

# Item No. 7

## **“To Be Delivered” Material**

**For**

### **City of Sacramento**

**City Council  
Housing Authority  
Redevelopment Agency  
Economic Development Commission  
Sacramento City Financing Authority**

### **Agenda Packet**

**Submitted:** March 17, 2006

**For the Meeting of:** **March 21, 2006 (Afternoon)**

The attached materials were not available at the time the Agenda Packet was prepared.

**Subject:** ParkeBridge Development Agreement (P04-212)

**Location:** Southeast of Truxel Road and Interstate 80 (District 1)

**Contact Information:** David Hung, Associate Planner, (916) 808-5530, Gregory Bitter, Senior Planner, (916) 808-7816, Development Services Department.

Please include this “To Be Delivered” material in your agenda packet. This material will also be published to the City’s Intranet.  
For additional information, contact the City Clerk Department at Historic City Hall, 915 I Street, First Floor, Sacramento, CA 95814-2604– (916) 808-7200.



# REPORT TO COUNCIL

## City of Sacramento

915 I Street, Sacramento, CA 95814-2671  
www.CityofSacramento.org

CONSENT  
March 21, 2006

Honorable Mayor and  
Members of the City Council

**Subject:** ParkeBridge (P04-212)

**Location/Council District:** Southeast of Truxel Road and Interstate 80. APN: 225-0160-084, -088, -054, 225-0170-062. Council District 1.

### **Recommendation:**

Planning Commission and staff recommend that the City Council take the following action: 1) Approve the Ordinance approving the Development Agreement between the City of Sacramento and Griffin Industries.

**Contact:** David Hung, Associate Planner, 808-5530; Gregory Bitter, Senior Planner, 808-7816

**Presenters:** David Hung, Associate Planner

**Department:** Development Services Department

**Division:** Planning

**Organization No:** 4875

### **Summary:**

On March 14, 2006 the City Council heard and approved the ParkeBridge project. During the hearing two conditions were added to the proposed Development Agreement, related to flood insurance and Neighborhood Traffic Management Plan funding. Because these two conditions were added during the hearing the Council was not able to adopt the Ordinance approving the Development Agreement. The two conditions have been added and the applicant has signed the revised Development Agreement. The revised Development Agreement is now before the Council for final approval.

### **Committee/Commission Action:**

On February 9, 2006, the Planning Commission unanimously approved (eight ayes and zero noes) the ParkeBridge project and forwarded a recommendation of approval to the

City Council for the Development Agreement, General Plan Amendment, Community Plan Amendment, Rezone and PUD Establishment, including Guidelines and Schematic Plan. At the same meeting, the Planning Commission approved the Environmental Impact Report, Mitigation Monitoring Plan, Tentative Map, Subdivision Modifications and Special Permits for the project. On March 14, 2006, the City Council approved the General Plan Amendment, Community Plan Amendment, Rezone and PUD Establishment, including Guidelines and Schematic Plan for the ParkeBridge proposal and made an intent motion to approve the Development Agreement with amendments.

**Background Information:**

On March 14, 2006 the City Council approved the necessary entitlements to allow the development of 113.3± acres into 389 single-family units, 142 condominium units, two park lots, four neighborhood pocket park lots, two open space lots, four landscape corridor lots, two landscape parkway lots, and one open space pedestrian connection.

During the March 14, 2006 hearing, two conditions were added to the proposed Development Agreement, related to flood insurance and Neighborhood Traffic Management Plan funding. Because these two conditions were added during the hearing the Council was not able to adopt the Ordinance approving the Development Agreement. The two conditions have been added and the applicant has signed the revised Development Agreement. The revised Development Agreement is now before the Council for final approval.

**Financial Considerations:**

This project has no fiscal considerations.

**Environmental Considerations:**

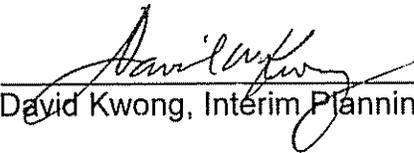
On March 14, 2006 the City Council certified the Environmental Impact Report for the ParkeBridge project.

**Policy Considerations:**

At the March 14, 2006 City Council hearing, the Council found the ParkeBridge project to be consistent with the City's General Plan, the South Natomas Community Plan, the City's adopted Smart Growth Principles and the City of Sacramento Strategic Plan.

**Emerging Small Business Development (ESBD):**

No goods or services are being purchased under this report.

Respectfully Submitted by:   
David Kwong, Interim Planning Manager

Approved by:   
William Thomas  
Director of Development Services

Recommendation Approved:

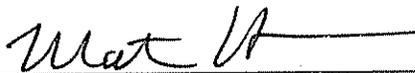
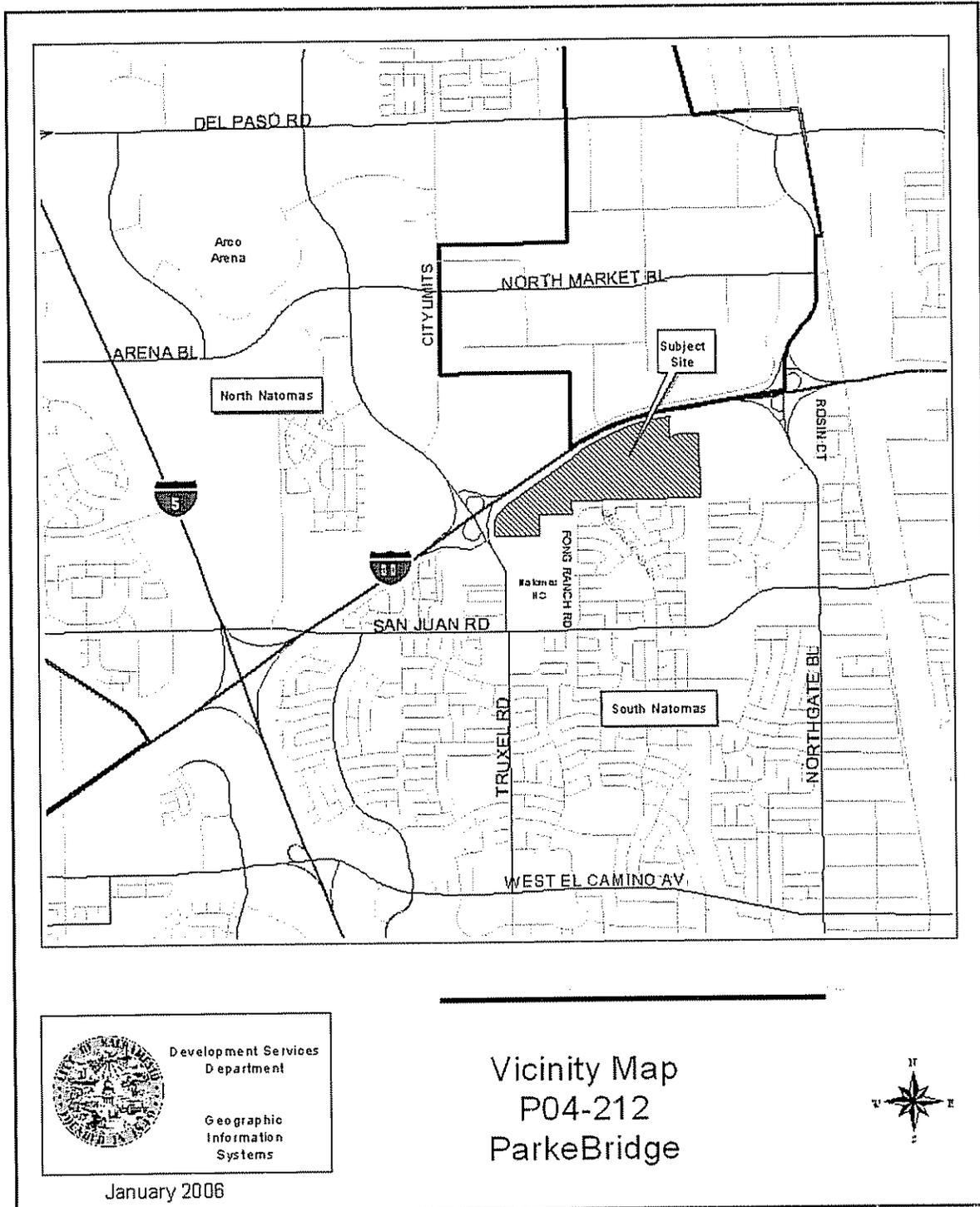
  
RAY KERRIDGE  
City Manager

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Vicinity Map



**ORDINANCE NO. 2006-XXXX**

Adopted by the Sacramento City Council

Date

**AN ORDINANCE RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND GRIFFIN INDUSTRIES FOR PROPERTY LOCATED SOUTHEAST OF TRUXEL ROAD AND INTERSTATE 80. (APN: 225-0160-054, -084, -088) (P04-212)**

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

SECTION 1

This Ordinance incorporates, and by this reference makes part hereof, that certain Development Agreement, by and between the City of Sacramento and Griffin Industries, a copy of which is attached hereto.

