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if the Subsequent Rule would conflict or impede with the Vested Rights of LANDOWNER as set out in this Agreement without LANDOWNER’s express written consent, except as otherwise set forth herein. The terms “conflict” and “impede” would include, without limitation, Subsequent Rules that would directly or indirectly modify the Project

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Entitlements or would increase the cost of Development in order to comply with the Subsequent Rule.

After the Initial Term, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if the Subsequent Rule would materially alter the remaining amount of Development permitted under the Development Plan without LANDOWNER's express written consent. The term "materially alter" means that compliance with the Subsequent Rule would require a significant reduction in the remaining amount of Development permitted under the Development Plan or would change the planned land uses as specified in the Development Plan. After the Initial Term, increases in the cost of Development to comply with the Subsequent Rule including, without limitation, increases in fees and assessments, is not a material alteration in the amount of Development permitted under the Development Plan.

3.4.2 Health and Safety and Supervening Laws. Notwithstanding the provisions in Section 3.4.1, during the Term of this Agreement the CITY may adopt and apply a Subsequent Rule to Subsequent Approvals if: (i) CITY upon notice and hearing, in the reasonable exercise of its discretion and based upon findings of fact and determinations of law, certifies to LANDOWNER that application of a Subsequent Rule is necessary to protect persons or property from a condition which could create a substantial risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property; or (ii) such Subsequent Rule is mandated or required by supervening federal, state, or Public Agency law, regulation or action enacted after the Effective Date. The foregoing two options include, without limitation, any flood control restrictions or requirements that may be adopted on a city-wide basis or that may only apply to the Community Plan or Specific Plan area.

3.4.3 Development Phasing. No Subsequent Rule enacted prior to the expiration of the Initial Term which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall apply to the Property, except (i) when approved by voters through the initiative or referendum process, or (ii) when the CITY enacts a moratorium pursuant to Government Code section 8558 pursuant to a declaration of a local emergency or a state of emergency which suspends development rights, and the moratorium encompasses the Property or the Project, and the basis for enactment of the moratorium otherwise complies with the provisions of Section 3.4.1. After expiration of the Initial Term, a Subsequent Rule which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall only apply to the Property as provided in Section 3.4.1.

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3.4.4 Changes in Plans and Land Use and Development Regulations.

Nothing contained herein shall prevent CITY from amending, repealing, suspending or otherwise modifying (collectively “amendments”) the Plans or Land Use and Development Regulations; provided, however, that no such amendments enacted prior to the expiration of the Initial Term shall apply to the Property or the Project to the extent that they would conflict or impede with LANDOWNER’s Vested Rights, except as set out in Section 2.4.1 or as otherwise provided in this Agreement. The terms “conflict” and “impede” would include, without limitation, changes that would directly or indirectly modify the Project Entitlements or would increase the cost of Development in order to comply with the amendment. After expiration of the Initial Term, a change in the Plans or Land Use Regulations shall only apply to Development of the Project as provided in Section 3.4.1.

3.4.5 Green Building Ordinance.

Notwithstanding anything herein to the contrary, if during the Initial Term CITY enacts an ordinance that would require buildings within the Community Plan area to be designed and constructed with materials, methods or in a manner that would reduce energy consumption, greenhouse gas emissions, and/or heat island effects (the “Green Building Ordinance” or “Ordinance”); such Ordinance shall apply to the Property and the Project to the extent that the Ordinance does not directly conflict with or materially alter the provisions in the Design Guidelines. The term “materially alter” means that compliance with the Ordinance would require a significant reduction in the remaining amount of Development permitted under the Development Plan or would change the planned land uses as specified in the Development Plan. Increases in the cost of Development to comply with the Green Building Ordinance is not a conflict or a material alteration of the Design Guidelines. The CITY will provide LANDOWNER with a copy of the draft Green Building Ordinance and provide notice of the hearings for adoption of that Ordinance. After expiration of the Initial Term, a change in the Green Building Ordinance shall only apply to the Project as provided in Section 3.4.1.

3.4.6 Beneficial Changes.

To the extent that any future amendments to the Land Use and Development Regulations would benefit LANDOWNER and LANDOWNER desires that the Land Use and Development Regulations as amended should be applicable to Subsequent Approvals, LANDOWNER shall notify CITY in writing of its desire to comply with the amended Land Use and Development Regulations and the Parties shall mutually agree to amend this Agreement in accordance with the provisions for Minor Changes in Section 2.4.2.

3.5 Public Park and Open Space Requirements. In consideration for LANDOWNER’s agreement to develop all of the parks and open spaces within the

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Project as provided in the Tentative Map conditions consistent with the Specific Plan and Design Guidelines (“Turnkey Development Requirement”) pursuant to Public Improvement or Credit/Reimbursement Agreement, the form of which shall be based on a standard CITY agreement as approved by the City Attorney, as well as to develop the additional off-site park and open space improvements that abut the Property (“Additional Improvements”) as specified in Exhibit H; the Quimby Parkland Dedication Requirement for the Project shall be two and one half (2.5) acres per one thousand (1,000) residents, calculated by the formula prescribed in the provisions of Section 16.64.030 of the City Code. This acreage shall be provided on-site within the Property. At the time of filing each final map, the 2.5 acre per 1,000 park and open space dedication requirement must have been satisfied for the amount of residential development proposed within that final map, based on the total amount of park and open space acreage that has been dedicated as of the filing date and the total number of housing units that have been approved at the time of filing the final map application. The Parties anticipate that more than 2.5 acres per 1,000 population will be dedicated and developed during the Initial Phase and LANDOWNER shall be entitled to apply such excess acreage as credit towards the Quimby Parkland Dedication Requirement for later phases of the Project, subject to the provision in Section 3.5.2. In addition, at the time of filing each final map, LANDOWNER must be in compliance with its Turnkey Development Requirements for development of the parks and open spaces previously dedicated and compliance with the schedule for development of the Additional Improvements, as specified in Exhibit H, as determined by CITY.

3.5.1 Location, Type and Acreage. The Specific Plan and Design Guidelines designate within the Project certain areas as park and open space lands, the particulars of which along with the acreage therefor are set forth in Exhibit H and the Tentative Map conditions. The Quimby Parkland Dedication Requirements specify the minimum size and type of acreage that is acceptable and provide a formula for allocation of private open space per dwelling unit constructed that is credited toward acreage dedication requirement. The lands designated in Exhibit H, together with the credit calculated pursuant to the Quimby Parkland Dedication Requirements for private open space, are hereby deemed to satisfy the type and size of the park and open spaces to be acceptable for dedication under the provisions of Chapter 16.64 of the City Code.

3.5.2 Development of Fewer Units. Should the amount of residential development proposed for the Project during the Term of this Agreement be substantially reduced from that specified in the Development Plan, the LANDOWNER may request modification of the park and open space dedications set out in Exhibit H to comply with the provisions of the Chapter 16.64 of the City Code, as modified in this Section 3.5. However, CITY shall determine, in consultation with LANDOWNER, which

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parks and open space lots and areas as shown in the Specific Plan and specified in the Tentative Map conditions and the Additional Improvements set out in Exhibit H shall be eliminated and such changes in the Project Entitlements and Exhibit H shall be subject to the procedures for Subsequent Approvals and amendments to this Agreement.

3.5.3 Park Development Impact Fees. LANDOWNER agrees to improve the dedicated parks and open space to the standards and designs set forth in the Plans and Project Entitlements or to other standards as approved by CITY, under the Turnkey Development Requirement in lieu of paying the applicable Park Development Impact Fees. Accordingly, if LANDOWNER meets its Turnkey Development Requirement and Quimby Parkland Dedication Requirement as specified in this Section 3.5, LANDOWNER shall have no obligation to pay Park Development Impact Fees.

3.5.4 Additional Improvements. The Additional Improvements specified in Exhibit H are located along the Sacramento River and beyond the boundaries of the Property. CITY does not own or control all of the land specified for the Additional Improvements. As set out in Exhibit H, the Additional Improvements are required to be implemented concurrently with LANDOWNER's Development of its riverfront parcels on lots 34 and 35. If CITY or LANDOWNER does not own or control all of the land specified for Additional Improvements at the time LANDOWNER undertakes Development of lots 34 and/or 35, then LANDOWNER's obligation to undertake the Additional Improvements shall be adjusted accordingly. Exhibit H sets the amount of LANDOWNER's contribution for the Additional Improvements based on current cost estimates. Those costs estimates shall be adjusted annually to account for construction cost inflation in accordance with the Engineering News Record Construction Cost Index as referenced in the Financing Plan or as specified in the nexus study if CITY adopts a different inflation index. The Additional Improvements located north of the Property are located within the Richards Boulevard Area Plan ("RABP"). CITY commits to including a fair share allocation of the costs of the Additional Improvements within the RABP as part of the upcoming amendment to the RABP Facility Element and the nexus study to set the Development Fees within that plan area. CITY will credit the amount of the RABP fees collected towards the cost of the Additional Improvements, which may reduce the amount of LANDOWNER's contribution for the Additional Improvements based on the actual costs to construct those improvements.

3.6 Private Open Space Requirements. The Parties acknowledge that CITY anticipates adopting a new Central City Urban Design Guidelines and Plan that will recommend changes to the existing Central City design guidelines and development standards, including private open space requirements, consisting of both common private space and exclusive private space requirements, for residential developments.

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Notwithstanding that the applicable Land Use and Development Regulations are set as of the Effective Date, the Parties agree that, if and when the Central City Urban Design Guidelines and Plan is adopted, the Special Planning District may be amended to change the private open space requirements for residential developments and such changes shall apply to the Project during the Initial Term only if such amended requirements provide for a reduction, as opposed to an increase, in the total amount of required private open space. However, any changes in the total amount of requirement open space shall not affect the Quimby Parkland Dedication Requirement as specified in Section 3.5. After the Initial Term, the Special Planning District may be amended to change the private open space requirements for residential developments if such changes are consistent with the adopted City Urban Design Guidelines and Plan and the revised Special Planning District private open space requirements shall apply to the Project and may be imposed as conditions of Subsequent Approvals.

3.7 Billboards and Message Center Displays. As of the Effective Date, Clear Channel either owns or has permits for two (2) billboards located within the Property. Billboards are as defined in the Section 5400 et seq. of the Business and Professions Code and the City Sign Code. Pursuant to the terms of a relocation agreement under the City Sign Code and issuance of the necessary permits and approvals from the State Department of Transportation as provided under State law, LANDOWNER and/or Clear Channel or the successive owner of the existing billboards on the Property shall have the option to retain or relocate one or both of the billboards within the Property. In addition, LANDOWNER and/or Clear Channel may be entitled to change the size of the billboards and to convert one or both of them to illuminated billboards, referred to as Message Center Displays in Section 5405 of the Business and Professions Code, subject to compliance with the City Sign Code and State law.

3.8 Inclusionary Housing Requirements. LANDOWNER has filed an Inclusionary Housing Plan, which has been approved as part of the Project Entitlements. The Inclusionary Housing Plan, which is set out in Exhibit E, specifies that certain Subsequent Approvals for the Project will contain conditions to implement the Inclusionary Housing Plan and that an Inclusionary Housing Agreement is to be recorded against all or a portion of the Property to secure compliance with these conditions. As part of the Subsequent Approvals for the Project, compliance with the Inclusionary Housing Plan will be determined in accordance with the Special Planning District process as set out in Section 3.3.2. LANDOWNER shall implement the Inclusionary Housing Plan and execute and comply with the terms of the Inclusionary Housing Agreement.

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3.8.1 Inclusionary Housing Ordinance Amendments. In addition to the provisions of Section 3.4.6, the Parties in particular acknowledge that in the future the CITY may amend the Inclusionary Housing Ordinance to allow for higher income levels for households that purchase for-sale affordable housing, and LANDOWNER has the right to modify the Inclusionary Housing plan to take advantage of such Ordinance amendments as permitted pursuant to the terms of the Inclusionary Housing Plan.

3.8.2 Contribution of Land. If CITY, City Agency and/or LANDOWNER develops or subsidizes an affordable housing project above public parking garages constructed and owned by CITY or City Agency, LANDOWNER's donation of the land for said garage shall be credited toward LANDOWNER's affordable housing obligation on a proportional basis. The market value of the land at the time of donation compared with the cost of the construction of the affordable housing units shall be used to determine the number of units to be credited towards LANDOWNER's obligation under the Inclusionary Housing Plan.

3.8.3 Housing Project Above 5th/6th Street Garage. If CITY or CITY Agency decides to contract for the development of an affordable housing project above the 5th and 6th Street parking garage on lot 17a, the LANDOWNER shall be given the first opportunity to submit a proposal for that development project on mutually acceptable terms and subject to compliance with the provisions of Section 5.12.2. The Parties shall negotiate in good faith to specify the terms of that development agreement within a 90 day period after CITY provides written notice to LANDOWNER of CITY's decision to seek affordable housing proposals. If LANDOWNER and CITY cannot agree on the terms of that development agreement, CITY shall be entitled to seek development proposals from other developers without further obligation to LANDOWNER.

3.9 Central Shops Historic District. After the Effective Date of this Agreement, the City Council may amend the boundaries of the Central Shops Historic District to coincide with the boundaries of the National Register of Historic Places if the application for the National Register nomination is approved.

3.10 5th and 7th Street Operations. Notwithstanding anything contained herein to the contrary, after the Effective Date of this Agreement the City Council may amend the Specific Plan and the Tentative Map conditions to change the operation of 5th and/or 7th Streets after the Initial Phase to provide that one or both streets are not converted from two-way to one-way operation. The change in operation of 5th and/or 7th Streets may also involve changing the operation of 6th Street. LANDOWNER commits that it will not object to this change in operation of 5th, 6th and/or 7th Streets.

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4.0 EXCLUSIONS.

4.1 Environmental Compliance.

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

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

4.2 **No Limit on Power of CITY to Adopt Subsequent Rule.** Notwithstanding anything contained herein to the contrary, this Agreement does not limit the power and right of the CITY to adopt and amend from time to time plans, ordinances, resolutions, rules and procedures governing development within the City, provision and financing of Public Facilities or Public Services, and any other matters that may be related to the subject matter of this Agreement; however, such Subsequent Rule shall only apply to

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the Property or the Project as provided in Section 3.4.

4.3 Changes Mandated by Other Agencies.

4.3.1. Amendment or Suspension of Agreement. Nothing in this Agreement shall preclude the application to the Property of a Subsequent Rule if the terms and conditions set out in a Subsequent Rule are specifically mandated by changes in state or federal laws or regulations or by action of a Public Agency other than the CITY after the Effective Date. In the event state or federal laws or regulations or an action by a Public Agency either (i) prevents or precludes LANDOWNER's or CITY's compliance with one or more provisions of this Agreement, or (ii) requires changes in the Project Entitlements, Special Conditions, Financing Plan, or Subsequent Approvals; the Parties shall meet and confer in good faith to determine whether the laws, regulations or actions applies to the Property and/or the Project and whether suitable amendments to this Agreement can be made in order to maintain LANDOWNER's Vested Rights and the CITY and LANDOWNER obligations as set out in this Agreement. If the Parties are unable to agree on the terms of an amendment to this Agreement to comply with such laws, regulations and actions, the Parties shall consider whether suspension of the applicable provision(s) of this Agreement is appropriate, and if so, the terms and conditions of such suspension. If the Parties are unable to agree on the terms of an amendment or suspension of this Agreement with respect to the applicable provision(s), either Party shall have the right to terminate this Agreement, only with respect to such provision(s), for its convenience by complying with the noticing procedures set out in Section 9.2, and without affecting the remaining provisions of the Agreement.

