

ORDINANCE NO. 2007-104

Adopted by the Sacramento City Council

December 11, 2007

AN ORDINANCE RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND S. THOMAS ENTERPRISES OF SACRAMENTO, LLC FOR THE SACRAMENTO RAILYARDS PROJECT ENCOMPASSING PROPERTY LOCATED NORTH OF I STREET, SOUTH OF NORTH B STREET EAST OF THE SACRAMENTO RIVER AND WEST OF 12TH STREET (APN: ALL OR PORTIONS OF NOS. 002-0010-044, 046, 047, 049 and 051) (P05-097)

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

SECTION 1.

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

SECTION 2.

On November 20, December 4 and December 11, 2007, the City Council conducted public hearings, for which notice was given pursuant Sacramento City Code Section 18.16.080, and received and considered evidence concerning the Sacramento Railyards Project and the terms and conditions of the Agreement.

SECTION 3.

The City Council finds:

1. The Agreement is consistent with the City General Plan and the goals, policies, standards and objectives of the Central City Community Plan and the Sacramento Railyards Specific Plan.
2. Development of the Project should be encouraged in order to meet important economic, social, environmental and planning goals of the Central City Community Plan and the Sacramento Railyards Specific Plan.

3. The Project would be unlikely to proceed in the manner proposed in the absence of the Agreement.
4. The Landowner will incur substantial costs in order to provide public improvements, facilities and services that will benefit the general public.
5. The Landowner will participate in all programs established and/or required under the General Plan and the Central City Community Plan and the Sacramento Railyards Specific Plan, comply with all of the provisions in the resolutions approving the Project (including the Mitigation Monitoring Plan, Tentative Master Parcel Map conditions, Design Guidelines and the Railyards Special Planning District), and has agreed to the financial participation as specified in the Railyards Specific Plan Public Facilities Financing Plan, including development fees and assessment district implementation measures, all of which will accrue to the benefit of the public.
6. The Landowner has made commitments to develop the Project with a high standard of quality and has agreed to comply with all applicable land use and development regulations as specified in the Project Plans, entitlements and the Agreement.

SECTION 4.

The Development Agreement attached hereto is hereby approved, and the Mayor is authorized to execute after the effective date of this Ordinance said Development Agreement on behalf of the City of Sacramento if all outstanding invoices for processing the Sacramento Railyards Project have been paid as of that date. This approval and authorization is based upon certification of the Environmental Impact Report and adoption of the Mitigation Monitoring Plan, and approval of the Project entitlements, which are the subject of separate resolutions and ordinances adopted by City Council prior to or concurrent with the adoption of this Ordinance.

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Exhibit A: Development Agreement

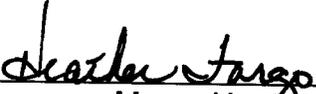
Adopted by the City of Sacramento City Council on December 11, 2007 by the following vote:

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

Noes: None.

Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk

Passed for Publication: November 20, 2007
Published: November 23, 2007
Effective: January 10, 2008

*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

DEVELOPMENT AGREEMENT

FOR

SACRAMENTO RAILYARDS PROJECT

Project No. P-05-097

Between

CITY OF SACRAMENTO

and

S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

Approved on:

December 11, 2007

Railyards Development Agreement

Revision Date: 12-11-07

FOR CITY CLERK USE ONLY

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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 10 day of January, 2008 ("Effective Date"), 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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DATE ADOPTED: _____

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.

N. **State Parks Agreement.** The LANDOWNER, State of California Department of Parks and Recreation ("State Parks"), and the California Rail Museum Foundation (collectively "RTM Parties") have entered into an agreement entitled Principles of Agreement ("POA"), a copy of which is attached as Addendum 1, whereby the terms and conditions for conveyance of the therein described portions of the Property will be conveyed to State Parks for the development of a Rail Technology Museum, which the City Council finds will benefit the City and the Project. The conveyance of a portion of the Property by LANDOWNER to State Parks under the POA is subject to certain conditions precedent as described in the POA. While the CITY is not a party to the POA, approval of this Agreement and the Project Entitlements is a condition precedent to the POA becoming effective. The City Council hereby finds that the terms and conditions of the POA are consistent with this Agreement and the Project Entitlements. Accordingly, the City Council hereby approves the POA in principle. The City Council pledges the CITY's cooperation with the RTM Parties to implement the terms and the conditions of the POA relating to the actual conveyance of a portion of the Property to State Parks for the creation of a world class Rail Technology Museum. The City Council hereby further confirms that a default under this Agreement shall not constitute a default under the POA, and a default under the POA shall not constitute a default under 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 F.

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 O.

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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 J 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 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	1,000

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	7,700

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, unless 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 and if lot 39 is rezoned to the Transportation Corridor (TC) zoning designation, that designation 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 are 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 has 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 3.4.2. 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 required 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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3.11 **High Rise Ordinance.** Notwithstanding anything herein to the contrary, if during the Term of this Agreement CITY enacts an ordinance that would require buildings over a certain height within the Community Plan area to (i) comply with a review and approval process that conflicts with the Special Planning District and/or (ii) fund the additional costs of Public Facilities and Public Services that are required due to Development of such tall buildings, that ordinance shall be applicable to the Project and the Property.

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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 apply 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 1.26 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 Mechanism 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 are 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. Formation of the association and the initiation of proceedings to establish a community facilities assessment district or similar benefit assessment district to fund the association operations and services shall occur prior to approval of the first final map or issuance of the first building permit, and the protest waiver set out in Exhibit G shall apply to the creation of that district. 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. The transportation system management measures funded by the association may include paying for a portion of the net operating costs for the light rail system and other transit services provided by the Sacramento Regional Transit District that serve the Property.

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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,

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____