SECTION 2

The City Council finds:

1. The agreement is consistent with the city general plan and the goals, policies, standards and objectives of any applicable specific or community plan;
2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of any applicable specific or community plan;
3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
4. The landowner will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;
5. The landowner will participate in all programs established and/or required under the general plan or any applicable specific or community plan and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public; and

6. The landowner has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

SECTION 3

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

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

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## DEVELOPMENT AGREEMENT

•••

ParkeBridge Project  
Project # P04-212

ParkeBridge, LLC

ParkeBridge Development Agreement

FOR CITY CLERK USE ONLY

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

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

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

**PARKEBRIDGE  
DEVELOPMENT AGREEMENT**

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ParkeBridge Development Agreement

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

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**LIST OF EXHIBITS**

- Exhibit "A"            Legal Description of Property
- Exhibit "B"            Landowner's Development Plan
- Exhibit "C"            Special Conditions
- Exhibit "D"            Assignment and Assumption Agreement
- Exhibit "E"            Protest Waiver Provisions Agreed to by Landowner
- Exhibit "F"            Irrevocable Offer of Dedication Form
- Exhibit "G"            Map and Categorical Listing of Land and Infrastructure

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**FOR CITY CLERK USE ONLY**

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

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

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

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF SACRAMENTO  
AND  
PARKEBRIDGE, LLC**

This Development Agreement (hereinafter "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2006, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and ParkeBridge, LLC (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party", as the context requires.

**RECITALS**

- A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, the Legislature of the State of California adopted section 65864 et seq. of the Government Code which authorizes any city, county, or city and county to enter into a development agreement with an applicant for a development project, in order to establish certain rights and obligations of the parties relative to the subject property.
- B. The Parties previously entered into a land exchange agreement, dated October 18, 2005, wherein they agreed to exchange ownership of their respective parcels of land ("the Land Exchange Agreement"). The Land Exchange Agreement is contingent on the CITY timely approving LANDOWNER's application for a Tentative Subdivision Map for the Property or LANDOWNER agreeing to accept all conditions imposed on said Tentative Subdivision Map. The Parties now desire to enter into this Development Agreement in order to enhance the likelihood of both Parties being able to realize their development objectives for their respective parcels, and to provide an incentive for LANDOWNER to complete the Development Plan in accordance with the CITY's desired time schedule.
- C. Upon closing of the Land Exchange Agreement, LANDOWNER owns a legal or equitable interest in those certain parcels of real property (hereinafter the "Property"), described in Exhibit "A" attached hereto and incorporated herein by this reference, which are located within the City of Sacramento. The Property consists of lands designated as Assessor Parcels Nos. ("APN") 225-0160-054, 225-0160-084, and 225-0160-088. LANDOWNER seeks to develop the Property consistent with CITY's General Plan, the South Natomas Community Plan ("SNCP") and the Zoning Ordinance as they exist on the Effective Date.

**FOR CITY CLERK USE ONLY**

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

- D. CITY and LANDOWNER desire to enter into a development agreement pursuant to the provisions of Government Code section 65865 et seq in order to provide for the orderly development of the Property, in accordance with the goals set forth in Government Code section 65865, the General Plan and the SNCP.
- E. Although LANDOWNER has not as of yet applied for a parcel map, and there are no parcel map conditions proposed for the Tentative Subdivision Map, LANDOWNER has informed CITY of its intent to record multiple final maps in phases. Therefore, it is the CITY's desire to ensure that LANDOWNER will provide the CITY with the infrastructure improvements it needs at or near the time LANDOWNER records its first final map.
- F. Development of the Property, in accordance with the conditions of this Development Agreement, will provide orderly growth and development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan and the SNCP.
- G. This Agreement is voluntarily entered into by LANDOWNER in order to assure the implementation of the General Plan and the SNCP, and is made in consideration of the rights conferred and the procedures specified herein for the development of the Property. This Agreement is voluntarily entered into by CITY in the exercise of its legislative discretion in order to assure the implementation of the General Plan and the SNCP, and in consideration of the agreements and undertakings of LANDOWNER hereunder. But for LANDOWNER's contribution to and participation in programs to mitigate the impacts of the development of the Property and the cumulative impacts of development in the SNCP area, the CITY would not approve development of the Property.
- H. The authority for this Agreement is contained in the City Charter of CITY, other applicable CITY ordinances, resolutions and procedures, and Government Code section 65864 et seq.
- I. CITY and LANDOWNER have taken all actions mandated by and have fulfilled all legal requirements for the adoption of this Agreement by the City Council.
- J. The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, the SNCP, and all applicable CITY ordinances, rules and regulations. The implementation of this Agreement is in the best interest of CITY and the health, safety and welfare of its residents. The environmental impacts of the development contemplated herein were adequately considered in the environmental documentation prepared by CITY and adoption of the ordinance and approval of this Agreement complies in all respects with the California Environmental Quality Act.

ParkeBridge Development Agreement

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FOR CITY CLERK USE ONLY

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

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

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

**AGREEMENT**

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

I

**DEFINITIONS**

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

- **Adopting Ordinance:** the ordinance pursuant to which the City Council approves this Agreement.
- **Allocation Procedures:** those procedures set forth in section 5.H. of this Agreement, whereunder the various uses and densities are distributed to and among the various parcels, or portions of them, comprising the Property.
- **Annual Review:** the process, and procedures therefor, whereby CITY reviews, pursuant to Government Code section 65865.1, the nature and extent of compliance by LANDOWNER with all of the terms and conditions of this Agreement, which process and procedures are as specified in section 17 of this Agreement.
- **Assessment:** a special assessment levied on real property within the South Natomas Community Plan area, for the purpose of financing infrastructure and/or public facilities, or maintenance thereof, in accordance with the California Streets and Highways Code, the California Government Code, and/or the Sacramento City Code.
- **Assessment District Policy Manual:** the document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.
- **Assignee:** a third Person executing an Assumption Agreement prepared in accordance with the format prescribed in Exhibit D.

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**FOR CITY CLERK USE ONLY**

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

- **Assignment:** the sale or other transfer by LANDOWNER of all or part of its right, title and interest in the Property and in this Agreement to another Person, in accordance with the terms and conditions of this Agreement.
- **Assumption Agreement:** the agreement prescribed in Exhibit D, whereby an Assignee undertakes to perform all obligations, and other terms and conditions of this Agreement, as a condition of release of the Assignee's predecessor in interest from the responsibility for performance of such obligations and other terms and conditions, with respect to the portion of the Property assigned to the Assignee.
- **CEQA:** the California Environmental Quality Act, set forth at California Public Resources Code section 21000 et seq., as amended from time to time.
- **CITY:** the City of Sacramento.
- **City Agency:** the Redevelopment Agency of the City of Sacramento, and the Housing Agency of the City of Sacramento.
- **City Council:** the Council of the City of Sacramento.
- **Comprehensive Flood Management Plan:** that plan required to be prepared, and to be adopted by the City Council, pursuant to the CITY's floodplain policy adopted by Resolution No. 93-696.
- **Dedication:** the transfer of real property, or a defined interest therein, to CITY or another public agency, free of all encumbrances and other matters affecting the title except as may otherwise be agreed to by CITY or such other public agency, and at no cost to CITY or such other public agency.
- **Deed of Trust:** a real property security device whereby the debtor (trustor) conveys title to real property to a trustee as security for a debt owed to the creditor (beneficiary).
- **Default:** a failure of performance, or unreasonable delay in performance, by either Party to this Agreement, of any of its terms, conditions, obligations or covenants. Default shall include, but not be limited to failure to comply with all provisions of the Facilities Benefit Assessment District (FBA) and the South Natomas Capital Improvement Fund, and/or failure to pay any fee, tax or assessment enacted pursuant thereto.