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

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4.3.3. Reserved Right to Contest Laws, Regulations and Actions. CITY and/or LANDOWNER shall have the right to institute litigation challenging the validity of the laws, regulations or actions of federal and state agencies and Public Agencies as described in Sections 4.3.1 and 4.3.2. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued; provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the contested law, regulation or action, CITY shall not be required to undertake such action until the litigation is resolved or the law, regulation or action is otherwise determined invalid, inapplicable or is repealed. If the final judgment invalidates the law, regulation or action, or determines that it does not affect the validity of this Agreement or the obligations of the Parties as set out in this Agreement, this Agreement shall remain in full force and effect. The Term of this Agreement shall be extended by the amount of time between the date when the litigation was filed and the date of the final judgment if the law, regulation or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

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

4.5 No Effect on Right to Tax, Assess or Levy Fees or Charges. Except as expressly provided herein, this Agreement does not limit the power and right of the CITY to impose taxes, levy assessments, or require payment of application, processing, inspection or building permit fees, and related charges by LANDOWNER or by any other entity or owner of property in the City. All applications by LANDOWNER for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, inspection fees, and other similar fees, except fees that are waived, deferred, credited or reduced as authorized by law, within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

4.5.1. Development Fees. LANDOWNER shall be subject to compliance with

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any changes to the Financing Plan that may be approved by the City Council after the Effective Date and subject to the imposition of new or increased development impact fees (Government Code § 66000 *et seq.*), defined in Section 1.27 as Development Fees, pursuant to the nexus study that is to be prepared to implement the development fee program specified in the Financing Plan, as such nexus study may be amended from time to time. As set out in Sections 5.5 and 5.6, the amount of the Development Fees may differ from what is specified in the Financing Plan. Once the Development Fees are established by ordinance based on the first nexus study completed after the Effective Date, for a five year period thereafter the Development Fees may not be increased except for the annual adjustment to account for construction cost inflation in accordance with the Engineering News Record Construction Cost Index as referenced in the Financing Plan or as specified in the nexus study if CITY adopts a different inflation index. However, Development Fees may be increased during this five year period to account for changes in Proposition 1C funding as set out in Section 5.6. After expiration of this five year period, the Development Fees may be increased during the Term of this Agreement as set out in Section 6.2.

4.6 **No General Limitation on Future Exercise of Police Power.** The CITY retains its right to exercise its broad and general police powers and to apply such powers within the Property, except when such exercise would impair, diminish, restrict, reduce or conflict with a Vested Right granted to LANDOWNER under this Agreement except as provided in Section 3.4.

4.7 **Location or Size of Public Facilities.** In the event that, at the time of the required Dedication or Reservation of land to CITY, City Agency or Public Agency for Public Facilities as specified in this Agreement, the location of or the quantity of land required for the Public Facilities has changed from that depicted or specified in the Plans and Project Entitlements to such a significant degree or extent that the location or quantity is inconsistent with the Development Plan, Project Entitlements or Financing 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 for the Project in a reasonable manner, taking into account the changes in Public Facilities needed to serve the Project that arose after the Effective Date. If agreement is reached between the Parties, the procedures specified in Section 2.4 shall apply to amend this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience by providing notice as specified in Section 9.2.

4.8 **LANDOWNER's Right to Propose Additional Development.** Nothing in this

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Agreement is intended to limit the right of LANDOWNER to apply for changes in the Development Plan and Project Entitlements, and amendments to the Plans and Land Use and Development Regulations to allow for additional or different development within the Property. CITY will process and decide whether to approve any such applications in accordance with the Subsequent Rules. Nothing herein shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any such application.

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5.0 CITY’S OBLIGATIONS AND COMMITMENTS.

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

5.2 **Allocation Procedures for Uses, Units, and Building Sizes.** The Parties agree that the Development Plan represent the maximum amount of residential units and commercial and office space square footage that LANDOWNER could develop on the Property under this Agreement, that LANDOWNER has the right but not the obligation to construct said maximum amount, and that the decision to construct the Project at a lower density consistent with the Plans, Project Entitlements and the Land Use and Development Regulations is within LANDOWNER’s sole discretion. The Parties further agree that LANDOWNER is entitled to transfer densities and uses among parcels within the Development Plan as specified in the Special Planning District. CITY acknowledges that LANDOWNER is entitled to Develop the Property substantially consistent with the Development Plan and subject to compliance with the Plans, Project Entitlements and the provisions of this Agreement.

5.3 **Extension of Entitlements.** Pursuant to Government Code Sections 66452.6 and 66463.5, 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 Agreement, as set out in the Development Plan and Project Entitlements, shall be valid for a minimum term equal to the full term of this Agreement (including the Initial Term and any Extension Period resulting from exercise by LANDOWNER of the

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option provided for in Section 2.1), or for a period of thirty-six (36) months, whichever is longer, but in no event for a longer period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of Section 8.5 relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this Section 5.3. Nothing in this Section 5.3 shall be construed, or operate, to extend the Term of this Agreement.

5.4 Reconfiguration of Parcels. LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be processed and Discretionary Action taken in accordance with the provisions of this Agreement. Where Reconfiguration requires a special permit, variance, planned unit development designation, or other entitlement beyond the scope of the Special Planning District procedures applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of approving the application. CITY shall process such Subsequent Approvals in a manner consistent with the Plans and Project Entitlements as provided in Section 3.3.

5.5 Implementation of the Financing Plan. As more particularly described in Exhibit E, the Financing Plan establishes methods for financing of required Public Facilities, including Backbone Infrastructure, to serve the Project through a combination of public debt, State and Federal assistance, land transfers, Dedications, Reservations, Development Fees and other Public Financing Mechanisms, including advances or reimbursement to LANDOWNER in accordance with the Funding Agreement.

5.5.1 Backbone Infrastructure. The Financing Plan recognizes that there is a regional cost associated with certain Backbone Infrastructure, and that that fair share will ultimately have to be paid from other sources and other property owners that benefit from such Backbone Infrastructure as identified in the Financing Plan. LANDOWNER acknowledges that it may have to participate in funding regional costs of Backbone Infrastructure that is located off-site of the Property on a fair share basis as identified in the Financing Plan and Environmental Impact Report. If a community facilities district or other Public Financing Mechanisms is formed to finance Backbone Infrastructure, the district may purchase the real property dedicated by LANDOWNER for Backbone Infrastructure as set out in the Funding Agreement or as approved by CITY at the time of formation of the district.

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5.5.2 Development Fees and Financing Mechanisms. CITY commits to making a good faith effort to adopt and implement the Development Fees and Public Financing Mechanisms as set out in the Financing Plan in order to provide the Public Facilities required for Development of the Property for the Project. Decisions as to whether to issue bonds pursuant to such Public 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 the Public Facilities and Backbone Infrastructure in order not to impede Development of the Property for the Project. The Parties intend that to the extent that federal, state and local funding has been committed or becomes available for the Public Facilities and Backbone Infrastructure improvements, the costs of those improvements would not be included in the Development Fees and Public Financing Mechanisms.

5.5.3 Credit for LANDOWNER Improvements. The Funding Agreement will specify the extent that Development Fees that may be assessed against the Project may be waived, modified, credited, offset or limited based on the Public Facilities and Backbone Infrastructure constructed by LANDOWNER at LANDOWNER's sole cost and expense in accordance with CITY policies regarding such Development Fee waivers, modifications, credits, offsets and limitations.

5.6 Proposition 1C Agreement. The CITY agrees to work cooperatively with LANDOWNER to assist in securing approval of the Proposition 1C Agreement to fund a portion of the costs of the Public Facilities needed for the Project. The funding to be secured under the Proposition 1C Agreement is included in the Financing Plan. During preparation of the Financing Plan, Development Fees and community facility district taxes were reduced as the Proposition 1C funding estimate was increased. If LANDOWNER is unsuccessful in obtaining all of the funding under the Proposition 1C Agreement as assumed under the Financing Plan and no other sources of state funding is available to make up the shortfall, CITY may amend the Financing Plan and impose Development Fees and establish Public Financing Mechanisms to cover such shortfalls. LANDOWNER shall defend and indemnify CITY and/or City Agency in any action by the State or any other third party against CITY and/or City Agency based on a claim that LANDOWNER has violated the terms of the Proposition 1C Funding Agreement.

5.7 Tax Increment Funding. The Financing Plan includes use of tax increment pursuant to California Community Redevelopment Law, as set forth in Health and Safety Code section 33000 *et seq.* CITY and LANDOWNER acknowledge that after the Effective Date of this Agreement, the Redevelopment Agency of the City of Sacramento may enter into an Owner Participation Agreement or other agreement with

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LANDOWNER providing for the use of said tax increment for low and moderate income housing, development subsidies, and payment or reimbursement of Public Facilities as specified therein, pursuant to State law.

5.8 Public Facilities Construction by CITY. To the extent that (i) funds are available to CITY pursuant to implementation of Public Financing Mechanisms as set out in the Financing Plan, (ii) any required real property has been transferred to CITY by LANDOWNER in conformance with the Dedication and/or Reservation requirements set out herein, or has been obtained by CITY through its power of eminent domain, and (iii) LANDOWNER is in compliance with the terms of this Agreement, including all of the terms and conditions of the Project Entitlements and Financing Plan, CITY agrees to use its best efforts to undertake, or cause to be undertaken, construction of the Public Facilities specified in the Financing Plan that are required for the LANDOWNER to develop the Property for the Project in accordance with any specified schedule for the construction of such Public Facilities as may be set forth in the Financing Plan, Phasing Plan or this Agreement. CITY's obligations hereunder shall be limited to those items of Public Facilities which, under the terms of the Financing Plan, are to be constructed by CITY or under CITY's direction and control. This Section 5.8 shall not apply to Public Facilities to be constructed by another Public Agency, or by another property owner or developer as specified in the Plans and Project Entitlements.

5.9 Public Facilities Financing Proceedings.

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

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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.

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

5.9.3 Proceedings Initiated by CITY. In the event that pursuant to the Financing Plan CITY in its discretion determines that a particular Public Financing Mechanism is required in order to implement the Financing Plan, LANDOWNER's participation obligations set forth hereunder, including, without limitation, the obligations set out on Sections 6.2 and 6.3 or in any condition of approval of the Project Entitlements or Subsequent Approvals, shall apply.

5.10 Maintenance.

5.10.1 Financing and Workforce. LANDOWNER may, following the procedures specified in Section 5.9.1, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping, lighting or other Public Facilities, whereunder lands benefiting from the Public Facilities and their maintenance are assessed for a proportionate share of the maintenance cost.

5.10.2 Park and Open Space Maintenance. The Tentative Map conditions imposed as part of the Project Entitlements require LANDOWNER to annex into an existing parks maintenance and community facilities district or initiate and fund the proceedings to create a Public Financing Mechanism that will encompass the Property to fund the maintenance of all of the Public Facilities as permitted under the applicable statute. The Public Financing Mechanism would provide funding for maintenance of the Project's public park and open space features that are owned or controlled by CITY which include, without limitation, the parks, parkways, greenbelts, plazas, fountains,

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trails, pedestrian pathways and facilities, lighting, landscaped medians, and decorative paving treatments. CITY will collect the assessment to fund maintenance of the Public Facilities and will determine whether LANDOWNER will have the option to undertake the maintenance work for all or part of the Project's public park and/or open space features, or to use CITY's work force or contractors to undertake such maintenance. In the event that LANDOWNER is selected to be responsible for any such maintenance, LANDOWNER shall be entitled to receive the benefit of the Public Financing Mechanism revenues collected for such purpose under the terms of a maintenance agreement. The Parties acknowledge that CITY will contract with LANDOWNER for maintenance of the plazas and parks within the Central Shops Historic District under the terms of a maintenance agreement.

5.10.3 Park and Open Space Maintenance Standards. Because the park and open space features in this Project are unique and will be developed with high quality materials and fixtures which are non-standard, the CITY recognizes that it is important that the maintenance work is performed at a level that will protect and enhance these Public Facilities and that materials and fixtures should be replaced on an as-needed basis with the same or substantially similar materials (including plantings) and fixtures. CITY commits to LANDOWNER that it will in good faith maintain the park and open space features funded under the assessment district in accordance with the Design Guidelines and at a higher quality level of maintenance, and LANDOWNER acknowledges that the CITY's obligation to maintain these Public Facilities to such standards may require a higher level of assessments. The CITY commits that it will communicate and collaborate with LANDOWNER and/or the property owners association(s) in regards to the frequency, cost, and scope of maintenance of the Project park and open space features.

5.11 Reimbursement to LANDOWNER.

5.11.1 From Financing Proceeds. Subject to the terms of the Financing Plan, where LANDOWNER has provided advance funding for Public Facilities, including Backbone Infrastructure, required by the Financing Plan or has constructed such Public Facilities under the direction and control of CITY, and under the terms of the Financing Plan or reimbursement agreement LANDOWNER is be entitled to Reimbursement; CITY will pay LANDOWNER the Reimbursement in such amounts and at such times as CITY determines is feasible based on establishment of a Public Financing Mechanism and receipt of funding under such financing program. Those items and costs incurred by LANDOWNER that qualify for Reimbursement shall be determined pursuant to CITY policies in existence at the time of establishment of the Public Financing Mechanism. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to

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such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon specified grounds, including but not limited to consistency of application of its policies. 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.

5.11.2 From Others Benefited. In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of Public Facilities, including Backbone Infrastructure, required for development of the Project by the terms of the Financing Plan or as set out in the conditions of approval of the Project Entitlements or in the Special Conditions, and either: (i) LANDOWNER's costs are in excess of or beyond those required to be incurred by LANDOWNER as specified in the Funding Agreement, Public Financing Mechanisms and/or in a reimbursement agreement, or (ii) CITY determines that LANDOWNER was required to make Dedications, provide mitigation or incur costs in connection with Public Facilities in excess of or beyond those required for Development of the Property, (collectively "Excess Costs"); CITY shall utilize its best efforts to require that all other landowners benefited by the Public Facilities shall reimburse (through fee districts, agreements, conditions of approval, or otherwise) LANDOWNER for such landowner's proportionate share of such Excess Costs, as determined in accordance with the nexus study that implements the Financing Plan, Public Financing Mechanism, reimbursement agreement, or by CITY. Such Reimbursement shall be subject to the limitations specified in Section 5.11.1, and shall not exceed the amount of actual and reasonable Excess Costs LANDOWNER incurred.

5.11.3 CITY Funds. Except as specified in the Funding Agreement, in no event shall the CITY's General Fund, any of the CITY's general or special funds, or any of the funds in the hands of the CITY or its accounts now and in the future be obligated as or claimed as a source of funding for reimbursement to LANDOWNER of the costs of Public Facilities or Backbone Infrastructure constructed by LANDOWNER. Nothing in this Agreement, except for the Funding Agreement Business Terms, shall be construed to obligate such funds held by the CITY.

5.12 Public Parking Facilities. In consideration of LANDOWNER's financial commitments to Develop the Property for the Project as set out in the Specific Plan, Development Plan, the Phase 1 Development Plan, and the terms of this Agreement, CITY (and as may be applicable City Agency under the terms of the Owner Participation Agreement) will undertake the development of public parking facilities in accordance with the terms set out in the Funding Agreement. The development of public parking

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facilities by CITY or City Agency for the Project will allow for a reduction in LANDOWNER's costs for Development of the Property by reducing the amount of parking that LANDOWNER would otherwise be required to construct as a condition of the Subsequent Approvals. In consideration of such cost savings and as set out in Section 6.8.4, LANDOWNER has agreed (i) not to permit any deeds, liens, easements or other encumbrances be placed on parcels used as surface parking lots which are designated in the Roadway and Parking Phasing Plan as the location for a structured parking lot without the CITY's prior written approval, and (ii) to transfer the land for such public parking facilities to CITY or City Agency at no cost, including funding the cost to remove any deeds, liens, easements or other encumbrances that would require payments for removal or would prevent or limit CITY or City Agency to undertake construction of the public parking facility.