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

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

- **Development:** the use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.
- **Development Agreement:** this Agreement.
- **Development Plan:** LANDOWNER's plan for development of the Property, as set forth in Exhibit B. Where LANDOWNER, at the time of execution of this Agreement, does not propose a specific development project, the Development Plan shall be deemed to be development consistent with the Land Use and Development Regulations.
- **Effective Date:** the date on which this Agreement has been approved by the City Council.
- **General Plan:** the General Plan of the City of Sacramento, as adopted by the City Council on January 19, 1988, as said plan may be amended from time to time.
- **Habitat Conservation Plan:** that plan, which must be adopted and implemented by the City Council, pursuant to which measures are taken to implement the provisions of the federal and state Endangered Species Acts, and pursuant to which incidental take permits will be issued to CITY, to LANDOWNER, or to others under said Acts.
- **Infrastructure:** all public facilities and improvements needed to serve urban development, as identified in the SNCP, or in subdivision maps or parcel maps, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.
- **Irrevocable Offer of Dedication:** an unconditional and irrevocable offer by LANDOWNER to transfer real property to CITY in accordance with the provisions of the SNLAP and/or any condition of any land use entitlement applicable to the Property, in the form specified in Exhibit F.
- **Land Exchange Agreement:** the Land Exchange Agreement entered into by the Parties, dated October 18, 2005, pursuant to City Resolution 2005-745.
- **Land Use and Development Regulations:** the General Plan, the South Natomas Community Plan, the CITY's Subdivision Map Act Ordinance, and Zoning Ordinances, together with any other CITY ordinance, or resolutions, rules, regulations and official policies as they exist on the Effective Date, which govern or regulate land use and/or development in the South Natomas Community Plan area.

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

- **Lender:** a Person (or a successor in interest to such person) who has advanced funds to, or who is otherwise owed money by a debtor, where the obligation is embodied in a promissory note or other evidence of indebtedness, and where such note or other evidence of indebtedness is secured by a Mortgage or Deed of Trust.
- **Mortgage:** a contract by which the mortgagor (debtor) as owner hypothecates or pledges real property, or otherwise grants a security interest therein to a Lender (mortgagee), to secure performance under a promissory note or other evidence of indebtedness, and where the holder of the mortgage is granted a power of sale.
- **Parties:** the CITY and LANDOWNER.
- **Person:** any person, firm, association, organization, partnership, business trust, corporation or company.
- **Project:** part or all of the elements set forth in LANDOWNER's Development Plan.
- **Project Review:** CITY's actions in reviewing any project proposed by LANDOWNER with respect to the Property, including but not limited to review of all required land use entitlement applications.
- **Property:** the real property owned by LANDOWNER, as set forth in Exhibit A.
- **Protest Waiver:** the agreement set forth in Exhibit E, executed by LANDOWNER pursuant to this Agreement, or in connection with the conditions of any required entitlement.
- **Purchaser:** an assignee.
- **Reconfiguration:** the reconfiguration, adjustment or alteration of property lines through parcel or subdivision mapping, or lot line adjustment.
- **South Natomas Community Plan (SNCP):** the Community Plan for development of the South Natomas area, as adopted by the City Council on November 29, 1988, as said plan exists on the Effective Date. The SNCP includes, without limitation, a Land Use Diagram and Policy Statements.
- **Special Conditions:** those conditions, terms and requirements specified in Exhibit C.

FOR CITY CLERK USE ONLY

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

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

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

- **Special Permit:** any discretionary permit required pursuant to the Land Use and Development Regulations, and issued by CITY for development of the Property, upon proper application therefor by LANDOWNER
- **Term:** the length of this Agreement in terms of time, as specified in section 3, or as that time may be extended pursuant to any applicable provision of this Agreement.
- **Transfer:** an assignment.
- **Transferee:** an assignee.
- **Zoning:** the division of the City of Sacramento into districts, and the application of zoning regulations thereto, which include (without limitation) regulation of the height or bulk of buildings (structural and architectural design) and the use to which the land and buildings within prescribed districts may be put, all as specified in the Zoning Ordinance.
- **Zoning Ordinance:** the Comprehensive Zoning Plan of the City of Sacramento, as that ordinance exists on the Effective Date

II

TERMS AND CONDITIONS OF AGREEMENT

1. **Property Description and Binding Covenants.** The Property is that certain real property owned by LANDOWNER and described in Exhibit "A" as APN 225-0160-054, APN 225-0160-084, and APN 225-0160-088. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of, the Parties and, subject to section 4 below, to their successors-in-interest.
2. **Interests of Landowner.** LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including KeyBank National Association, a national banking association Home Builder Group (the Lender), have executed and are bound by this Agreement.
3. **Term**
  - A. **Initial Term.** The term of this Agreement shall commence on the Effective Date and shall extend for a period of three (3) years thereafter, unless it is sooner terminated or modified by the mutual consent of the parties.

ParkeBridge Development Agreement

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FOR CITY CLERK USE ONLY

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

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

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

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

- (1) On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto. For purposes of this subsection, "Exercise Date" shall mean the date that LANDOWNER or LANDOWNER's successor in interest gives written notice of intention to exercise the option to renew this Agreement, in accordance with the provisions of section 20 hereof.
- (2) The option to renew shall be exercisable by giving CITY written notice of LANDOWNER's intention to exercise the option on or before the Exercise Date, which notice shall be given not later than one hundred eighty (180) days prior to expiration of the initial term or any renewal term.
- (3) LANDOWNER shall be limited to two (2) renewal periods as follows:
  - (a) **First Renewal Period:** provided LANDOWNER has closed escrow on the Land Exchange Agreement before the first Exercise Date and is not in default on the Land Exchange Agreement in any material respect, LANDOWNER may renew this Agreement for two (2) years. Failure to record a final map for the Property by the end of the Initial Term is not a default. Notwithstanding any limitation period for recording a final map for the Property that would otherwise apply under state law or by City Ordinance, upon exercise of the First Renewal Period, the time to record a first final map for the Property shall be automatically extended to the end of the First Renewal Period.
  - (b) **Second Renewal Period:** provided LANDOWNER has recorded a first final map for the Property before the expiration the First Renewal Period and is not in default on the this Agreement in any material respect, LANDOWNER may renew this Agreement for an additional five (5) years.
  - (c) **Maximum Term:** the parties specifically intend that under no circumstances shall the term of this Agreement extend beyond ten (10) years.

FOR CITY CLERK USE ONLY

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

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4. **Assignment.** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, with the consent of CITY, which the CITY may not withhold unreasonably. LANDOWNER shall notify CITY of such sale, assignment or transfer by providing written notice thereof to CITY in the manner provided in this Agreement. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement, unless such purchaser, assignee or transferee, to the satisfaction of and in a form acceptable to the City Attorney, executes and delivers to CITY an express agreement to assume all of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred. The execution of such an assumption agreement shall relieve LANDOWNER of the obligations expressly assumed only if (a) LANDOWNER is not in default under this Agreement at the time of the assignment or transfer; and (b) LANDOWNER has provided CITY with notice of said assignment or transfer in the manner provided hereunder. Any such assumption agreement with respect to LANDOWNER's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form of the Assignment and Assumption Agreement attached hereto as Exhibit "D" and incorporated herein by this reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment. The City Manager is authorized to approve any assignment on the CITY's behalf.

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

5. **Development of the Property.**

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

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buildings and provisions for reservation and dedication of land for public purposes shall be as set forth in the Development Plan

**B. Discretionary Approvals.**

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

**C. Development Timing.** It is the intention of this provision that, for the most part, LANDOWNER be able to develop the Property in accordance with LANDOWNER's own schedule; provided, however, that to the extent that phasing is required by the SNCP, or by the Special Conditions, such provisions shall govern. At a minimum, however, LANDOWNER shall do the following:

- (1) Record a first final map for the Property or portion thereof no later than five (5) years after the Effective Date, which shall include completed construction of the park improvements for Lot "O", or shall be required to do so within one year after said first final map is recorded, pursuant to an executed, bonded standard subdivision improvement agreement. Said park improvements shall include installation of major surface and subsurface infrastructure improvements such as trunk lines for sewer, water, storm drainage and adjacent roadway. In so doing, the LANDOWNER shall comply with all conditions of the Tentative Subdivision Map (H-1 through H-82) approved concurrently with this Agreement ("Conditions of Approval"); provided, however, as each final map is recorded, LANDOWNER is only required to comply with the specific conditions that pertain to the particular final map that is being recorded. The objective of this subsection is to ensure that the CITY has access to these infrastructure services as soon as LANDOWNER first has access to these services.
- (2) No future modification of the Sacramento City Code or any ordinance or regulation which limits the rate of development over time shall be applicable to the Property. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions in any permit or subdivision map approval or to excuse the timely completion of any act which is required to be

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completed within a time period set by any applicable code or permit provisions.

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

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

- (1) Subject to the Special Conditions specified in Exhibit C, development of the Property shall be subject to the Land Use and Development Regulations applicable to such development on the Effective Date.
- (2) Except as otherwise provided in this Agreement, to the extent any future changes in Land Use and Development Regulations adopted by CITY purport to be applicable to the Property but are inconsistent with the terms and conditions of this Agreement, including subsection 5E(1) above, the terms and conditions of this Agreement shall prevail, unless the parties or their successors in interest mutually agree to amend or modify this Agreement in accordance with the provisions for modification hereinafter set forth.
- (3) To the extent that any future changes in the Land Use and Development Regulations adopted by CITY are applicable to the Property and are not inconsistent with the terms and conditions of this Agreement or are otherwise made applicable by other provisions of this Agreement, such future changes shall be applicable to the Property.
- (4) Nothing in this Agreement shall preclude the application to development of the Property of changes in the Land Use and Development Regulations, the terms of which are specifically mandated by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than CITY prevent or preclude compliance with one or more provisions of this Agreement or require changes in permits, maps or plans approved hereunder by CITY, this Agreement shall be modified, extended or suspended as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction.
- (5) To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including CITY, required by federal or state agencies or actions of CITY taken in good faith in order to prevent adverse

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

- (6) Nothing herein shall be construed to limit the authority of CITY to enact amendments to the Land Use and Development Regulations, or enact other ordinances or resolutions, which have the legal effect of protecting persons or property from conditions which create a health, safety or physical risk.
- (7) Building codes, ordinances and regulations relating to construction standards or permits shall apply as of the time of grant of each applicable construction permit.
- (8) No modification of CITY's ordinances, resolutions, policies, rules or regulations adopted after the Effective Date, which purport to limit the rate of development over time or to govern the sequence of development of land within the SNCP area, shall apply to the Property. The provisions of this subsection apply to modifications adopted or imposed by the City Council, or through the initiative or referendum process; provided, however, nothing in this subsection shall limit the ability of CITY to act in accordance with the provisions of subsections 5E(4), 5E(5) and 5E(6) of this Agreement.

F. **CITY Review of Applications.** Consistent with the standards set forth in section 15 of this Agreement, nothing contained in this Agreement shall preclude CITY from its right and responsibility to review applications for entitlements submitted by LANDOWNER in accordance with its normal and usual procedures and practices, as they may exist at the time the application is accepted as complete, or is otherwise deemed complete by operation of law.

G. **Extension of Entitlements.** Pursuant to Government Code section 66452.6 all vesting tentative subdivision maps, master parcel tentative maps, parcel maps, subdivision tentative maps, planned unit development permits, special permits, or any other maps, rezonings or land use entitlements of potentially limited duration

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previously, contemporaneously or subsequently approved for the Property subject to this Development Agreement, shall be valid for a minimum term equal to thirty-six (36) months, unless LANDOWNER has exercised its renewal option for the First Renewal Period pursuant to subsection 3B(3)(a), in which case they shall be valid for a maximum of five (5) years from the Effective Date; but if LANDOWNER has exercised its renewal option for the Second Renewal Period pursuant to subsection 3B(3)(b), then said entitlements shall be valid for a maximum of ten (10) years from the Effective Date. The provisions of section 25 of this Agreement relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this subsection. Nothing in this section shall be construed to, or operate to extend the term of this Agreement.

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

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

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

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6. Fees, Charges, Assessments and Taxes.

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

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

- (1) all fees, charges, assessments, special taxes or levies of any sort imposed by any other state or local agency, including but not limited to the Sacramento Area Flood Control Agency, in the future as a charge for mitigation measures imposed for the purpose of mitigation of environmental impacts associated with the provision of flood control improvements and measures for the SNCP area;
- (2) all fees, charges, assessments, special taxes or levies of any sort associated with the financing of the construction and implementation of said flood control improvements and measures;
- (3) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of public improvements, where the Property is located within a district formed for that purpose by any agency other than CITY;
- (4) ad valorem real estate taxes, and utility fees.

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

C. LANDOWNER's Waivers. LANDOWNER hereby agrees to the provisions of Exhibit E, which (without limitation) contains a comprehensive waiver of protest rights with respect to CITY's establishment and implementation of development and impact fees; and CITY's actions in forming assessment districts and

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community facilities districts, and in levying assessments and taxes pursuant thereto. 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.

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

8. **Infrastructure.**

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

B. **Infrastructure Financing Proceedings.**

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

- (a) is complete and is accompanied by payment of CITY fees applicable on the date of filing of the application;
- (b) otherwise complies with the Land Use and Development Regulations and applicable law, as it exists on the date of the application, including but not limited to the Assessment District Policy Manual;
- (c) is consistent with CITY's policies and procedures;

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- (d) provides for a value to lien ratio and other financial terms that are reasonably acceptable to CITY;
- (e) provides for all funding requirements established by CITY for the purpose of payment of the costs of outside consultants needed, in CITY's sole discretion; and
- (f) provides that the specific consultants (e.g., bond counsel, financial advisors, underwriters, or other consultants as may be necessary under the circumstances) shall be selected by CITY in its sole discretion.

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

- (2) **Proceedings Initiated by CITY.** In the event that CITY in its discretion determines that a particular financing mechanism, including but not limited to an assessment district, a community facilities district, a fee district, a development fees procedure, or any similar mechanism, is required, LANDOWNER's participation obligations set forth hereunder (including but not limited to Exhibit C), or in any Condition of Approval, shall apply.
- (3) **Maintenance Districts.** LANDOWNER may, following the procedures specified in subsection 8B(1) above, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping or other public improvements, whereunder lands benefitting from the improvements and their maintenance are assessed for a proportionate share of the maintenance cost.

**9 LANDOWNER Obligations**

- A. **Transfer of Land to CITY.** As set forth elsewhere in this Agreement, LANDOWNER has agreed to transfer lands needed for Infrastructure or public

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facilities to CITY, or to such other public agency as is appropriate. Set forth in Exhibit G, attached hereto and incorporated herein by this reference, is a map depicting the currently contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY, together with a categorical listing of the types of Infrastructure and public facilities which are covered by the terms of this subsection. LANDOWNER shall transfer the said required lands to CITY either by a statement on the final map in accordance with Government Code section 66439, or by Grant Deed as specified in the Conditions of Approval, or by utilizing the Irrevocable Offer of Dedication form set forth in Exhibit F, attached hereto and incorporated herein by this reference, at such time as is:

- (1) required pursuant to a condition or term of any entitlement for use or development of the Property; or
- (2) requested by CITY, where LANDOWNER has not applied for an entitlement for use or development of the Property, but the land is needed, in CITY's sole discretion, for purposes of construction of Infrastructure or public facilities.
- (3) Exhibit G assumes that escrow has closed on the Land Exchange Agreement, which is a condition precedent to extending the Tentative Subdivision Map beyond the Initial Term of this Agreement.