5.12.1 Airspace Rights. CITY will own the land underneath the structured parking lot be located between 5th and 6th Streets on lots 18, 17a, and 47b of the Tentative Map. However, CITY will only own the airspace rights over that portion of the structured parking lot that encompasses lot 17a as shown on the Tentative Map. If CITY, City Agency or Public Agency decides not to undertake a development project above the structured parking lot on lot 17a, then CITY will provide LANDOWNER with the first opportunity to submit a proposal for development within the airspace above this structured parking lot. In that event, in consideration for LANDOWNER dedication of the land to CITY for this structured parking lot, LANDOWNER shall not owe CITY any amount for LANDOWNER to retain the airspace rights and all necessary temporary and permanent easements for future Development of lot 17a in accordance with the Project Entitlements on mutually acceptable terms and subject to compliance with the provisions of Section 5.12.2. The Parties shall negotiate in good faith to specify the terms of agreement to allow LANDOWNER to retain the airspace rights within a 90 day period after CITY provides written notice to LANDOWNER of CITY's decision to release such rights. If LANDOWNER and CITY cannot agree on the terms of an agreement for LANDOWNER's use of the airspace rights on lot 17a, CITY shall be entitled to seek development proposals from other developers without further obligation to LANDOWNER.

5.12.2 Foundation Support Costs. If LANDOWNER has the right to retain an airspace easement under the terms of an agreement for CITY to construct a structured parking lot, that agreement may provide that CITY will prepare public parking facility plans and specifications that are satisfactory to LANDOWNER in respect to foundation strength and structural support to ensure the use and buildability of future air space improvements and development if LANDOWNER pays for such extra foundation and excess structural support costs.

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5.12.3 Master Lease. The parking garage to be constructed by CITY between 5th and 6th Streets is to be designed to include retail space along street frontage. CITY will provide LANDOWNER with the first opportunity to submit a proposal to be selected as the master lessee for all of the retail space owned by CITY within this parking garage. The Parties shall negotiate in good faith to specify the terms of agreement to allow LANDOWNER to control the retail space within this garage within a 90 day period after CITY provides written notice to LANDOWNER of the CITY's desire to negotiate the terms of a master lease. The compensation for the master lease shall be based on a pro forma of the market rate for master lease for the retail space which includes LANDOWNER's costs to market and manage that space and the potential tenant mix, and other terms as mutually acceptable by the Parties. If LANDOWNER and CITY cannot agree on the terms of this master lease agreement, CITY shall be entitled to seek proposals from others or manage this space without further obligation to LANDOWNER.

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

5.13.1 Proceedings. The procedures specified in the Procedural Ordinance for conduct of the Annual Review by the City Manager and City Council shall apply to each Annual Review of this Agreement. At least thirty (30) days prior to the commencement of any Annual Review by the City Council, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects. At the conclusion of the Annual Review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors and any Assignees have complied in good faith with the terms and conditions of this Agreement.

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5.13.2 **Failure of Compliance.** Any determination of by the City Council of LANDOWNER's failure to comply with the terms and conditions of this Agreement shall be a default subject to the notice requirements and cure periods set forth in Sections 7.5 and 7.6.

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6.0 LANDOWNER’S OBLIGATIONS AND COMMITMENTS.

6.1 Project Entitlements, Mitigation Measures and Special Conditions.

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

6.2 Participation in the Financing Plan.

As more particularly described in the Financing Plan, LANDOWNER shall participate in the establishment of the Public Financing Mechanisms for Public Facilities specified in the Financing Plan, the Project Entitlements and as made applicable to the Development of the Property, and shall faithfully and timely comply with each and every provision thereof, including without limitation, approval and payment of the assessments, special taxes, and other fees and exactions as set forth therein. In addition, LANDOWNER shall pay the Development Fee as identified and adopted pursuant to the nexus study that is to be prepared and amended from time to time to implement the Financing Plan when due (unless otherwise waived or credited per the terms of the Funding Agreement). Subject to the limitation set out in Section 4.5.1, the amount of the Development Fees may be increased after the Effective Date (i) annually to account for construction cost inflation in accordance with the Engineering News Record Construction Cost Index as referenced in the Financing Plan or as specified in the nexus study if CITY adopts a different inflation index in the future, and (ii) to include the costs of Public Facilities that are not specified in the Financing Plan based on a nexus study which identifies the fair share allocation.

6.2.1 Without limiting the foregoing, applications for Subsequent Approvals and Building Permits for the Project may be made subject to LANDOWNER's participation in and compliance with the Public Financing Mechanisms and payment of the Development Fee in effect at the time of Building Permit issuance, in accordance with the nexus study and ordinances implementing the Financing Plan, as it may be amended, and the Project Entitlements.

6.2.2 Failure to participate in and comply with the Public Financing Mechanisms, or make payment of the applicable Development Fee as specified in the nexus study and ordinances implementing the Financing Plan and Project Entitlements shall be an

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event of default under this Agreement. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the established or adopted Public Financing Mechanisms as specified in the Financing Plan or the Project Entitlements, voting for establishment of assessment districts and community facilities districts, and performance of all obligations imposed thereby.

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

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

6.5 **Park and Open Space Development.** At the time of filing the final map(s) and based upon the standards in Section 3.5, CITY may require LANDOWNER to develop some or all of the parks and open spaces located within that final map, as specified in the Tentative Map conditions under the terms of a Park Improvement Agreement, the form of which is provided as Exhibit Q. LANDOWNER shall receive full credit for the cost of developing those parks and open spaces as specified by CITY against the amount of the Park Development Impact Fees that would otherwise be assessed were it not for LANDOWNER's improvement of such park and open spaces at the time of filing that final map. It is the intention of the Parties that the LANDOWNER will develop all parks dedicated to the CITY in accordance with parks standards and that no Park Development Impact Fees will be paid, in accordance with the provisions of Section 3.5.

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

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

6.8 **Transfer of Land.** As set forth in the Specific Plan, Project Entitlements, Mitigation Measures, and Special Conditions; LANDOWNER has agreed to transfer lands, including defined interests that are less than fee interests therein, by Dedication or Reservation that are needed for Public Facilities to CITY, City Agency or Public Agency as specified or appropriate. LANDOWNER shall transfer the land required by Dedication to CITY, City Agency or Public Agency utilizing the Offer of Dedication agreement form provided as Exhibit I or by placing an Offer of Dedication on a final subdivision or parcel map in accordance with Government Code Sections 66439 and 66447. LANDOWNER shall transfer the land required by Reservation to CITY or to a Public Agency utilizing the Reservation form provided as Exhibit J and in accordance

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

6.8.1 Dedication of Land for Parks and Open Spaces. LANDOWNER shall transfer to CITY the land designated in the Specific Plan and on the Tentative Map for parks and open spaces in the following form of real property interest as specified in the Tentative Map conditions, which are summarized in Exhibit H.

6.8.2 Public Easement Restrictions. Public Access Easements as specified in the Tentative Map conditions and summarized in Exhibit H for the parcels within the Central Shops Historic District (Shops Parcels) shall be subject to LANDOWNER's reasonable restrictions as to hours of public use, nature of use(s), and place and manner of use(s) under the terms of a public access easement agreement. With respect to the Shops Parcels, LANDOWNER shall retain the rights to: (i) control of the program of activities thereon, (ii) the types of commercial uses, if any, thereon, and (iii) receipt of any revenue therefrom.

6.8.3 7th Street Improvements and Light Rail Dedication. Pursuant to the terms of the Project Entitlements (Exhibit C) and the Mitigation Measures regarding mitigation of freeway and roadway congestion impacts, LANDOWNER is required to dedicate right of way for Phase 1 of the Downtown-Natomas-Airport (DNA) light rail alignment located within the Property and the light rail station and ancillary facilities located at 7th Street between North Park Street and South Park Street (Station) to the Sacramento Regional Transit District (RT) subject to the terms of the Offer of Dedication Agreement provided as Exhibit I. LANDOWNER desires to transfer the right of way and the Station land to RT with an airspace easement reservation by LANDOWNER to allow for development above the light rail line and Station, subject to RT's approval of an easement agreement which provides that LANDOWNER shall not intrude into the "operating zone" or "restricted area" of the line or Station as defined in the easement agreement between RT and LANDOWNER. The form of the Offer of Dedication Agreement provided as Exhibit I may be revised to incorporate the operating zone and restricted area definitions as approved by LANDOWNER and RT.

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LANDOWNER's obligation to undertake improvement of 7th Street to accommodate the Phase 1 single track and the subsequent phase of the DNA project that requires double tracks along 7th Street have been included in the Tentative Map conditions. As referenced in Section 3.10, the conversion of 7th Street from a two way operation to one way operation after the Initial Phase may be modified, and the Tentative Map right of way and improvements required along 7th Street may be revised accordingly. LANDOWNER shall be obligated to undertake improvements to 7th Street consistent with the amendments to the Specific Plan and Tentative Map conditions as specified in Section 3.10 and consistent with RT's phasing and design plans for construction of the DNA project.

6.8.4 Public Parking Facilities. LANDOWNER shall not encumber the surface parking lot parcels that are designated for Development as either a structured parking lot or for retail, residential, office or mixed use in the Specific Plan, Development Plan or Roadway and Parking Phasing Plan by placing any deed, mortgage, lien, reciprocal access easement or other similar encumbrance that could prevent or delay the designated Development of that parcel in accordance with the Specific Plan, Development Plan, Roadway and Parking Phasing Plan, Phasing Plan, or Project Entitlements without CITY's prior written approval, which will not be unreasonably withheld.

6.9 Cogeneration Plant. CITY and LANDOWNER acknowledge that the Project may require implementation of an energy infrastructure development strategy in consultation with SMUD and PG&E in order to supply the Project site with the necessary energy infrastructure and services, which infrastructure may include reducing reliance on fossil fuels by promoting energy efficiency and incorporating distributed, renewable and technologically advanced electrical and other energy generation resources. To that end LANDOWNER intends to pursue development of, but has no obligation to develop, a state-of-the-art district cogeneration plant (the "COGEN plant") for the Project utilizing renewable energy and providing the Project with an integrated energy supply system.

CITY acknowledges that the primary jurisdictional authority for the licensing of power plants and distributed generation and cogeneration power delivery methods in California rests with various state and regional regulatory agencies, including without limitation the California Energy Commission ("CEC"), the California Public Utilities Commission ("CPUC"), the California Air Resources Board ("CARB"), the Sacramento Municipal Utility District ("SMUD"), and the Sacramento Metropolitan Air Quality Management District ("SMAQMD"), and that as part of the review and approval of the proposed COGEN Plant, these agencies will conduct extensive environmental impact

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analysis, including assessment of potential air quality and public health impacts. The COGEN Plant was not included in the Environmental Impact Report or the Project Entitlements, and is subject to Discretionary Approval by the CITY unless such approval is explicitly preempted under existing law. In addition, LANDOWNER may request CITY to consider co-locating the COGEN Plant at the CITY's water treatment facility which abuts the Property.

6.10 Allocation Dispute Resolution. Where a dispute exists between LANDOWNER, Assignee, and/or any successor or successors in interest with respect to any matter involving the CITY's allocation of the land uses, housing units, densities and building square footages for or on the Property in compliance with the Project Entitlements as set out in Section 5.2, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of JAMS, 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 LANDOWNER's obligation to defend and indemnify CITY and payment of CITY costs shall apply to all disputes relating directly or indirectly to such allocation.

6.11 Annual Report. LANDOWNER shall annually, within thirty (30) days after each anniversary of the Effective Date, submit to the City Manager a brief written report on the progress of Development of the Property for the Project as authorized under this Agreement during the prior twelve (12) month period. The annual report shall include, at a minimum, (i) the additional square footage of commercial and office development and the number of housing units constructed or under construction, (ii) the Public Facilities constructed or under construction by LANDOWNER, and (iii) the Land Dedications conveyed to CITY, City Agency, or Public Agency. The CITY will review the annual report in accordance with Section 5.13. LANDOWNER shall pay a processing fee for each annual review in the amount established by resolution of the City Council.

6.12 Indemnification. LANDOWNER agrees to defend and indemnify CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to develop the Property, whether undertaken by LANDOWNER or LANDOWNER's affiliates, contractors, subcontractors, agents or employees. Said indemnification pursuant to this Section 6.12 shall not extend to claims that are based on an indemnified Party's gross negligence or willful misconduct.

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6.13 **Reimbursement for Agreement Costs.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is \$140 per hour, not to exceed \$10,000. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

6.14 **Transportation Management Association.** Notwithstanding anything herein to the contrary, LANDOWNER shall form a transportation management association that encompasses all of the Property and imposes an annual fee assessment to fund the association's operations and services. The transportation management association shall be charged with the obligation to implement transportation system management measures to achieve a reduction in vehicular trips by employees and residents within the Project. The transportation management association articles of incorporation, bylaws, fee assessment, annual budget and transportation system management measures shall be subject to CITY approval.

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7.0 LITIGATION, DEFAULT, AND TERMINATION.

7.1 Litigation by Others.

7.1.1 Challenge to Agreement or Entitlements. In the event of any action instituted by a third party challenging the validity of any portion of this Agreement, including, without limitation (i) the proceedings taken for its approval (including the CEQA requirements), (ii) any action instituted by a third party challenging the validity of any of the Project Entitlements (including CEQA challenges), or (iii) any other act undertaken by the Parties in furtherance of this Agreement or its terms including, without limitation, Subsequent Approvals; the Parties agree to cooperate in the defense of the action.

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

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

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

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

7.1.3 Effect of Judgment. If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective,

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in whole or in part, any provision of this Agreement or the Agreement itself, or any Project Entitlement or Subsequent Approval, the following shall apply:

7.1.3.1 If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. However, if the litigation relates entirely, solely and exclusively to a challenge to the Financing Plan in general, separate and apart from this Agreement or any Project Entitlement or Subsequent Approval 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.

7.1.3.2 CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow Development of the Property for the Project to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified in Section 2.4 shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement for its convenience by giving the other party notice as provided in Section 9.2.

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

7.2 **Force Majeure and Enforced Delay.** In addition to other specific provisions of this Agreement, performance by either Party hereunder shall not be deemed in default where delay or inability to perform is due to: (i) war, insurrection, terrorist acts, riots or other civil commotions; (ii) vandalism or other criminal acts; (iii) strikes, walkouts, or other labor disputes; (iv) acts of God, including floods, earthquakes, fires, casualties, or other natural calamities; (v) enactment of supervening state or federal laws or regulations; (vi) shortages of materials and supplies or delivery interruptions; or (vii) litigation instituted by third parties challenging the validity of this Agreement or Subsequent Approvals. A Party's financial inability to perform shall not be a ground for claiming an enforced delay. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay and the Term of this Agreement shall be extended by amendment in accordance with Section 2.4.

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7.3 **Waiver.** Except as otherwise expressly provided herein to the contrary, by entering into this Agreement LANDOWNER waives its right to challenge the fairness or appropriateness of, as applied to the Property and/or the Project, the Plans, Project Entitlements, the Land Use and Development Regulations, and the Financing Plan and all actions implemented in furtherance of the foregoing as specified herein.

7.3.1 **Legal Actions by Parties.** In addition to the provisions set out in Section 7.6 and any other rights or remedies as set out in this Agreement; either Party may institute legal action to cure, correct, or remedy any default by any other Party to this Agreement, to enforce any covenant or obligation herein, or to enjoin any threatened or attempted violation hereunder. Subject to any mutual extensions, notice and opportunity to cure, the term “default” shall mean a material failure of performance or a substantial and unreasonable delay in performance by either Party of any of term, condition, obligation or covenant of this Agreement. Default by either Party may include, without limitation, material failure to: (i) comply with any provision of the Financing Plan, (ii) transfer land for Public Facilities as required by Dedication or Reservation, (iii) undertake construction of Public Facilities, and/or (iv) implement or comply with the terms and conditions set out in the Mitigation Measures, Mitigation Monitoring Plan, Special Conditions, Inclusionary Housing Plan and/or the conditions of approval set out in the Project Entitlements. In addition, “default” shall mean a material failure of performance or a substantial and unreasonable delay in performance by CITY or LANDOWNER of any of term, condition, obligation or covenant set out in the: (i) Purchase and Sale Agreement, (ii) Track Relocation Agreement, (iii) Tri-Party MOU, (iv) Proposition 1C Agreement, (v) Sacramento City Unified School District Mitigation Agreement, and (vi) Owner Participation Agreement.

7.3.2 **Parties’ Liability.** Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall LANDOWNER, CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement; provided, however, that this Section 7.3.2 shall not limit the prevailing party’s ability to recover attorney fees and costs of litigation as provided in Section 7.4.

7.3.3 **Limitation of Legal Actions.** No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days

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from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

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

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

7.4 Attorney Fees. In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either Party to enforce or interpret any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief; the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this Section 7.4 and any other portion of this Agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall include direct, indirect and overhead costs.

7.5 Default. Subject to any extensions of time by mutual consent of the Parties, and subject to the cure provisions set forth herein, any default (as that term is defined in Section 7.3.1) of this Agreement shall constitute a breach and the non-defaulting Party may cancel this Agreement for default.

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7.5.1 LANDOWNER Default. In addition to any other remedy specified in this Agreement, in the event that notice of default has been given by CITY to LANDOWNER, CITY shall not be obligated to issue any Building Permit or grant any Subsequent Approval for the Project until such time as the default is cured. If cancellation of this Agreement for default is proposed by CITY with respect to only a portion of the Property or the Project that is affected by LANDOWNER's default as specified in the CITY's notice of default, only those Building Permits and Subsequent Approvals applicable to that portion of the Property and/or the Project shall be affected by the suspension of Building Permits and Subsequent Approvals until the such time as the default is cured. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER from receiving Building Permits and Subsequent Approvals for the remainder pursuant to the terms of the Assignment and Assumption Agreement. In no event shall a default of LANDOWNER prevent an Assignee from receiving Building Permits and Subsequent Approvals for Assignee's portion of the Property and/or Project pursuant to the terms of the Assignment and Assumption Agreement.

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

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

7.5.4 No Cross Default. Where a portion of the Property has been transferred in accordance with the Assignment provisions of this Agreement and notice of default has been given by CITY to an Assignee, (i) neither LANDOWNER nor any non-defaulting Assignee shall be liable for the default of that Assignee, (ii) the rights of LANDOWNER and non-defaulting Assignees under this Agreement shall not be affected by the default of that Assignee, and (ii) CITY shall not be in default or otherwise liable to LANDOWNER or a non-defaulting Assignee for the CITY's action to declare a default. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER or non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement. In no event shall a default of LANDOWNER prevent non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment

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and Assumption Agreement. Notwithstanding the foregoing, CITY, in the reasonable exercise of its discretion, shall have the right, following notice and hearing, to terminate this Agreement, as to the LANDOWNER and the non-defaulting Assignees, for CITY's convenience if CITY certifies to LANDOWNER and any non-defaulting Assignees that the default of the defaulting Assignee prevents in a material manner CITY's performance of its obligations to LANDOWNER and non-defaulting Assignees under this Agreement.

7.5.5 Cure Period. In the event of an alleged default of any term or condition of this Agreement, the Party alleging such default shall give the other Party notice in writing as provided in Section 9.2 specifying the nature of the alleged default, the manner in which said default may be satisfactorily cured, and a reasonable period of time in which to cure the default, which shall not be less than ninety (90) days following receipt of notice of default. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

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

7.6.1 Public Hearing. In the event that notice of intent to cancel this Agreement is given by either Party, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default pursuant to Government Code Section 65868 and the Procedural Ordinance. Where LANDOWNER is the Party alleged to be in default, CITY shall provide LANDOWNER (i) a reasonable opportunity to respond to all allegations of default at such public hearing, (ii) at least thirty (30) days prior written notice of the date, time and place of the public hearing, and (iii) copies of all CITY staff reports prepared in connection therewith at least ten (10) days prior to the hearing. LANDOWNER shall be given a reasonable opportunity to be heard at the public hearing. The burden of proof whether LANDOWNER is in default shall be on CITY, the burden of proof whether the CITY is in default shall be on the LANDOWNER, the burden on whether the default has been properly cured shall be on the Party alleged to be in default.

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7.6.2 Cancellation of Agreement. At the conclusion of the public hearing, if the City Council finds, based on substantial evidence, that the LANDOWNER was in default and the default has not been cured to the satisfaction of CITY, or if the City Council determines that because of the default a substantial risk to the public health or safety exists, this Agreement shall be cancelled for breach as of the date of the City Council's determination. LANDOWNER may thereafter institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief. Expiration of the Term of this Agreement shall be tolled during the period of legal proceedings, should there be a judicial determination invalidating or reversing the CITY's cancellation of this Agreement.

7.7 Termination for Convenience.

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

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

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

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7.7.4 Termination by Expiration of Term. This Agreement shall expire as of the date of the expiration of the Term, without notice or any further action of either Party, unless prior to said expiration, the Term is extended by mutual agreement of the Parties as set out in an amendment.

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

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

7.9 Effect of Cancellation/Termination on LANDOWNER's Obligations. Cancellation or termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with the General Plan, Community Plan, Specific Plan, Project Entitlements, Mitigation Measures, Special Conditions, Inclusionary Housing Plan, Financing Plan, Public Financing Mechanisms, Development Fee, Land Use and Development Regulations, Design Guidelines and Subsequent Approvals, including, without limitation, tentative maps, special permits, variances, Building Permits, and all other entitlements and permits issued for the Property and/or the Project prior to the effective date of cancellation or termination which are required: (i) for LANDOWNER to complete construction of any improvements on the Property for which a final map or Building Permit had been issued; (ii) for CITY to provide any Public Facilities and/or Public Services to serve improvements on the Property either completed prior to the effective date of cancellation or termination or to be completed under the Building Permits and final maps issued prior to the effective date, or to serve residents and businesses that are then occupying the Property or will occupy the Property under the Building Permits and final maps issued prior to the effective date; and (iii) for LANDOWNER's performance of obligations under the Land

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Use and Development Regulations, Project Entitlements, Mitigation Measures or Special Conditions which had otherwise been deferred under the terms of this Agreement. Notwithstanding the cancellation or termination of this Agreement or anything contained herein to the contrary, LANDOWNER shall also be obligated to comply with any covenants of this Agreement that are to survive after cancellation or termination of this Agreement, whether express or implied, or which have been recorded against the Property under the terms of a separate agreement.

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8.0 **LENDER PROVISIONS.**

8.1 **Lender Rights and Obligations.**

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

8.1.2 **Prior to Lender Possession.** No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but agrees that the Property shall be bound by all of the terms and conditions of this Agreement. Nothing in this Section 8.1 shall be construed to grant to a Lender rights beyond those of LANDOWNER hereunder, or subject to Section 8.1.1, above, to limit any remedy CITY has hereunder in the event of default by LANDOWNER, including, without limitation, suspension, cancellation for breach and/or refusal to grant entitlements with respect to the Property.

8.1.3 **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a Mortgage or Deed of Trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. If LANDOWNER is not in default at the time Lender comes into possession of the Property, or any portion thereof, or if Lender cures LANDOWNER's default to the CITY's satisfaction as provided in Section 8.3, Lender shall have the right to enter into an Assignment and Assumption Agreement to assume the Development Agreement from LANDOWNER, in which event Lender shall receive entitlements with respect to Development of the Property for the Project subject to all of the terms and conditions hereof, including payment of all continuing fees and charges accruing in the future.

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

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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 such notice of non-compliance on such Lender concurrently with service thereof to LANDOWNER.

8.3 **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or any areas of non-compliance set forth in CITY's written default notice. Following expiration of the cure period pursuant to Section 7.5.5, Lender shall have an additional ninety (90) days in which to cure or remedy such default or claimed noncompliance. Such action shall not entitle a Lender to develop the Property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder under the terms of an Assignment Agreement.

8.4 **Other CITY Notices.** A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided herein.

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

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9.0 MISCELLANEOUS PROVISIONS

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

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

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

Notice to the LANDOWNER: S. Thomas Enterprises of Sacramento, LLC
431 I Street, Suite 202
Sacramento, California 95814
ATTN: Suheil J. Totah

with copies to:
Meyers Nave Riback Silver & Wilson, PLC
555 12th Street, Suite 1500
Oakland, California 94607
ATTN: Steven R. Meyers

Cushing, Morris, Armbruster & Montgomery, LLP
229 Peachtree Street, NE
Suite 2110, International Tower
Atlanta, Georgia 30303
ATTN: Jeffrey F. Montgomery

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Notice to Lender: IA Sacramento, LLC
2901 Butterfield Road
Oak Brook, Illinois 60523

With a copy to:

Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523

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

9.3 **Integrated Documents/Entire Agreement.** This Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Notwithstanding any references made in this Agreement, this Agreement does not incorporate by reference, for the purpose of becoming part of this Agreement, or supersede the following other existing agreements between the Parties or between LANDOWNER and CITY or Agency: Purchase and Sale Agreement, Track Relocation Agreement, Tri-Party MOU, or Owner Participation Agreement.

9.4 **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 2.4. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, any portion thereof, prior to the termination date, except as provided in Section 7.9.

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9.5 **Precedence.** If any direct conflict or inconsistency arises between this Agreement and the Land Use and Development Regulations, or between this Agreement and a Subsequent Rule, the provision of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the Land Use and Development Regulations or the Subsequent Rule, except as provided in Section 3.4.

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

9.7 **Referendum.** CITY shall not submit the Adopting Ordinance to a referendum by action of the City Council on its own motion without LANDOWNER's written consent. This Agreement shall not become effective if a referendum petition is filed challenging the validity of the Adopting Ordinance. If the Adopting Ordinance is the subject of a referendum, LANDOWNER shall have the right to terminate this Agreement for its convenience by providing written notice to CITY as provide in Section 9.2 no later than thirty (30) days after the referendum petition is certified as valid by the County elections officer, or such later time as allowed in writing by the City Manager. The Parties' obligation to perform under this Agreement shall be suspended pending the outcome of any such the referendum election.

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

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

9.10 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom

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enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.11 **No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Parties, the Parties' successors and Assignees, and Lenders. No Person who is not a Lender, or a qualified successor of a Party or an Assignee pursuant to Sections 2.7 and 8.1.3 of this Agreement, or who has not become a party by duly adopted amendment to this Agreement, may claim the benefit of any provision of this Agreement.

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

9.13 **Survivorship.** The LANDOWNER's obligations arising under this Agreement pertaining to indemnity and attorneys fees as set out in Sections 2.8.5, 2.9, 5.6, 6.10, 6.12, 7.1.2.3, 7.1.3.1 and 7.4 and LANDOWNER's rights regarding approved entitlements as set out in Section 7.9 shall survive the expiration, termination or cancellation of this Agreement.

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

9.15 **Prior Agreements.** Excluding the Purchase and Sale Agreement, Track Relocation Agreement and the Tri-Party MOU, there are no oral or written representations, understandings, undertakings or agreements between the Parties related to Development of the Property that are not contained in or expressly referred to in this Agreement. Excluding the Purchase and Sale Agreement, Track Relocation Agreement and the Tri-Party MOU, any such representations, understandings, undertakings or agreements are superseded by this Agreement. No evidence of any such representations, understandings, undertakings and agreements shall be admissible in any proceeding of any kind or nature related to the terms and conditions

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of this Agreement, its interpretation or default. Except as provided in this Section 9.15, this Agreement is specifically intended by the Parties to supersede all other prior written or oral agreements, if any, for the Development of the Property which may exist between CITY and LANDOWNER, including in particular the Millennia MOU and the City Deal Points MOU. In the event a dispute arises regarding the interpretation of this Agreement, the Parties may refer to the Millennia MOU or the City Deal Points MOU for the sole purpose of interpreting an ambiguity in this Agreement. The provisions of Sections 2.8.5, 2.9, 5.6, 6.10, 6.12, 7.1.2.3 and 7.1.3.1 of this Agreement relating to indemnification and defense of CITY by LANDOWNER shall be applicable to any claim whatsoever against CITY by an Assignee or a third party arising out of or in any way relating to any prior, existing or future agreement between the Parties, or between LANDOWNER and City Agency, relating to the Development of the Property, including, without limitation, the Purchase and Sale Agreement, Track Relocation Agreement, Tri-Party MOU, Millennia MOU, City Deal Points MOU, Sacramento City Unified School Mitigation Agreement, Proposition 1C Agreement, and the Owner Participation Agreement.

9.16 Power of Eminent Domain. It is understood that LANDOWNER may be required by CITY to utilize good faith efforts to acquire certain parcels and land and rights-of-way which are not currently owned by LANDOWNER and necessary to construct the Public Facilities as required by CITY to serve the Project. Should it become necessary due to LANDOWNER's failure to acquire such lands and rights-of-way, the CITY shall negotiate the purchase of the needed land and rights of way to allow LANDOWNER or CITY to construct the Public Facilities that are required to be constructed by LANDOWNER or CITY to serve the Project under this Agreement. If necessary, in accordance with the procedures established by State law, CITY may use its power of eminent domain to condemn such lands and rights-of-way. LANDOWNER shall pay for CITY's costs associated with CITY's acquisition and condemnation proceedings unless such costs are paid through a Public Financing Mechanism or Development Fee. If CITY is unable or prevented from acquiring or condemning the necessary land and rights-of-way to enable LANDOWNER or CITY to construct the Public Facilities required under this Agreement, then the Parties will meet to negotiate the terms of an amendment to this Agreement, including, without limitation, changes to the Project Entitlements and LANDOWNER's Vested Rights. Nothing in this Section 9.16 is intended or shall be deemed to constitute a determination or resolution of necessity by CITY to initiate condemnation proceedings, and nothing in this Section 9.16 or in this Agreement is intended or shall be construed to constitute a prohibition against CITY or City Agency to exercise its power of eminent domain to condemn LANDOWNER's Property.

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

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

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

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LANDOWNER:

By: _____

Name: _____

Title: _____

Date: _____

(ATTACH NOTARY ACKNOWLEDGMENTS)

Railyards Development Agreement

Revision Date: 12-05-07

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXECUTION PAGE FOR LENDER

IA Sacramento, LLC, a Delaware limited liability company (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, Security Agreement and Fixture Filing dated April 26, 2007, and recorded on April 27, 2007, as Instrument _____, in Book 20070427, Page 362, Official Records, Sacramento County, California, and that certain Assignment of Leases and Rents dated April 26, 2007, and recorded on April 27, 2007, in Book 20070427, Page 366, Official Records, Sacramento County, California.

LENDER hereby executes this Agreement and agrees that the Property shall be bound by the terms and conditions hereof, subject to the limitations set forth in Section 8.1. Nothing herein shall be deemed to modify the terms of the loan documents between Lender and LANDOWNER.