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

**B. Development Timing.** LANDOWNER shall have no obligation to initiate or commence development of any particular phase of the Property within any period of time except as provided in subsection 5C, above.

**C. Waiver of Nexus Challenge.** LANDOWNER waives any and all administrative or judicial challenges that it can legally make based on insufficient nexus relative to lands it is required to transfer pursuant to the Tentative Subdivision Map or this

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Agreement for infrastructure or public facilities, to CITY or to other public agencies, as appropriate.

10. **Litigation/Indemnification**

A. **Challenge to Agreement or Entitlements**

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

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

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

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

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

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- (a) If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order. Provided, however, that if the litigation relates entirely, solely and exclusively to a challenge to the SNCP in general, separate and apart from this Agreement or any entitlement relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.
- (b) CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow development of the Property to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified herein shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement by giving the other party sixty (60) days' notice of termination.
- (c) In the event that amendment is not required, and the court's judgment or order requires CITY to engage in other or further proceedings, CITY agrees to comply with the terms of the judgment or order expeditiously.

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

**11 Effect of Subsequent Laws**

**A Laws of Other Agencies**

- (1) If any public agency, other than CITY, adopts any new law, regulation, ordinance or imposes any new condition (herein referred to collectively as "the New Law") after the date of this Agreement, which prevents or precludes either the CITY or LANDOWNER, or both, from complying with one or more provisions of this Agreement, then immediately following the enactment of the New Law the parties shall meet and confer in good faith to determine

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whether the New Law applies to the Property, and whether suitable amendments to this Agreement can be made, in order to maintain LANDOWNER's right to develop the Property in a reasonable manner pursuant to Exhibit B.

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

(3) LANDOWNER or CITY shall have the right to institute litigation relating to the New Law, and raise any issues relating to its validity. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued. Provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the New Law, CITY shall not be required to undertake such action until the litigation is resolved, or the New Law is otherwise determined invalid, inapplicable, or is repealed. In the event that such judgment invalidates the New Law, or determines that it does not affect the validity of this Agreement, this Agreement shall remain in full force and effect, and its term shall be extended by the amount of time between the effective date of the New Law, and the effective date of the judgment. In the event that such judgment determines that the validity of this Agreement is, directly or indirectly affected by the New Law, the provisions of subsections 11A(1) and 11A(2) above shall apply.

B **Laws Passed by CITY.** Subject to the provisions of section 5 of this Agreement, neither the CITY nor any CITY Agency shall enact any initiative, ordinance, policy, resolution, general plan amendment or other measure that relates to the density or intensity of development on the Property, or the rate, timing or sequencing of the development or the construction on the Property on all or any part thereof, or that is otherwise in conflict, either directly or indirectly, with this Agreement.

12. **Enforced Delay; Extension of Times of Performance.** In addition to other specific provisions of this Agreement, performance by either party hereunder shall not be deemed in default where delay or inability to perform is due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, enactment of conflicting state or federal laws or regulations, new or supplementary environmental

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laws or regulations, litigation instituted by third parties challenging the validity of this Agreement or any of the vested entitlements described in section 5 of this Agreement. Upon request of either party to the other, a written extension of time for such cause shall be granted for the period of the enforced delay, or longer as may be mutually agreed upon.

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

- A. **Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. Notwithstanding any other provision of law, or of this Agreement, in no event shall LANDOWNER or CITY, its officers, agents or employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.
- B. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. LANDOWNER agrees and acknowledges that CITY has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of CITY.
- C. **Attorney Fees.** In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either party hereto to enforce or interpret any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this section, and any other portion of this Agreement relating to attorney fees, reasonable attorneys fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in Sacramento County

14. **Amendment of Agreement.** This Agreement may be amended from time to time only by the mutual written consent of the parties, in accordance with the provisions of Government Code sections 65867 and 65868.

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- 15. **CITY's Good Faith in Processing.** Subject to the provisions of subsection 5B hereof, and LANDOWNER's compliance with each and every term and condition of this Agreement and all of its exhibits, CITY agrees that it will accept in good faith for processing, review, and action, all complete applications for master parcel maps, zoning, planned unit development designation, planned unit development guidelines, schematic plans, special permits, building permits, parcel maps, subdivision maps, or other entitlements for use of the Property in accordance with the General Plan, the SNCP and this Agreement.

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

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

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

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

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- B. **Cure of Default.** In the event of an alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured and a reasonable period of time in which to cure, that shall in no event be less than thirty (30) days. During any such period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.
  
- C. **Remedies After Expiration of Cure Period.** After notice and expiration of the thirty (30) day period, if the alleged default has not been cured in the manner set forth in the notice, the other party may at its option:
  - (1) institute legal proceedings to obtain appropriate judicial relief, including but not limited to mandamus, specific performance, injunctive relief, or termination of this Agreement; or
  - (2) give the other party notice of intent to terminate this Agreement pursuant to Government Code section 65868. In the event that such notice is given, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default. Where LANDOWNER is the party alleged to be in default, LANDOWNER shall be afforded a reasonable opportunity to respond to all allegations of default at such public hearing. CITY shall provide LANDOWNER at least thirty (30) days prior written notice of such public hearing, as well as provide LANDOWNER copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing

17 Annual Review.

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

ParkeBridge Development Agreement

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- C. **Proceedings.** At least ten (10) days prior to the commencement of any annual review, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects.

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

- D. **Failure of Compliance** Any determination of failure of compliance shall be subject to the notice requirements and cure periods set forth in section 16 of this Agreement. If termination is proposed, it shall apply solely with respect to that portion of the Property (if less than all) affected by the failure to show good faith compliance. If modification of the Development Agreement is proposed, the modification shall pertain solely to the provisions hereof as applicable to that portion of the Property (if less than all) affected by the condition that has prompted the proposed modification.

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

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

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



with copies to:

ParkeBridge, LLC, a California limited liability company  
Attn: John Griffin  
4200 Duckhorn Drive,  
Sacramento, CA 95834

Griffin Industries, Inc.  
Attn: Andrew W. Zepeda  
24005 Ventura Blvd.,  
Calabasas, CA 91302

Notice to Lender: Lynne Vuskovic, Vice President  
KeyBank National Association  
Mail code CA-03-04-3660  
200 Pringle Avenue, Suite 400  
Walnut Creek, CA 94596

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

- 21. **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the parties. Provided, however, that if such holding affects a material provision of this Agreement, either Party shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.
- 22. **Recording.** The City Clerk shall cause a copy of this Agreement to be recorded with the Sacramento County Recorder no later than ten (10) days following execution of this Agreement by CITY, which execution will take place no sooner than the effective date of the ordinance approving this Agreement.
- 23. **Reimbursement to CITY.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY'S review, consideration and execution of this Agreement. Such expenses include but are not limited to recording fees, publishing fees and any special meeting costs, staff time (including drafting and review by the City Attorney), and notice costs. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

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24. Provisions Relating to Lenders.

A Lender Rights and Obligations.

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

(2) **Lender in Possession.** A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. Provided, however, that a Lender shall not be eligible to apply for or receive entitlements with respect to the Property, or otherwise be entitled to develop the Property or devote the Property to any uses or to construct any improvements thereon other than the development contemplated or authorized by this Agreement and subject to all of the terms and conditions hereof, including payment of all fees (delinquent, current and accruing in the future) and charges, and assumption of all obligations of LANDOWNER hereunder; provided, further, that no Lender, or successor thereof, shall be entitled to the rights and benefits of the LANDOWNER hereunder or entitled to enforce the provisions of this Agreement against CITY unless and until such Lender or successor thereof qualifies as a recognized assignee under the provisions of section 4 of this Agreement.