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:

IA Sacramento, L.L.C.
2901 Butterfield Road
Oak Brook, Illinois 60523
Attn: _____

with a copy to:

Inland Real Estate Group
2901 Butterfield Road
Oak Brook, Illinois 60523
Attn: _____

LENDER:

By: _____

Name: _____

Title: _____

Dated: _____ (ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

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EXHIBIT A

**DESCRIPTION OF LANDOWNER'S
PROPERTY**

THE PROPERTY CONSISTS OF PARCELS OF LAND DESIGNATED AS THE FOLLOWING ASSESSOR PARCELS NOS.:

- Parcel A - 002-0010-044-0000
- Parcel B - 002-0010-046-0000
- Parcel D - 002-0010-049-0000
- Parcel 1 - 002-0010-047-0000
- Parcel 2 - 002-0010-051-0000

THE PROPERTY IS LOCATED WITHIN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A-1 ATTACHED, WHICH IS INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

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

FOR CITY CLERK USE ONLY

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EXHIBIT A -1

PROPERTY LEGAL DESCRIPTION

All that property located in the City of Sacramento, County of Sacramento described as follows:

Parcels 1 and 2 in the certificate of compliance recorded January 31, 2007 in Book 20070131, Page 2410, and parcels B and D in the certificate of compliance recorded, December 28, 2006 in Book 20061228, Page 1681.

FOR CITY CLERK USE ONLY

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EXHIBIT B

PROJECT DEVELOPMENT PLAN

SEE ATTACHED DOCUMENTS LABELLED AS FOLLOWS.

SPECIFIC PLAN LAND USE MAPS	EXHIBIT B-1
EIR ANALYSIS SCENARIO	EXHIBIT B-2
INITIAL PHASE DEVELOPMENT PLAN	EXHIBIT B-3
PHASING PLAN	EXHIBIT B-4
ROADWAY AND PARKING PHASING PLAN	EXHIBIT B-5

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

FOR CITY CLERK USE ONLY

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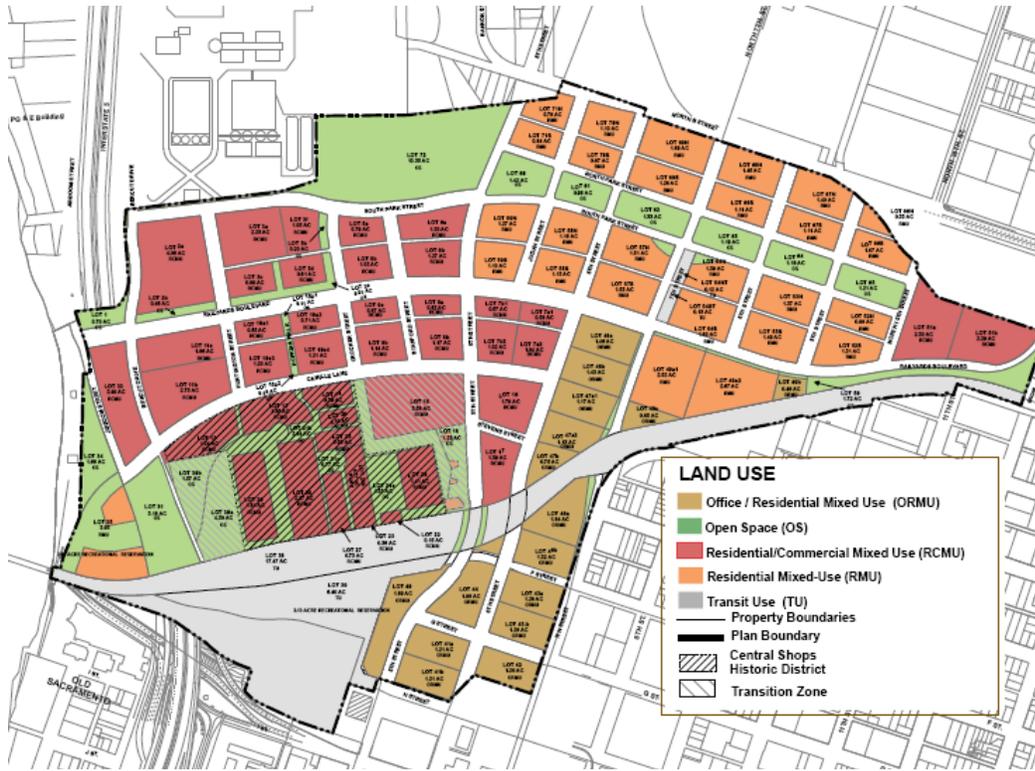
EXHIBIT B-1
SPECIFIC PLAN LAND USE MAPS
SEE ATTACHED

Railyards Development Agreement
Exhibits

Revision Date: 12-05-07

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



RAILYARDS

THOMAS ENTERPRISES, INC.

NOLTE
LAND DEVELOPMENT

LAND USE PLAN
 November 13, 2007

P-1.01

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

**INITIAL PHASE
LAND USE PLAN**
Illustrative Exhibit
November 27, 2007



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT B-2
EIR ANALYSIS SCENARIO
(FROM EIR APPENDIX C)
SEE ATTACHED

FOR CITY CLERK USE ONLY

CITY AGREEMENT NO. _____

ORDINANCE NO. _____

DATE ADOPTED: _____

THE RAILYARDS		Land Use Distribution and Densities - Preferred Plan				PROGRAMMATIC LEVEL				April 5, 2007			
Parcel #	Land Use	Residential		Retail	Mixed-Use 2nd Level on Canille	Hotel	Office	Hist./Cultural	Open Space	Density		FAR	Open Space
		Density	Density							2nd Level on Canille	Open Space		
1	0.75 AC OS												
2	4.31 AC RRRU			200,000 SF									0.75 AC
3a	7.84 AC RRRU		49 DU/MAC										0.15 AC
3b	0.13 AC OS												
3c	0.93 AC RRRU												
3d	0.73 AC RRRU		108 DU	28,000 SF	32,000 SF								0.67 AC
3e	0.07 AC OS												
3f	0.28 AC RRRU		140 DU										
5a	1.14 AC RRRU		104 DU										
5b	0.98 AC RRRU		118 DU/MAC	27,000 SF	26,000 SF								
6a	1.28 AC RRRU		138 DU/MAC	242 DU									
6b	1.07 AC RRRU		95 DU/MAC	109 DU	43,000 SF								0.15 AC
6c	0.15 AC OS												
7a	2.06 AC RRRU		90 DU/MAC	16,000 SF	16,000 SF								
7b	1.19 AC RRRU		91 DU/MAC	109 DU	34,000 SF								0.03 AC
7c	0.03 AC OS												
8a	0.01 AC RRRU		36 DU/MAC	27,000 SF	27,000 SF								
8b	1.22 AC RRRU		39 DU/MAC	40 DU	31,000 SF								
8c	0.09 AC RRRU		79 DU/MAC	44 DU	34,000 SF								
8d	1.84 AC RRRU		39 DU/MAC	49 DU	36,000 SF								
8e	1.84 AC RRRU		39 DU/MAC	49 DU	34,000 SF								
8f	0.57 AC OS												0.57 AC
11a	4.42 AC RRRU			223,000 SF									0.77 AC
11b	0.27 AC OS												
12	1.17 AC RRRU			71,000 SF	43,000 SF								
13a	0.11 AC RRRU			3,500 SF									
13b	0.23 AC RRRU			8,000 SF									
13c	0.12 AC RRRU			5,000 SF									0.60 AC
13d	0.60 AC OS												
14	0.92 AC RRRU			13,000 SF									
15a	3.33 AC RRRU		22 DU/MAC	72 DU	65,500 SF	40,000 SF				100 NYS			0.05 AC
15b	0.05 AC OS												
16a	1.67 AC RRRU		14 DU/MAC	236 DU	28,000 SF	30,000 SF							0.07 AC
16b	0.07 AC OS												
17	1.48 AC RRRU												1.08 AC
18a	1.05 AC OS												
18b	0.25 AC RRRU			38,500 SF									5.30 AC
20	1.50 AC RRRU												
21	5.30 AC OS												
22	0.15 AC RRRU												6.50 SF
23	0.34 AC RRRU												22,500 SF
24	0.73 AC RRRU												42,500 SF
25	0.53 AC RRRU												35,500 SF
26	0.33 AC RRRU												28,500 SF
27	0.85 AC RRRU												28,433 SF
28	2.24 AC RRRU												93,134 SF
29	1.97 AC RRRU												69,690 SF
30a	5.97 AC OS												5.07 AC
30b	1.35 AC OS												1.35 AC
31a	2.65 AC OS												2.65 AC
31b	0.32 AC OS												0.32 AC
32	2.65 AC RRRU												2.65 AC
33	4.90 AC RRRU		225 DU/MAC	900 DU	15,000 SF					500 NYS			1.26 AC
34	15.78 AC TU												
35	15.34 AC TU												
40	1.53 AC ORAU		50 DU/MAC	96 DU*	38,000 SF								3.13 AC
41	2.43 AC ORAU		80 DU/MAC	160 DU*	85,000 SF								1.4
42	1.16 AC ORAU		239 DU/MAC	273 DU*	6,200 SF								1.8
43	2.85 AC ORAU		178 DU/MAC	455 DU*	12,000 SF								5.8
44	1.80 AC ORAU		118 DU/MAC	227 DU*	10,500 SF								4.5
45	0.33 AC OS												2.9
46	2.89 AC ORAU		57 DU/MAC	164 DU*									1.4
47a	2.21 AC ORAU		123 DU/MAC	273 DU*									3.1
47b	0.78 AC RRRU												300,000 SF*
48	2.56 AC ORAU		178 DU/MAC	455 DU*									4.5
													600,000 SF*

Thomas Enterprises, Inc.

Railyards Development Agreement Exhibits

Revision Date: 12-05-07

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

THE RAILYARDS Land Use Distribution and Densities - Preferred Plan													April 5, 2007	
PROGRAMMATIC LEVEL														
Parcel #	Land Use	Residential Density	Retail	Mixed-Use 2nd Level on Cornale	Hotel	Office	Hist./Cultural	Open Space	FAR	Office	Hist./Cultural	Open Space		
48B	4.87 AC	RMU	60,000/SF											
49B	0.73 AC	ORMU												
49C	1.00 AC	ORMU												
50	1.26 AC	OS										1.26 AC		
51	4.70 AC	RMU	40,000/SF											
52N	0.98 AC	RMU												
52S	1.30 AC	RMU												
53N	1.38 AC	RMU												
53S	1.49 AC	RMU												
54N	1.35 AC	RMU												
54S	1.58 AC	RMU	15,000/SF											
54a	0.12 AC	OS	10,000/SF									0.12 AC		
57a	0.12 AC	OS										0.12 AC		
57N	1.24 AC	RMU												
57S	1.38 AC	RMU	15,000/SF											
58N	1.17 AC	RMU	10,000/SF											
58S	1.15 AC	RMU												
59N	1.27 AC	RMU												
59S	1.11 AC	RMU												
60	1.12 AC	OS												
61	0.71 AC	OS												
62	0.92 AC	OS												
63	0.97 AC	OS												
64	0.89 AC	OS												
65	0.92 AC	OS												
66N	0.33 AC	RMU												
66S	1.07 AC	RMU												
67N	1.27 AC	RMU												
67S	1.12 AC	RMU												
68N	1.48 AC	RMU												
68S	1.17 AC	RMU												
69N	1.84 AC	RMU												
69S	1.21 AC	RMU												
70N	1.10 AC	RMU												
70S	0.88 AC	RMU												
71N	0.77 AC	RMU												
71S	0.84 AC	RMU												
72	10.37 AC	OS										10.37 AC		
TOTAL	180.39 AC		1,384,800/SF	491,000/SF	1,100 Kys	2,337,200/SF	485,390/SF					41.16 AC		
Roads	50.90 AC													
Site Total	237.29 AC													
Devel Total	100.78 AC	42%												
48B	48.83 AC													
49B	41.95 AC													
49C	28.94 AC													
50	41.16 AC													
51	19.46 AC													
Total	180.39 AC													

Railyards Development Agreement Exhibits

Revision Date: 12-05-07

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THE RAILYARDS										
Land Use Distribution									April 5, 2007	
Phasing Scenario (1)										
Phase	Parcel #	AC	Land Use	Res [2] DU	Retail SF	Mix Use [3] SF	Hotel [2] KYS	Office [2] SF	Historic Cultural SF	Open Space AC
Phase 1A										
	1	0.75	OS							0.75
	2	4.31	RRMU		200,000					
	3a	2.84	RRMU							
	38	16.78	TU							
	41	2.43	ORMU	160	85,000			192,000		
	42	1.19	ORMU	273	6,200			300,000		
	Subtotal	28.30	Max	433	291,200	0	0	492,000	0	0.75
	1A		Min	0	291,200	0	0	0	0	0.75
Phase 1B										
	8a	0.61	RRMU	22	27,000	27,000				
	8b	1.22	RRMU	48	33,000	38,000				
	9a	0.60	RRMU	44	26,000	26,000				
	9b	1.27	RRMU	48	34,000	38,000				
	10a	3.88	RRMU	106	116,000	65,000				
	10b	0.57	OS							0.57
	11a	4.42	RRMU		223,000					
	11b	0.27	OS							0.27
	12	1.17	RRMU		71,000	43,000				
	13a	0.11	RRMU		3,500					
	13b	0.23	RRMU		8,000					
	13c	0.12	RRMU		5,600					
	13d	0.60	OS							0.60
	14	0.62	RRMU		13,000		100			
	15a	3.33	RRMU	72	65,500	40,000			100,000	
	15b	0.05	OS							0.05
	17	1.48	RRMU							
	18a	1.05	OS							1.05
	18b	0.25	RRMU		38,500					
	20	1.30	RRMU						56,278	
	21	5.30	OS							5.30
	22	0.15	RRMU						6,500	
	23	0.34	RRMU						22,500	
	24	0.73	RRMU						42,028	
	25	0.53	RRMU						36,711	
	26	0.33	RRMU						28,500	
	27	0.65	RRMU						28,043	
	28	2.24	RRMU						93,134	
	29	1.67	RRMU						69,696	
	30a	5.07	OS							5.07
	30b	1.35	OS							1.35
	31a	2.66	OS							2.66
	31b	0.32	OS							0.32
	33	2.62	RRMU							
	45	0.33	OS							0.33
	47b	0.78	RRMU							
	49b	0.73	ORMU							
	49c	1.00	ORMU							
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	49.95	Max	340	664,100	277,000	100	0	485,390	17.57
	1B		Min	340	664,100	277,000	100	0	485,390	17.57
Phase 1 Cumulative										
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	78.25	Max	773	955,300	277,000	100	492,000	485,390	18.32
	Phase 1		Min	340	955,300	277,000	100	0	485,390	18.32