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

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- C. **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed or the areas of non-compliance set forth in CITY's notice. Such action shall not entitle a Lender to develop the property or otherwise partake of any benefits of this Agreement unless such Lender shall assume and perform all obligations of LANDOWNER hereunder.
  - D. **Other Notices Given By City.** A copy of all notices given by CITY pursuant to the terms of this Agreement shall be sent to Lender at the address provided in section 20 hereof.
25. **Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such other party to certify in writing that, to the knowledge of the certifying party, (i) this Development Agreement is in full force and effect and a binding obligation of the parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, describing therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such estoppel certificate, or give a written detailed response explaining why it will not do so, within thirty (30) days following the receipt of each such request. Each party acknowledges that such an estoppel certificate may be relied upon by third parties acting in good faith. A certificate provided by CITY establishing the status of this Agreement with respect to the Property or any portion thereof shall be in recordable form and may be recorded at the expense of the recording party.
26. **Construction.** All parties have had the opportunity to be represented by legal counsel of their own choice in the preparation of this Development Agreement and no presumption or rule that "an ambiguity shall be construed against a drafting party" shall apply to the interpretation or enforcement of any provision hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend or affect the meaning of the provision to which they pertain.
27. **Counterparts.** This Agreement may be executed in any number of counterparts and shall be deemed duly executed when each of the parties has executed such a counterpart.
28. **Time.** Time is of the essence of each and every provision hereof.
29. **Limitation of Actions.** No court action shall be filed by a party to this Agreement on the ground of default or breach of its terms unless such action is filed within one

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hundred eighty (180) days from the date of discovery by the aggrieved party of the facts underlying the claim of breach or default.

- 30. **No Third Parties Benefitted.** No Person who is not a qualified successor or assign of a party hereto pursuant to section 4 of this Agreement, or who has not become a party by duly adopted amendment hereof may claim the benefit of any provision of this Agreement
- 31. **Effect of Agreement Upon Title to Property.** In accordance with the provisions of Government Code section 65868.5, from and after the time of recordation of this Agreement, the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement.
- 32. **Covenant of Good Faith.** CITY and LANDOWNER agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement
- 33. **Exhibits:** The following are the exhibits to this Agreement:
  - A Legal Description of the Property
  - B Landowner's Development Plan
  - C Special Conditions
  - D Assignment and Assumption Agreement
  - E Protest Waiver Form
  - F Irrevocable Offer of Dedication Form
  - G Map and Categorical Listing of Land and Infrastructure
- 34. **Entire Agreement.** This Agreement, together with its Exhibits A to G, inclusive, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties hereto to supersede all prior development agreements, if any, for the Property which may exist between CITY and LANDOWNER. The provisions of subsection 10B of this Agreement, relating to indemnification and defense of CITY, its officers, employees and agents, shall be applicable to any claim whatsoever against CITY, its officers, employees and agents, arising out of or in any way relating to any prior development agreement relating to the Property.

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35. **City Attorney Costs.** Landowner shall pay to the City of Sacramento the sum of seven thousand five hundred dollars (\$7,500) as and for reimbursement of the costs of the City Attorney in preparation and processing of this Agreement.

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

CITY OF SACRAMENTO

ATTEST:

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

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

APPROVED FOR LEGAL FORM:

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

PARKEBRIDGE, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

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

EXECUTION PAGE FOR LENDER

KeyBank National Association, a national banking association Home Builder Group (herein "LENDER") owns an equitable interest in the Property described in Exhibit "A" of this Agreement as the beneficiary of that certain deed of trust and assignment of rents dated \_\_\_\_\_ and recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, Official Records, Sacramento County, California.

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

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

KeyBank National Association  
Mail Code CA 03-04-3660  
200 Pringle Avenue, Suite 400  
Walnut Creek, CA 94596  
Attn: Lynne Vuskovic

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

LENDER: KeyBank National Association

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

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

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

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

**EXHIBIT A**

**DESCRIPTION OF LANDOWNER'S  
PROPERTY**

SEE ATTACHED

NOTE: UPON RECORDATION OF FINAL MASTER PARCEL MAP, THIS EXHIBIT A WILL BE REPLACED BY THE SAID MAP, WITHOUT NEED FOR AMENDMENT OF THIS AGREEMENT; PROVIDED, HOWEVER, IF THE FINAL MAP IS RECORDED IN PHASES, ONLY THE PERTINENT PORTIONS OF THIS EXHIBIT A WILL BE REPLACED BY THE FINAL PARCEL MAP PHASES, AS APPROPRIATE, WITHOUT THE NEED FOR AMENDMENT OF THIS AGREEMENT.



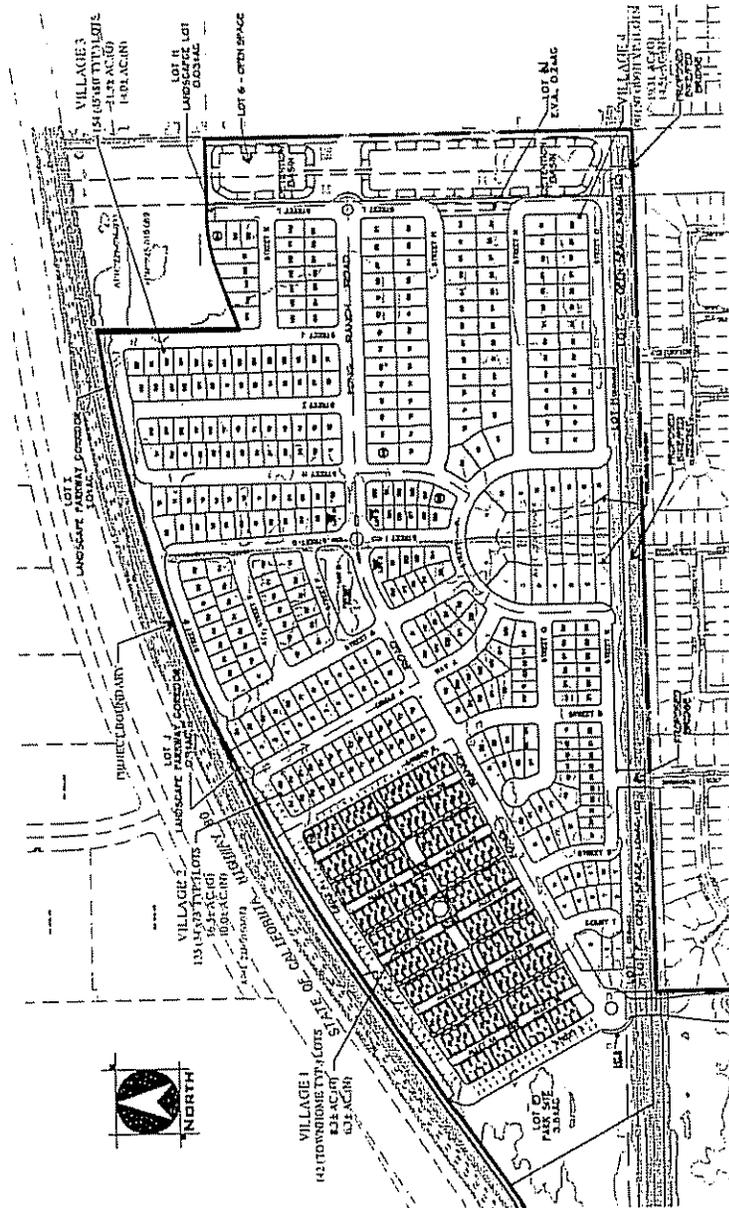
**EXHIBIT B**  
**LANDOWNER'S DEVELOPMENT PLAN**

SEE ATTACHED

"EXHIBIT B"

Section 1

INTRODUCTION



## EXHIBIT C

### SPECIAL CONDITIONS

#### I. PURPOSE AND INTENT

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

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

#### II. LANDOWNERS' OBLIGATIONS

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

1. **Mitigation Monitoring** When required in order to obtain entitlements, LANDOWNER shall execute a mitigation monitoring agreement, and such other agreements as may be necessary in CITY's judgment in order to implement any mitigation measure relating to the SNCP and any mitigation monitoring plans applicable to the Property, and shall fully cooperate with CITY in implementing any mitigation monitoring plan adopted as part of the approval process for development of the Property.
2. **Habitat Conservation Plan.**
  - a. In the event that a Habitat Conservation Plan has been adopted by CITY, LANDOWNER shall be obligated to undertake and exercise one of the following options:
    - (i) participate in that Plan by payment of the fees applicable to LANDOWNER and/or the Property or provide required proportionate land dedications, at the time specified in the Plan for payment of fees or dedication of required proportionate lands; or
    - (ii) obtain and present to CITY a duly issued, executed and effective incidental take permit issued by federal and state agencies charged with implementation of the provisions of federal and state Endangered Species Acts, which would allow development of the Property; or
    - (iii) obtain and present to CITY a duly issued, executed, and effective form of document from said federal and state agencies that

development of the Property may proceed without the need for an incidental take permit; or

- (iv) participate in such other plan or program which has been approved by said federal and state agencies; or
- (v) take any other action required by CITY in its sole discretion, relating to satisfaction of all applicable laws, including but not limited to CEQA and the federal and state Endangered Species Acts, where none of the provisions of subsections (i), (ii), (iii) or (iv) are applicable

- b. The Natomas Basin Habitat Conservation Plan Fee is payable by Landowner at the time of and as a condition of issuance of a grading or building permit. The fee is, at the time of execution of this Agreement, the sum of **\$24,897 per acre** of the Property subject to the grading or building permit. In addition to the payment of that sum, Landowner shall be subject to the provisions of any "catch-up fee" ordinance, resolution, rule or regulation in effect at the time of issuance of the grading or building permit. The requirement specified in this subsection 2b shall be included in each entitlement issued with respect to the Property. Landowner understands and agrees that the provisions of Government Code sections 66000 through 66025, as those sections are amended, renumbered or reconstituted, shall not apply to the fees covered by this subsection 2b.

- B. **Agreements With Other Agencies.** As required by CITY, LANDOWNER shall enter into agreements with other affected agencies, including but not limited to:
  - 1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District, for provision of facilities, payment of fees and charges, and payment (if applicable) of any proportionate share of penalties imposed by the Environmental Protection Agency.
- C. **Flood Insurance; NTMP Deposit.** As required by CITY, LANDOWNER shall do the following:
  - 1. Provide, at its cost, flood insurance for two (2) years, from the time of sale of individual units to homebuyers, for all residential units on the project site, provided that the total cost not exceed one thousand dollars (\$1,000) per unit.
  - 2. Deposit ten thousand dollars (\$10,000) with the City for use in its Neighborhood Traffic Management Program (NTMP). In the event the deposit, or any portion of the deposit, is not used by the City for the installation of neighborhood traffic calming devices pursuant to the NTMP prior to issuance of the last building permit for the project, any remaining portion of the deposit shall

be returned to the applicant and the applicant shall have no further obligations with respect to this condition.

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

- A. In addition to other findings and conditions as may be deemed applicable, no special permit, subdivision map or other land use entitlement for the Property shall be approved unless the approving body either: (1) makes the following findings; or (2) expressly waives such findings, in whole or in part, as not applicable to the Property and stating the reasons therefor with such waiver and the reasons therefor appear in the record or document of approval. These findings are:
1. The approval of the proposed project is consistent with the policies, goals, standards and objectives of the General Plan, the SNCP and other relevant factors and circumstances, including but not limited to:
    - a. The adequacy of the required interim and permanent Infrastructure needed to support the project planned for the Property;
    - b. The extent to which LANDOWNER has complied with provisions of this Agreement.
  2. All transfers of land, owned by or under the control of LANDOWNER, have been transferred to CITY or to the appropriate public agency. For this purpose, a transfer will be deemed to occur upon delivery to CITY of an Irrevocable Offer of Dedication in form and manner approved by the City Department of Public Works and the City Attorney. These dedications include, but are not limited to streets, utilities, drainage facilities and public transit.
  3. LANDOWNER has entered into all agreements required pursuant to sections IIA and IIB, above.
  4. Appropriate environmental review of the proposed project has been completed, and any suggested mitigation measures resulting therefrom have been included in the approval of the project to the extent feasible.
- B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the proposed project if all of the following conditions can be satisfied with respect to each such special finding not made:
1. Practicable and feasible requirements or mitigation measures can be imposed upon the project, the implementation of which would allow such special finding to be made;

2. The applicant has agreed to be bound (through written agreement satisfactory to the City Attorney) by and to implement such requirements or mitigation measures, and has posted such security for compliance therewith as may be required by the City Manager; and
  3. It is in the public interest and consistent with the policies, goals, standards and objectives of the Community Plan for the project to be approved with such requirements and mitigation measures.
- C. This Development Agreement shall not be valid unless the City Council, pursuant to subsection 18.16.110A of the Sacramento City Code, makes all of the following findings:
1. The Agreement is consistent with the General Plan and the goals, policies, standards and objectives of the SNCP;
  2. The subject project should be encouraged in order to meet important economic, social, environmental or planning goals of the SNCP;
  3. The project would be unlikely to proceed in the manner proposed in the absence of a development agreement;
  4. LANDOWNER will incur substantial costs in order to provide public improvements, facilities or services from which the general public will benefit;
  5. LANDOWNER will participate in all programs established and /or required under the General Plan or the SNCP and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all which accrue to the benefit of the public;
  6. LANDOWNER has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

## EXHIBIT D

### ASSIGNMENT AND ASSUMPTION AGREEMENT

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

#### RECITALS

- A. LANDOWNER has entered into a Development Agreement (herein "the Development Agreement") dated \_\_\_\_\_, with the City of Sacramento, pursuant to which LANDOWNER agreed to develop certain property more particularly described in the Development Agreement (herein "the Property") in the South Natomas Community Plan Area subject to certain conditions and obligations set forth in the Development Agreement.
- B. LANDOWNER has assigned its interests under the Development Agreement to ASSIGNEE under a written agreement dated \_\_\_\_\_, as to that portion of the Property identified and incorporated herein by this reference (herein the "Assigned Parcel(s)").
- C. ASSIGNEE desires to assume all of LANDOWNER's rights and obligations and other terms and conditions under the Development Agreement with respect to the Assigned Parcel(s).

#### AGREEMENTS

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

- 1. ASSIGNEE hereby assumes all of the burdens and obligations of LANDOWNER under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of LANDOWNER under the Development Agreement, and to be subject to all of the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both LANDOWNER and ASSIGNEE that, upon the execution of this Agreement, ASSIGNEE shall become substituted for LANDOWNER as the "LANDOWNER" under the Development Agreement with respect to the Assigned Parcel(s).
- 2. ASSIGNEE understands and agrees that this Agreement is subject to section 4 of the Development Agreement. Section 4 reads as follows:

**Assignment.** LANDOWNER shall have the right to sell, assign, or transfer its interests under this Agreement as part of a contemporaneous and related sale, assignment or transfer of its interests in the Property, or any portion thereof, with the consent of CITY, which the City may not

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

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

4. At the request of the City, ASSIGNEE agrees to enter into a separate development agreement with respect to the Assigned Parcel(s).
5. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.
6. ASSIGNEE agrees that it has read, and has sought and received all required legal and other expert consultation with regard to the Development Agreement, and fully understands all of its terms and conditions. ASSIGNEE further agrees that: (i) LANDOWNER has furnished ASSIGNEE with a copy of the South Natomas Community Plan, the Habitat Conservation Plan, and all other documents and materials containing or relating to terms and conditions of development in the SNCP area; (ii) ASSIGNEE has read and understands all of the terms and conditions of said documents and materials; and (iii) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other financial mechanisms and

obligations inherent in such documents and materials, nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials.