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THE RAILYARDS										
Land Use Distribution									April 5, 2007	
Phasing Scenario (1)										
Phase	Parcel #	AC	Land Use	Res [2] DU	Retail SF	Mix Use [3] SF	Hotel [2] KYS	Office [2] SF	Historic Cultural SF	Open Space AC
Phase 2										
	3b	0.13	OS							0.13
	3c	0.93	RRMU				500			
	3d	0.73	RRMU	168	28,000	32,000				
	3e	0.67	OS							0.67
	3f	0.28	RRMU	140						
	5a	1.14	RRMU	104						
	5b	0.68	RRMU	80	27,000	29,000				
	6a	1.28	RRMU	242						
	6b	1.07	RRMU	100	43,000	47,000				0.15
	6c	0.15	OS							
	7a	2.06	RRMU	165	18,000	18,000				
	7b	1.19	RRMU	108	54,000	58,000				
	7c	0.03	OS							0.03
	10a	1.67	RRMU	236	28,000	30,000				
	10b	0.07	OS							0.07
	40	1.93	ORMU	96	38,000			115,200		
	43	2.56	ORMU	455	12,000			500,000		
	44	1.96	ORMU	227	16,500			250,000		
	46	2.69	ORMU	164				180,000		
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	21.42	Max	2,305	264,500	214,000	500	1,045,200	0	1.05
	Phase 2		Min	1,364	264,500	214,000	500	0	0	1.05
Project Area Cumulative										
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	99.67	Max	3,078	1,219,800	491,000	600	1,537,200	485,390	19.37
	Project Area		Min	1,704	1,219,800	491,000	600	0	485,390	19.37
Phase 3										
	34	1.26	OS							1.26
	35	4.00	RMU	900	15,000		500			
	39	15.34	TU							3.13
	47a	2.21	ORMU	273				300,000		
	48	2.56	ORMU	455				500,000		
	50	1.26	OS							1.26
	57a	0.12	OS							0.12
	57N	1.24	RMU	250	15,000					
	57S	1.38	RMU	415	10,000					
	58N	1.17	RMU	125						
	58S	1.15	RMU	345						
	59N	1.27	RMU	135						
	59S	1.11	RMU	333						
	60	1.12	OS							1.12
	61	0.71	OS							0.71
	62	0.92	OS							0.92
	69N	1.64	RMU	480						
	69S	1.21	RMU	135						
	70N	1.10	RMU	330						
	70S	0.88	RMU	110						
	71N	0.77	RMU	200						
	71S	0.84	RMU	100						
	72	10.37	OS							10.37
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	53.63	Max	4,585	40,000	0	500	800,000	0	18.89
	Phase 3		Min	3,858	40,000	0	500	0	0	18.89

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THE RAILYARDS										
Land Use Distribution										April 5, 2007
Phasing Scenario [1]										
Phase	Parcel #	AC	Land Use	Res [2] DU	Retail SF	Mix Use [3] SF	Hotel [2] KYS	Office [2] SF	Historic Cultural SF	Open Space AC
Phase 4										
	49a	4.87	RMU	650	60,000					
	51	4.70	RMU	650	40,000					
	52N	0.98	RMU	195						
	52S	1.30	RMU	390						
	53N	1.38	RMU	150						
	53S	1.49	RMU	445						
	54N	1.35	RMU	275	15,000					
	54S	1.68	RMU	500	10,000					
	64a	0.12	OS							0.12
	63	0.97	OS							0.97
	64	0.89	OS							0.89
	65	0.92	OS							0.92
	66N	0.33	RMU	35						
	66S	1.07	RMU	115						
	67N	1.27	RMU	385						
	67S	1.12	RMU	178						
	68N	1.48	RMU	430						
	68S	1.17	RMU	130						
				Res	Retail	Mixed L2	Hotel	Office	Historic	OS
	Subtotal	27.09	Max	4,438	125,000	0	0	0	0	2.90
	Phase 3		Min	4,438	125,000	0	0	0	0	2.90
Total Railyards										
	Total	180.39	Max	12,101	1,384,800	491,000	1,100	2,337,200	485,390	41.16
			Min	10,000	1,384,800	491,000	1,100	0	485,390	41.16
[1]	This exercise represents one possible buildout scenario based on reasonable assumptions of market demand. Actual development sequence will be determined by market conditions.									
[2]	Bolded values indicate that Parcel may be housing OR office OR hotel OR combinations thereof within the building envelope defined in the Specific Plan.									
[3]	Second level mixed-use commercial space fronting Camille Lane may be retail, office, housing or educational use.									

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EXHIBIT B-3
INITIAL PHASE DEVELOPMENT PLAN
SEE ATTACHED

Railyards Development Agreement
Exhibits

Revision Date: 12-05-07

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**INITIAL PHASE DEVELOPMENT PLAN
(EIR Development Scenario and November 3, 2007 Phasing Plan)**

Plan Parcel	Phase	Parcel Size (Acres)	Dwelling Units/Acre	Total Units	Retail/Historic (Sq. Ft.)	Mixed Use (Sq. Ft.)	Office (Sq. Ft.)	Hotel (Rooms)
2a	1A	4.06			200,000			
41a	1A	1.21	66	80*	42,500		96,000*	
41b	1A	1.21	66	80*	42,500		96,000*	
42	1A	1.17	223	273*	6,200		300,000*	
Year 2008-2010 PHASE 1A TOTAL:				433*	291,200	0	492,000*	0
8b	1B.1	1.17	41	48	33,000	38,000		
9b	1B.1	1.14	38	48	34,000	38,000		
10a3	1B.1	1.20	29	35	40,000	33,000		
10a4	1B.1	1.21	29	35	40,000	32,000		
11a	1B.1	1.86			90,000			
11b	1B.1	2.73			133,000			
12	1B.1	1.34			71,000	43,000		
13	1B.1	1.36			17,100			
14	1B.1	0.79			13,000			100
15	1B.1	3.58	20	72	165,500	40,000		
18	1B.1	1.23			38,500			
20	1B.1	1.41	(1 historic bldg)		56,278			
22	1B.1	0.15			6,500			
23	1B.1	0.36			22,500			
Year 2010-2015 Phase 1B.1 Subtotal:				238	799,089	224,000	0	100
3c	1B.2	0.89						500
3d	1B.2	0.81	207	168	28,000	32,000		
5b	1B.2	1.02	78	80	27,000	29,000		
6b	1B.2	1.27	79	100	43,000	47,000		
7b1	1B.2	0.57	63	36	18,000	19,000		
7b2	1B.2	1.02	71	72	36,000	39,000		
8a	1B.2	0.62	35	22	27,000	27,000		
9a	1B.2	0.67	66	44	26,000	26,000		
10a1	1B.2	0.69	26	18	18,000			
10a2	1B.2	0.71	25	18	18,000			
16	1B.2	1.79	132	236	28,000	30,000		

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

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Plan Parcel	Phase	Parcel Size (Acres)	Dwelling Units/Acre	Total Units	Retail/Historic (Sq. Ft.)	Mixed Use (Sq. Ft.)	Office (Sq. Ft.)	Hotel (Rooms)
25	1B.2	0.56	(1 historic bldg)		42,028			
26	1B.2	0.39	(1 historic bldg)		28,500			
Year 2010-2015 Phase 1B2 Subtotal:				794	339,528	249,000	0	500
Year 2010-2015 PHASE 1B TOTAL:				1,032	1,138,617	473,000	0	600
3f	2	1.05	133	140				
5a	2	0.79	132	104				
6a	2	1.20	202	242				
7a1	2	0.58	107	62	6,000	6,000		
7a2	2	1.04	119	124	12,000	12,000		
27	2	0.73	(1 historic bldg)		28,043			
28	2	2.27	(1 historic bldg)		93,134			
29	2	1.81	(1 historic bldg)		69,696			
40	2	1.89	51	96*	38,000		115,200*	
43a	2	1.31	173	227*	6,000		250,000*	
43b	2	1.28	178	228*	6,000		250,000*	
44	2	1.96	116	227*	16,500		250,000*	
46a	2	1.84	45	82*			90,000*	
46b	2	1.32	62	82*			90,000*	
Year 2015-2020 PHASE 2 TOTAL:				1,614*	275,373	18,000	1,045,200	0
INITIAL PHASE (1A, 1B, 2) TOTAL:				3,079	1,705,190	491,000	1,537,200	600

* Flexible Mixed Use parcels (also referred to as General Mixed Use). Either residential or office or a combination of uses would apply.

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ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT B-4
PHASING PLAN

SEE ATTACHED

FOR CITY CLERK USE ONLY

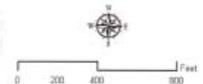
ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

PHASE 1 LAND USE PLAN

Illustrative Exhibit
November 27, 2007



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

**PHASE 2
LAND USE PLAN**

Illustrative Exhibit
November 27, 2007



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

**PHASE 3
LAND USE PLAN**
Illustrative Exhibit
November 27, 2007



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

**PHASE 4
LAND USE PLAN**
Illustrative Exhibit
November 27, 2007



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ORDINANCE NO. _____

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DATE ADOPTED: _____

EXHIBIT B-5
ROADWAY AND PARKING PHASING PLAN

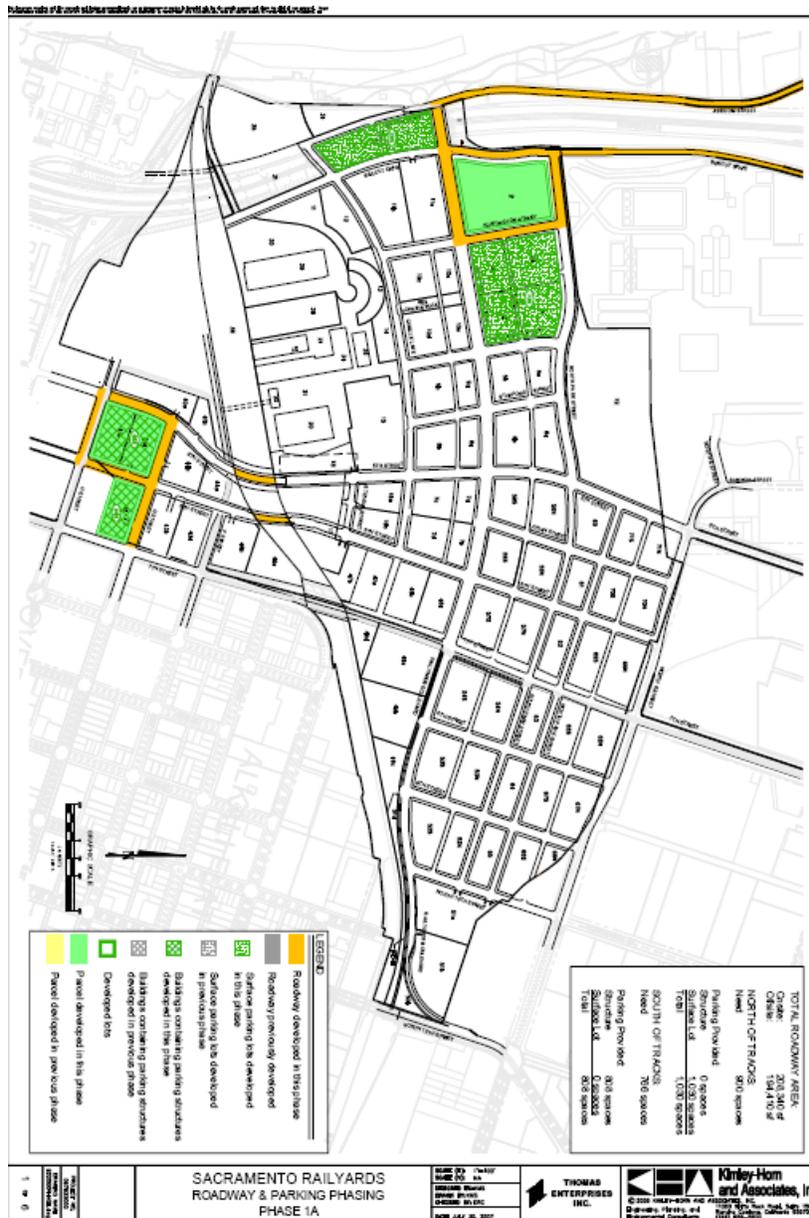
SEE ATTACHED

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ORDINANCE NO. _____

DATE ADOPTED: _____



Railyards Development Agreement Exhibits

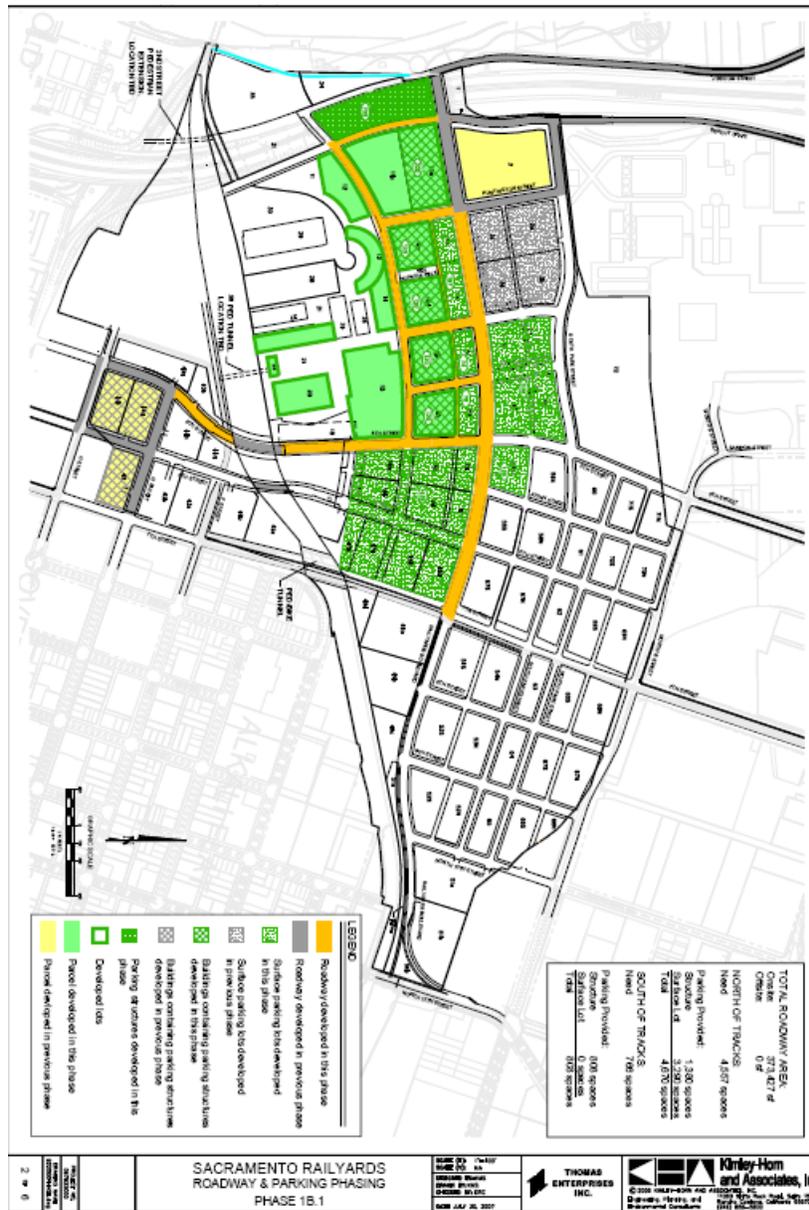
Revision Date: 12-05-07

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ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