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

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

## EXHIBIT E

### Protest Waiver Provisions Agreed to by LANDOWNER

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

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

Without limiting the generality of the foregoing, LANDOWNER for itself, its constituents, successors and assignees specifically, as to the Property, agrees to the following:

- (1) Waives, and hereby grants advance consent to the formation and implementation of any and all special assessment districts, tax districts (such as Mello-Roos Community Facilities Districts), fee districts or other financing mechanisms of a similar nature recommended or established by CITY for the purpose of financing Infrastructure, public improvements and facilities. Without limiting the generality of the foregoing, LANDOWNER specifically waives:
  - (i) the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (division 4 of the Streets and Highways Code, beginning at section 2800), together with associated provisions of the California Constitution;
  - (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism; and
  - (iii) the provisions of any procedure embodied in the Sacramento City Code designed to provide a protest or contest procedure in connection with formation and implementation of a district or similar financing mechanism.
- (2) Waives, and hereby grants advance consent to the formation and implementation of any and all special fees, exactions, development fees, assessments, taxes or other charges established by CITY for the purpose of financing Infrastructure, public improvements and facilities. Without limiting the generality of the foregoing, LANDOWNER specifically waives:
  - (i) to the extent applicable, those statutory and constitutional provisions specified in paragraph (1) above; and
  - (ii) the provisions of Government Code section 66000 et seq. or any other provision of law providing a procedure for contest or protest of establishment or imposition of special fees, exactions, development fees, assessments, taxes or other charges of a similar nature
- (3) Agrees to:
  - (i) affirmatively petition CITY, where applicable, for the formation of all special districts and other financing mechanisms that have been or will be in the future selected or recommended by CITY;

- (ii) execute an irrevocable proxy or proxies when necessary (such as in the formation of, or imposition of taxes relative to, a Mello-Roos Community Facilities District) authorizing a representative designated by CITY, who will vote in favor of establishing the specific financing mechanism in question; and
- (iii) execute immediately upon presentation any document which is required or convenient for the formation of the district or facilitation of the particular financing mechanism.

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

**EXHIBIT F**  
**IRREVOCABLE OFFER OF DEDICATION FORM**

SEE ATTACHED

RECORDED FOR THE BENEFIT OF  
THE CITY OF SACRAMENTO  
GOV. CODE 6103

WHEN RECORDED RETURN TO:

CITY OF SACRAMENTO  
ATTN: JERRY LOVATO  
DEVELOPMENT SERVICES DEPARTMENT  
NEW CITY HALL  
915 "I" STREET, 3<sup>rd</sup> FLOOR  
SACRAMENTO, CA 95814

DOCUMENTARY TRANSFER TAX NOT REQUIRED:  
SEC 11922 REVENUE AND TAXATION CODE

**IRREVOCABLE OFFER OF DEDICATION  
FEE TITLE**

THE UNDERSIGNED HEREBY CERTIFIES THAT I /WE /AM /ARE THE LEGAL OWNERS OF, OR ARE PARTIES HAVING AN INTEREST IN THE HEREINAFTER DESCRIBED REAL PROPERTY, AND THE UNDERSIGNED, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS, AND ASSIGNS, DO HEREBY IRREVOCABLY OFFER TO DEDICATE TO THE CITY OF SACRAMENTO, A MUNICIPAL CORPORATION, IN FEE TITLE THE HEREINAFTER DESCRIBED REAL PROPERTY LOCATED IN THE CITY OF SACRAMENTO. COUNTY OF SACRAMENTO. STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS TO-WIT:

RESERVING, HOWEVER, UNTO THE UNDERSIGNED, THEIR HEIRS, SUCCESSORS AND ASSIGNS ANY AND ALL PRESENT LAWFUL USES OF SAID LAND, UNTIL SUCH TIME AS THE CITY MANAGER'S DESIGNEE OF THE CITY OF SACRAMENTO GIVES WRITTEN NOTICE THAT SAID LAND WILL BE IMPROVED FOR PUBLIC PURPOSES, AND IT IS ALSO HEREBY UNDERSTOOD AND AGREED BY THE UNDERSIGNED, THEIR HEIRS, SUCCESSORS, AND ASSIGNS, THAT ANY IMPROVEMENTS HEREINAFTER PLACED BY THEM IN OR UPON THE ABOVE DESCRIBED PROPERTY SHALL BE REMOVED WITHOUT COST OR EXPENSE TO THE CITY OF SACRAMENTO. UNTIL SUCH NOTICE IS GIVEN BY THE CITY MANAGER'S DESIGNEE. THE UNDERSIGNED, AND THEIR HEIRS, SUCCESSORS OR ASSIGNS AGREE TO ASSUME FULL RESPONSIBILITY OR LIABILITY FOR ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY ON SAID LAND OR ARISING OUT OF ITS USE OR OCCUPANCY BY THEM. IT IS ALSO HEREBY UNDERSTOOD THAT ALL WORK TO BE DONE IN OR UPON THE ABOVE DESCRIBED PROPERTY SHALL BE DONE UNDER PERMIT AND DONE IN ACCORDANCE WITH PLANS TO BE FURNISHED BY THE PRINCIPAL AND APPROVED BY THE CITY MANAGER'S DESIGNEE OF THE CITY OF SACRAMENTO, AND IN ACCORDANCE WITH THE SPECIFICATIONS OF THE CITY MANAGER'S DESIGNEE OF THE CITY OF SACRAMENTO UPON WRITTEN REQUEST BY THE CITY MANAGER'S DESIGNEE OF THE CITY OF SACRAMENTO PRIOR TO HIS OR HER ACCEPTANCE OF THE DEDICATION OFFERED HEREUNDER, THE UNDERSIGNED, THEIR HEIRS, SUCCESSORS, AND ASSIGNS AGREE TO PROVIDE AT NO COST TO THE CITY OF SACRAMENTO A CLTA OWNER'S POLICY OF TITLE INSURANCE INSURING, AT THE CURRENT MARKET VALUE, THE CONVEYANCE TO THE CITY OF SACRAMENTO OF CLEAR TITLE FREE OF ENCUMBRANCES

THE DEDICATION OFFERED HEREUNDER SHALL BE COMPLETE UPON ITS WRITTEN ACCEPTANCE BY THE CITY MANAGER'S DESIGNEE OF THE CITY OF SACRAMENTO

OWNER'S NAME (PRINT) \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

[ ATTACH NOTARY ACKNOWLEDGEMENT ]

**EXHIBIT G**

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

SEE ATTACHED

## EXHIBIT G

### CATEGORICAL LISTING OF LAND AND INFRASTRUCTURE

Certain land and infrastructure within the ParkeBridge project area shall be dedicated to the City of Sacramento. As depicted on the attached Tentative Subdivision Map dated November 10, 2004 and last revised February 3, 2006, the land and infrastructure includes but is not limited to the following:

#### A. Streets (dedicated easements):

- |                    |              |              |
|--------------------|--------------|--------------|
| 1. Fong Ranch Road | 9. Street F  | 17. Street N |
| 2. Circle A        | 10. Street G | 18. Street O |
| 3. Way A           | 11. Street H | 19. Street P |
| 4. Street A        | 12. Street I | 20. Street Q |
| 5. Street B        | 13. Street J | 21. Street R |
| 6. Street C        | 14. Street K | 22. Street S |
| 7. Street D        | 15. Street L | 23. Court T  |
| 8. Street E        | 16. Street M |              |

Minimum 10-foot public-utility easement along all public and private rights-of-way, or as otherwise approved by SMUD.

#### B. Parks, Landscape Corridors, Trails (dedications):

- |                            |                            |
|----------------------------|----------------------------|
| 1. Lot A (22.8± net acres) | 8. Lot J (0.9± net acres)  |
| 2. Lot B (0.6± net acres)  | 9. Lot K (1.0± net acres)  |
| 3. Lot C (0.1± net acres)  | 10. Lot L (0.6± net acres) |
| 4. Lot D (0.08± net acres) | 11. Lot M (2.0± net acres) |
| 5. Lot E (0.15± net acres) | 12. Lot N (0.2± net acres) |
| 6. Lot H (0.3± net acres)  | 13. Lot O (3.8± park site) |
| 7. Lot I (0.03± net acres) |                            |

Minimum 10-foot public-utility easement along all public and private rights-of-way, or as otherwise approved by SMUD.

#### C. Detention Basins and Open Space (dedications):

1. Lot F (1.0± net acres)
2. Lot G (8.7± net acres)

EXHIBIT "G"