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DATE ADOPTED: _____



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

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DATE ADOPTED: _____

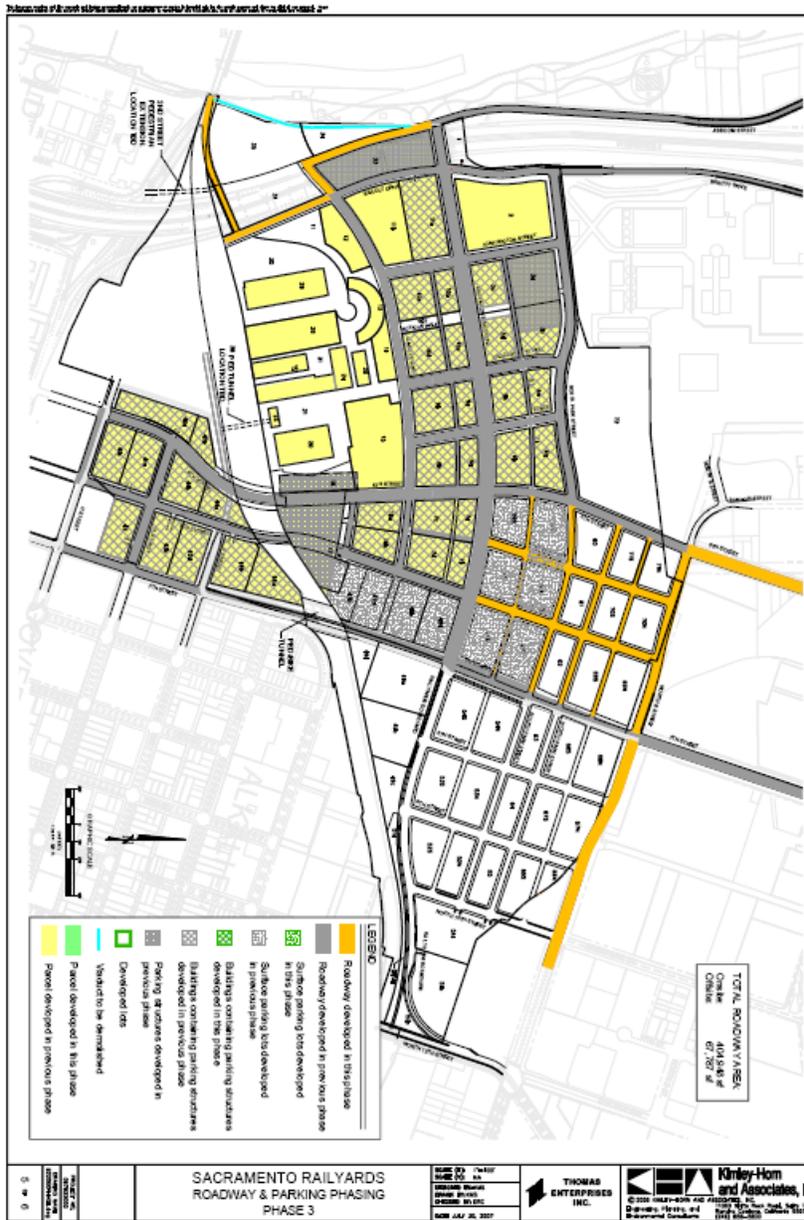


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CITY AGREEMENT NO. _____

DATE ADOPTED: _____

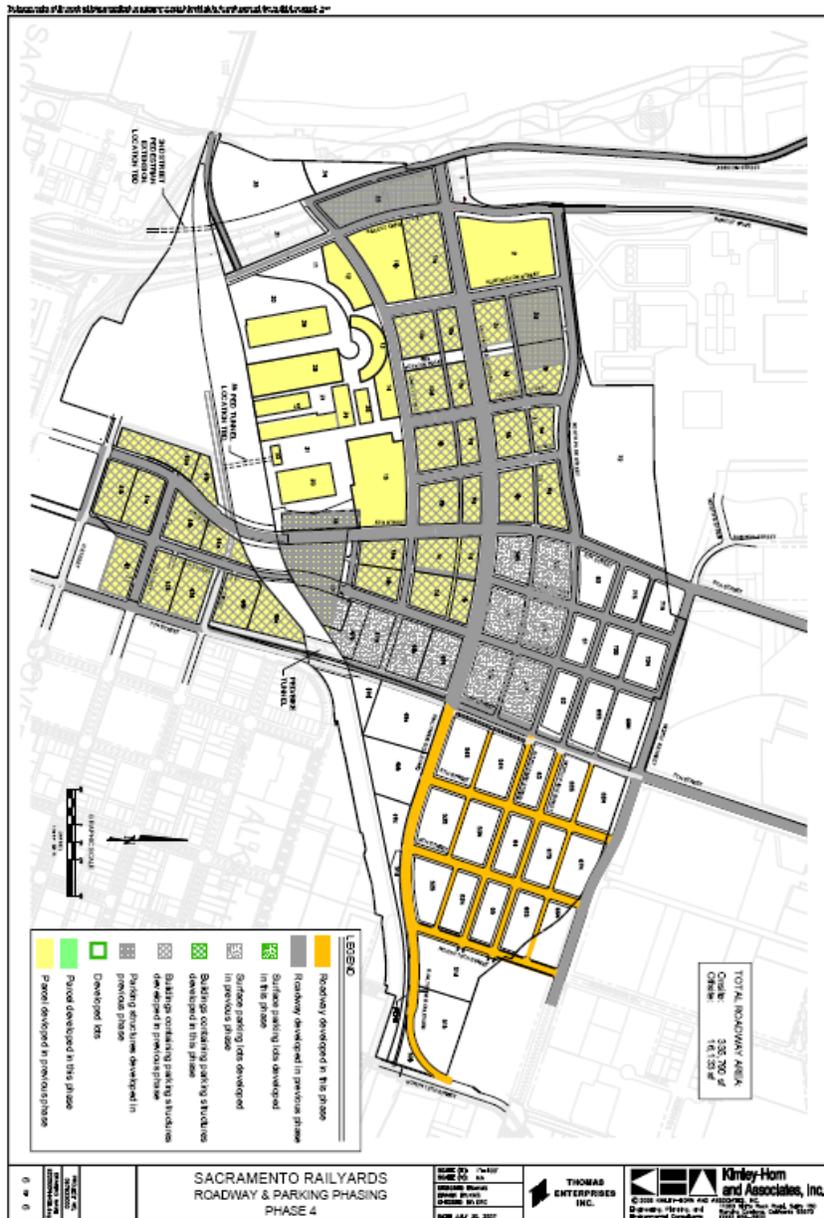


FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____



FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT C

PROJECT ENTITLEMENTS

THE FOLLOWING APPROVED ENTITLEMENTS FOR THE PROJECT, WHICH IS REFERENCED AS P -05-097, AND THE ORDINANCES, RESOLUTIONS, PERMITS AND FINDINGS AND CONDITIONS ATTACHED TO SUCH ENTITLEMENTS AS OF THE EFFECTIVE DATE OF THIS AGREEMENT ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

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

Date of Hearing	Description of Approved Entitlements	Ordinance or Resolution	Attached as:
12-11-07	Tentative Map	Resolution No.	Exhibit C-1
12-11-07	Zoning Map	Ordinance No.	Exhibit C-2
12-11-07	Inclusionary Housing Plan	Resolution No.	Exhibit C-3
12-11-07	Railyards Special Planning District	Ordinance No.	
12-11-07	Railyards Specific Plan	Resolution No.	
12-11-07	Amendment of General Plan	Resolution No.	
12-11-07	Amendment of Central City Community Plan	Resolution No.	
12-11-07	Amendment of Facility Element of Richards Boulevard Area Plan and Railyards Specific Plan	Resolution No.	

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

12-11-07	Central Shops Historic District Ordinance	Ordinance No.	
12-11-07	Railyards Design Guidelines	Resolution No.	

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT D

**ENVIRONMENTAL IMPACT REPORT
AND MITIGATION MEASURES**

THE RESOLUTION CERTIFYING THE DRAFT AND FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT AND ADOPTING FINDINGS OF FACT, MITIGATION MEASURES, STATEMENTS OF OVERRIDING CONSIDERATION WAS APPROVED BY THE CITY COUNCIL ON DECEMBER 11, 2007 BY RESOLUTION NO. _____.

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

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

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT E

INCLUSIONARY HOUSING PLAN

THE INCLUSIONARY HOUSING PLAN FOR THE PROJECT IS ATTACHED AS EXHIBIT C-3 AND INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

NOTE: ANY CHANGES TO THE TERMS AND CONDITIONS OF THE INCLUSIONARY HOUSING PLAN REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT F
FINANCING PLAN

THE RAILYARDS SPECIFIC PLAN PUBLIC FACILITIES FINANCING PLAN DATED AS OF NOVEMBER 2007 AND ACCEPTED BY THE CITY COUNCIL ON DECEMBER 11, 2007 IS INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE AS IF SET FORTH IN FULL.

NOTE: ANY CHANGES TO THE FINANCING PLAN DO NOT REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT G

PROTEST WAIVER PROVISIONS

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

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

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

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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

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

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

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

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

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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

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

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

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT H
PARKS AND OPEN SPACE REQUIREMENTS

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

Revised 10/16/07, J.P. Tindell based on 10/15/07 TE Map
 10/24/07 J.P. Tindell
 11/16/07 R. Rich; approved by J.P. Tindell

Oct 1, 2007

THE RAILYARDS
 Open Space Summary
 Acreage and cost info from R. Rich

Phase	Parcel	Linear MI	Park	Notes	Finance Plan				Quincy		Total \$ [5]	JPT Notes
					AC	SF	\$/SF	Total \$ [5]	AC	AC		
E	1A	0.70	Entry		30,492	15	457	0.70	457			
F	1A	0.08	Hopkins Walk		20,038	20	401	0.46	401			
E	1B	0.32	5th Street Bridge	[4]	13,938	20	279	0.00	0.00	City will own and provide easement.		
E	1B	0.55	Roundhouse Plaza	[1]	23,958	25	599	0.55	599			
E	1B	1.23	5th Street Steps		53,579	35	1,875	1.23	1,875			
F	1B	0.11	Hopkins Walk		4,782	25	120	0.11	120			
F	1B	0.02	Hopkins Walk		7,841	25	198	0.18	198			
F	1B	0.04	Hopkins Walk		57,499	25	1,437	1.32	1,437			
E	1B	1.32	Market Plaza		123,710	25	3,093	2.84	3,093			
E	1B	2.84	Market Plaza / Roundhouse		33,541	25	839	0.77	839			
E	1B	0.77	Powerhouse Court		187,308	0.00	0.00	4.30	0.00	State to develop; assumes all outdoor space has unrestricted public access		
E	2	4.30	Museum Park / Roundtable		68,389	15	1,026	1.57	1,026			
E	2	1.57	Museum Park		8,712	20	174	0.20	174			
F	2	0.34	Hopkins Walk		43,560	20	871	0.20	871	Area changed in final tentative map analysis by Note 783		
F	2	0.15	Hopkins Walk		7,405	15	111	0.00	0.00	Paving only (separated sidewalk)		
E	2	11.31	Class I Bike/Ped Way	[1][3]	450,946	25	11,271	10.35	11,271	11,271 Capnet reclamation site; no Capnet. Plant to be sited here		
E	2	0.35	Vista Park		1,307	15	20	0.00	0.00	Paving only (separated sidewalk)		
E	2	0.63	Class I Bike/Ped Way	[1][3]	1,135,916	15	22,769	25.49	22,281			
E	2	26.10	SUBT		138,521	20	2,770	3.18	2,770			
E	3	1.66	Under I-5 Experience		72,310	20	1,446	1.88	1,446			
E	3	2.08	Riverfront Park		90,608	20	1,812	2.08	1,812			
E	3	0.09	Riverfront Park	[1][3]	3,920	15	59	0.00	0.00	Paving only (separated sidewalk)		
E	3	0.03	Class I Bike/Ped Way	[1][3]	1,507	15	20	0.00	0.00	Paving only (separated sidewalk)		
E	3	0.04	Class I Bike/Ped Way	[1][3]	1,742	15	26	0.00	0.00	Paving only (separated sidewalk)		
E	3	0.04	Class I Bike/Ped Way	[1][3]	1,742	15	26	0.00	0.00	Paving only (separated sidewalk)		
F	3	1.72	Class I Bike/Ped Way	[1][3]	74,923	15	1,124	1.72	1,124	With landscape area		
F	3	1.41	Class I Bike/Ped Way	[2]	61,420	20.8	1,278	1.41	1,278			
F	3	0.86	Box Car Park	[2]	41,818	20.8	870	0.96	870			
F	3	1.33	Box Car Park	[2]	57,835	20.8	1,205	1.33	1,205			
F	3	1.19	Box Car Park	[2]	51,401	20.8	1,069	1.18	1,069			
F	3	1.18	Box Car Park	[2]	52,706	20.8	1,096	1.21	1,096			
F	3	1.21	Box Car Park	[2]	4,782	15	72	0.11	72	Landscape Bike/Ped way		
F	3	0.11	Class I Bike/Ped Way	[1][3]	5,534	15	96	0.15	96	Landscape Bike/Ped way		
F	3	0.15	Class I Bike/Ped Way	[1][3]	2,614	15	39	0.00	0.00	Landscape Bike/Ped way		
F	3	0.06	Class I Bike/Ped Way	[1][3]	5,227	20	105	0.12	105	With landscape area complementing LRT Station		
F	3	0.12	Box Car Station East	[1]	5,683	20	113	0.13	113	With landscape area complementing LRT Station		
F	3	0.13	Box Car Station West	[1]	727,016	20	14,306	16.49	13,895			
F	3	16.69	SUBT		136,343	0.00	0.00	0.00	0.00	City will get property (3.13 ac) via TE-City Purchase/Sale Agreement		
nr	nr	3.13	Depot Park		2,000,276	0.00	41.88	9.00	41.88	Avg. \$876K/ac. development		
E	3	46.92	Residential Private Rec. Improvements	[6]	54.92		\$37,075	41.88	\$35,247	Created only once under Quincy; and not also under PIF		
F	3	9.00	SUBT		50.98		50.98		50.98	est. 59 ac. to meet 2.5 ac./1000 on-site = 4 ac. gap est. 110 ac. to meet 6 ac./1000 overall = 58 ac. gap		
F	3	54.92	TOTAL									

City Notes:
 1) Above lines not include 4.11 ac. State owned Riverfront parcel, assumed coming to City directly via land swaps
 F = Fee title to City
 E = Easement to City
 Phases per TE 10/23/07
 Linear miles calculated for O&M costs in Fiscal Impact Analysis

TE Notes:
 [1] Area shown is dedicated open space from larger lot total
 [2] Includes \$16,266 plus self allowance of \$5,556/af
 Add to Finance Plan
 [3] Parcel 38 (formerly Parcel 45) is an air rights easement for open space on the 5th St. Bridge
 (000) 2007 dollars
 [5] 25% of 120cu times 130cu/du (max. allowed by City Code)
 [6]

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DATE ADOPTED: _____

Final Exhibit H Development Agreement Section 3.5

RAILYARDS: "Value Analysis" of TE Proposal for Open Space (values in 2007 \$1000s)

Municipal Code 16.04: Meeting Park Development Fee and Quimby Act Requirements

Pursue creative ways to minimize impact of requirements by considering: (per City Agreement 2003-0176-1)

- 1) reduce amount of fees;
- 2) additional credit for desirable portions of RY property;
- 3) reduce per-unit factors; and/or
- 4) include retention basins and public areas (plazas, museums, courtyards, etc.)

Recommendations

- 1) "waive" some fees (Quimby in lieu) **(NOTE: Quimby + PIF fees already set lower than full cost coverage to acquire or develop)**
- 2) credit given for: plazas; bike/pedways connecting public spaces; under freeway; RR spur; capped remediation site (Vieta Park)
- 3) no per unit reductions recommended
- 4) no retention basins in project design
- 5) do not reduce 5 ac./1000 requirement for high density infill projects citywide; get as close to 2.5 ac./1000 on-site and implement MOU conditions via D.A.

Muni. Code 16.04 (Quimby): Land Dedication or In Lieu Fees

Current requirement	Est. acres/\$s	TE proposes (ac./\$s)	Gap (ac.)	Gap (\$s)	Notes/Assumptions
5 ac./1000	105.5	42.0	55.5	\$16,650.0	City already flexible on counting proposed OS per MOU (see above) City can accept any combination of land + fees up to 5 ac./1000 Est. \$300K/ac. value per Quimby Ordinance
(2.5 ac. Neigh. Parks on-site + 2.5 ac. Commun. Parks)	<53, 53>		<4.5 on-site>	<\$1,170.0 on-site>	
Max 25% credit for private rec. improvements		\$12,600.0			
		9.0			
		51.0			

Muni. Code 16.44: Park Development Impact Fee (PIF)

Current requirement	Est. \$s	TE proposes (\$s for 42 ac.)	Gap (\$s)	Notes
	\$36,000.0	\$36,247.0	-\$247.0	TE proposes turnkey development of est. 42 ac. @ average \$860K/ac.; City usually spends \$330K/ac.

Totals: \$67,950.0 \$51,547.0 to provide 5 ac./1000 of value

Additional improvements to be provided	Est. value not to exceed
Sec. Riverfront enhancements between RY Riverfront Park and Tiscornia Park	\$3,100.0

Timing: No final map or building permits can be issued for Lot 35 until these improvements and development of Lot 34 are completed.

Remainder of Quimby In Lieu Fees to be waived: \$13,303.0

FOR CITY CLERK USE ONLY

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DATE ADOPTED: _____



Sacramento Riverfront Trail Project Scope
City of Sacramento – Department of Parks and Recreation
Park Planning and Development Services

Sacramento Riverfront Trail

The proposed Sacramento Riverfront Trail will consist of 4,000 linear feet of trail from Tiscomia Park to the I Street Bridge on the top of the east Sacramento River levee. The majority of the bike and pedestrian use trail will consist of 10' of asphalt and 1' decomposed granite shoulders with 9' of landscaping on each side. At each of the two entry points, a 50' by 20' plaza with concrete seat walls, a drinking fountain, an interpretive sign, and additional landscaping is proposed. At about 1,000' from each end of the trail, two 20' long seating areas are proposed. Each would have two benches with 6' additional paving and an interpretive sign. Three additional interpretive signs are proposed along the trail. Lighting would be included in the project and would consist of pedestrian-scaled fixtures at 100' on center.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT I
OFFER OF DEDICATION FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

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

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

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

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

GRANTOR acknowledges and agrees as follows:

1. This offer is given pursuant to Government Code Section 7050, and shall be recorded in the office of the County Recorder, County of Sacramento.

FOR CITY CLERK USE ONLY

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CITY AGREEMENT NO. _____

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2. This offer may be accepted at any time by the City Council of CITY. This offer may be terminated only in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.
3. CITY assumes no responsibility or liability whatsoever with respect to the Property or occurrences thereon, as a consequence of the offer set forth herein.
4. GRANTOR shall not create, nor permit to be created, any lien, encumbrance or other title impediment of any sort or nature on or affecting the Property.
5. At the time CITY accepts this offer, GRANTOR shall insure that the Property is free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except (a) easements or rights-of-way for public utilities, if any, (b) items which CITY has expressly consented in writing, if any, and (c) the land use covenants and other restrictions specified by the California Department of Toxic Substances Control or its successor agency.
6. In the event that there are improvements upon the Property placed thereon either before or after this offer is recorded, GRANTOR shall have full legal responsibility, without cost to CITY, to remove such improvements, if this offer is accepted by CITY.
7. The California Department of Toxic Substances Control (DTSC), or its successor agency, has required LANDOWNER to remediate the Hazardous Substances on the Property. At the time the Property title is to be transferred to PUBLIC AGENCY, LANDOWNER shall provide PUBLIC AGENCY with written verification from DTSC that all Hazardous Substances on the Property has been properly remediated.

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

8. GRANTOR agrees and covenants to indemnify and defend CITY and its officers, employees and agents, harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for

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CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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

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

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

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

GRANTOR(s):

By: _____

Title:

Print Name:

Date: _____

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ORDINANCE NO. _____

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DATE ADOPTED: _____

EXHIBIT J
RESERVATION AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

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

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

RESERVATION OF REAL PROPERTY AGREEMENT

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

RECITALS

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

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

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

AGREEMENT

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

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1. Property Ownership

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

2. Consideration for Reservation

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

3. Reservation Parcel

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

4. Purchase Price

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

5. Documents and Agreements

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

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

6. Acquisition Schedule

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

7. Acquisition of Reservation Parcel

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

8. Encumbrances and Improvements

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

9. Hazardous Substances

The California Department of Toxic Substances Control (DTSC), or its successor agency, has required LANDOWNER to remediate the Hazardous Substances on the Property. At the time the Property title is to be transferred to PUBLIC AGENCY, LANDOWNER shall provide PUBLIC AGENCY with written verification

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DATE ADOPTED: _____

from DTSC that all Hazardous Substances on the Property has been properly remediated.

As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Reservation Parcel shall be governed by the provisions of Section 10 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by PUBLIC AGENCY prior to close of escrow.

10. Hazardous Substances Indemnity

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

11. Notices

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

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DATE ADOPTED: _____

Notice to the PUBLIC AGENCY:

Notice to the LANDOWNER:

Notice to Lender:

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

12. Successors and Assigns

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

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

LANDOWNER:

By: _____

PUBLIC AGENCY:

By: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT K
ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

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

ASSIGNMENT AND ASSUMPTION AGREEMENT

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

RECITALS

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

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

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

AGREEMENT

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

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

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

3. **Assumption Terms and Conditions.** LANDOWNER and ASSIGNEE understand and agree that this Assignment is subject in particular to Section 2.7 of the Development Agreement, which reads as follows:

"2.7 Assignment.

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

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2.7.2. **Release of LANDOWNER.** Such purchaser, assignee or transferee shall execute and deliver to CITY an Assignment and Assumption Agreement whereby such purchaser, assignee or transferee assumes all obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned, or transferred. Upon such execution and delivery, CITY shall release LANDOWNER from all duties, liabilities and obligations under the Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

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

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

5. **No Cross-Default.** The Parties acknowledge and agree that the respective obligations of LANDOWNER and ASSIGNEE under the Development Agreement shall be separate and independent from one another, such that a default by LANDOWNER of any of the LANDOWNER’s duties and obligations will not constitute a

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default under the Development Agreement by ASSIGNEE, and a default by ASSIGNEE of any of the ASSIGNEE's duties and obligations will not constitute a default under the Development Agreement by LANDOWNER, and the CITY's rights and remedies under the Development Agreement shall apply only to the Party, and the Property or Assigned Parcel(s), that is the subject of the default. Any duties and obligations under the Development Agreement that apply to both the Assigned Parcel(s) and the remaining Property must be complied with by both LANDOWNER and ASSIGNEE, as applicable.

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

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

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

9. **Further Assurances.** The Parties agree to execute all such additional

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instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.

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

Notice to the CITY:

Notice to the LANDOWNER:

Notice to the ASSIGNEE:

Notice to Lender:

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

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

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

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13. **Release of LANDOWNER.** Upon execution and delivery of this Agreement by CITY, CITY hereby releases LANDOWNER from all duties, liabilities and obligations pursuant to the Development Agreement.

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

By: _____
LANDOWNER

By: _____
ASSIGNEE

By: _____
CITY

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DATE ADOPTED: _____

EXHIBIT L

DESIGN GUIDELINES

THE SACRAMENTO RAILYARDS DESIGN GUIDELINES DATED AS APPROVED BY THE CITY COUNCIL ON DECEMBER 11, 2007 BY RESOLUTION NO.

_____ ARE INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE AS IF SET FORTH IN FULL.

NOTE: ANY CHANGES TO THE DESIGN GUIDELINES DO NOT REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

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EXHIBIT M

SPECIAL CONDITIONS

I. PURPOSE AND INTENT

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

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

II. LANDOWNERS' OBLIGATIONS

A. **Compliance with Law Respecting Other Public Agencies.** As required under this Agreement and by CITY as a condition of the Project Entitlements or a Subsequent Approval, LANDOWNER shall comply with applicable law with respect to the following matters concerning other Public Agencies:

1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District, for provision of Public Facilities, payment of fees and charges, and payment (if applicable) of any proportionate share of penalties imposed by the Environmental Protection Agency.
2. The State Department of Toxic Substance Control in regards to remediation of the hazardous substances on the Property.
3. Applicable School District(s) in regard to school facilities for the students that will reside within the Project.
4. The Sacramento Regional Transit District in regard to the extension of the light rail transit system within the Property.
5. The Sacramento Municipal Utility District in regard to the provision of one or more new substations required to serve the Project.

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III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

A. In addition to other findings and conditions as may be deemed applicable, no Subsequent Approvals for Development of 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 Specific Plan and other relevant factors and circumstances, including, without limitation:

a. The adequacy of the required interim and permanent Public Facilities needed to support the project;

b. The extent of participation required of LANDOWNER under the Financing Plan has been secured;

c. The extent to which LANDOWNER has complied with the provisions of the Inclusionary Housing Plan.

2. The actions needed to implement the Financing Plan for financing of the Public Facilities required for Subsequent Approval have been adopted by the City Council.

3. All transfers of land, owned by or under the control of LANDOWNER, necessary for Public Facilities, have been transferred to CITY, City Agency or Public Agency as appropriate

4. LANDOWNER has complied with applicable law pursuant to Sections II.A, above.

5. 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

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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 General Plan, Community Plan and Specific Plan for the project to be approved with such requirements and mitigation measures.

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EXHIBIT N

**PUBLIC SAFETY RADIO COMMUNICATION
REQUIREMENTS FOR BUILDINGS**

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

(A) **General.** Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to, any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage for the Sacramento Regional Radio Communications System (SRRCS), including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following: (1) a minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest Sacramento Regional Radio Communications System site; (2) a minimum signal strength of -95 dBm received at the closest Sacramento Regional Radio Communications System site when transmitted from 90% of the area of each floor of the building; (3) the frequency range that must 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) **Amplification Systems Allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned to so that they will be 35 db below the SRRCS frequencies.

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(C) Testing Procedures.

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

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

2. Annual Tests. When an in-building radio system is required, the building owner shall test all active components of the system, including but not limited to amplifiers, power supplies and backup batteries, a minimum of once every 12 months. Amplifiers shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance. Backup batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one hour test period, in the opinion of the testing

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technician, the battery exhibits symptoms of failure; the test shall be extended for additional one hour periods until the testing technician confirms the integrity of the battery. All other active components shall be checked to determine that they are operating within the manufacture's specifications for the intended purpose.

3. Five-Year Tests. In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five years to ensure that radio system continues to meet the requirements of the original acceptance test. The procedure set forth above shall apply to these tests.
 4. Qualifications of Testing Personnel. All tests shall be conducted, documented and signed by a person in possession of a current FCC license, or a current technician certification (minimum Associate level) issued by the Electronics Technicians Association. All original test records shall be retained on the inspected premises by the building owner and copies of the records shall be submitted to the Sacramento Fire Department via the "Self Help Inspection Process".
 5. Field Testing: Police and Fire personnel, after providing reasonable notice to the owner or his representative, shall have the right to enter onto the property to conduct field-testing to be certain that the required level of radio coverage is present.
- (D) **Permits:** A permit fee of \$100.00 shall be submitted to the Sacramento Fire Department along with copies of all test records. This fee may be increased annually.
- (E) **Implementation:** Although not a condition of occupancy, the building shall be in compliance of this ordinance within 90 days of occupancy.
- (F) **Penalties:** Pursuant to 8.040.080 of the SCC, a violation of this ordinance is a misdemeanor criminal offense and a civil penalty up to \$25,000.00 per day (for each and every day that the violation exists) can be imposed.
- (G) **Exemptions:** This section shall not apply to buildings less than 5,000 square feet or buildings zoned for Residential 1& 2 Family Units.
- (H) **Required Path Availability of SRRCS Microwave System & Mitigation Issues:**
The SRRCS Microwave System is designed for a minimum of 99.999%

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availability which takes into consideration existing structures along the microwave system transmission path, obstruction from natural terrain, and environmental factors.

If 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, (3) paying a fee to be determined by the CITY to cover any work required to restore the SRRCS Microwave System's availability, (4) or installing other technology as may be necessary to maintain the minimum 99.999% system availability. Prior to commencing any mitigation work, the building owner shall submit a detailed mitigation plan to the CITY for approval. If CITY reasonably determines that any proposed structure will reduce system availability to a level below 99.999%, then building owner shall comply with mitigation measures.

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EXHIBIT O
FISCAL IMPACT ANALYSIS

THE RAILYARDS SPECIFIC PLAN FISCAL IMPACT ANALYSIS DATED AS OF NOVEMBER, 2007 WAS ACCEPTED BY THE CITY COUNCIL ON DECEMBER 11, 2007 IS INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE AS IF SET FORTH IN FULL.

NOTE: ANY CHANGES TO THE FISCAL IMPACT ANALYSIS DO NOT REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME EFFECTIVE, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

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EXHIBIT P

SACRAMENTO RAILYARDS CITY OF SACRAMENTO Funding Agreement Business Terms 11/30/07

CITY agrees that the Backbone Infrastructure needs exceed what the private development economics can fully bear. A public-private partnership is necessary to initiate the Initial Phase of the Project and likely future phases. The following Funding Agreement Business Terms are specifically intended to guide the preparation of the Funding Agreement that is to be subsequently drafted and approved by the Parties.

TRANSPORTATION FUNDS

1. CITY commits to investing the road and highway funds identified in Measure A for the Railyards/River District Area for improvements to the Richards/I-5 interchange and nearby access improvements to offset costs identified in the Railyards Public Facilities Financing Plan (PFFP). (\$17,750,000)
2. CITY commits to investing the road and highway funds that are the Federal Earmark and local match funds to help implement the North CBD Access Study including improvements to the Richards/I-5 interchange and the "Interim Access Project" (Jibboom/Bercut) to offset costs identified in the Financing Plan. (\$8,400,000+\$2,200,000 local match = \$10,600,000)

PARKS AND OPEN SPACE

3. CITY commits to investing \$600,000 of Park Development Impact Fees in the Central City Community Plan Area Reserves to help the initial financing of Railyards Parks and Open Space improvement costs, specifically Market Plaza between the Paint Shop and Car Shop #3, as identified in the Financing Plan.

5TH/6TH STREETS PUBLIC PARKING GARAGE

4. CITY commits to providing \$2 million annually to service debt to help fund the 5th/6th Street Public Parking Garage, which is expected to be completed and operational by 2012. It is anticipated that most of this cash flow will come from the surplus operating revenue in the CITY's parking fund. Actual construction of the garage or a phased portion thereof, will be contingent upon securing other funding adequate to finance the project, such as long term parking agreements with Sacramento County, Sacramento Superior Courts, other tenants, LANDOWNER, and user fees.

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HOUSING TRUST FUND

5. CITY commits to allocating all Housing Trust Fund fees generated by the Project to subsidize affordable housing projects within the Project to assist LANDOWNER in complying with its obligations under the Inclusionary Housing Ordinance.

CITY GENERAL FUND AND MUNICIPAL REVENUES

6. The CITY’s General Fund cannot be put at risk. Municipal services required to serve the Project must be funded by municipal revenues generated from the Project. The fiscal analysis of the Project assumed full build out of each Project phase and showed that after payment of the costs of Public Services there will be a net gain of revenue to the CITY’s General Fund. If the Project Development varies from the Development Plan, a different balance of costs to revenues can be expected.

7. Public Financing Mechanisms cannot use the CITY’s General Fund as security.

8. If there are surplus municipal revenues from the Project, CITY is willing to consider the use of surpluses from the Project for assistance in financing Backbone Infrastructure and Public Facilities after the current projected General Fund budget deficit has been reduced to an acceptable level. The use of surplus municipal revenues will only be considered to be used as they are actually received. Use of surplus local public funds to underwrite the cost of private development is not intended except potentially to assist with the rehabilitation of the Central Shops.

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