

ORDINANCE NO. 2011-038

Adopted by the Sacramento City Council

August 23, 2011

AN ORDINANCE RELATING TO THE APPROVAL OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND NORTHWEST LAND PARK, LLC, THE CHY COMPANY, CHY II, AND COUSINS MARKET, FOR AREA BOUNDED BY BROADWAY ON THE NORTH, 5TH STREET ON THE EAST, MCCLATCHY WAY ON THE SOUTH, AND I-5 ON THE WEST. (APN: 009-0030-008, 019, 043, 045; 009-0223-007, 012, 013, 016; 009-0237-018; 009-0270-009, 015, 017, 028, 029, 032, 033; 009-0286-001, 012, 013, 014, 018) (P10-039)

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 Northwest Land Park, LLC, the CHY Company, CHY II, and Cousins Market, a copy of which is attached hereto.

SECTION 2

The City Council finds:

1. The agreement is consistent with the City's 2030 General Plan, including the goals, policies, standards and objectives of the Land Park and Central City Community Plans;
2. The project should be encouraged in order to meet important economic, social, environmental or planning goals of the Land Park and Central City Community Plans;
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, including the Land Park and Central City Community Plans, and all of its approving resolutions (including any mitigation monitoring plan), and has agreed to financial participation required under any applicable financing plan and its implementation measures, all of which will accrue to the benefit of the public;
6. The landowner has made commitments to a high standard of quality and has agreed to all applicable land use and development regulations.

SECTION 3

The Development Agreement attached hereto is hereby approved, and the City 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 and Reporting Program which is the subject of a separate resolution adopted by City Council prior to or concurrent with the adoption of this Ordinance.

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Exhibit A: Development Agreement – 109 pages

Exhibit B: Status of Contract Requiring Council Approval Form – 1 page

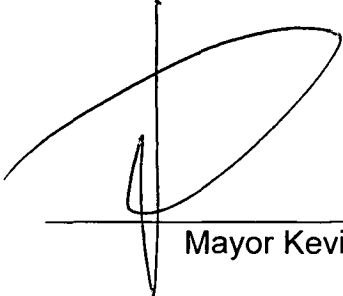
Adopted by the City of Sacramento City Council on August 23, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Passed for Publication: August 16, 2011

Published: August 19, 2011

Effective: September 21, 2011

Exhibit A: Development Agreement

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

FOR

NORTHWEST LAND PARK

Project No. P 10-039

Between

CITY OF SACRAMENTO

and

NORTHWEST LAND PARK, LLC

and

THE CHY COMPANY, CHY II, and COUSINS MARKET

Northwest Land Park Development Agreement

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NORTHWEST LAND PARK

DEVELOPMENT AGREEMENT

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND**

**NORTHWEST LAND PARK LLC
and
THE CHY COMPANY, CHY II, and COUSINS MARKET**

FOR THE

NORTHWEST LAND PARK PROJECT

This DEVELOPMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2011, by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and NORTHWEST LAND PARK, LLC, a California Limited Liability Company (NWLP); and The CHY COMPANY, a California General Partnership, successor by merger to SETZER FOREST PRODUCTS, a California General Partnership; CHY II, G.P., a California General Partnership; and COUSINS MARKET LLC, a California Limited Liability Company (separately and collectively "Setzer") (NWLP and Setzer collectively, the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

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

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

B. **Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development,

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in 1979 the Legislature of the State of California adopted Article 2.5 of Chapter 4 of Division 1 of the Government Code, commencing at Section 65864 (the "Statute"), which authorizes the CITY to enter into this binding Agreement with LANDOWNER in order to establish certain rights and obligations of the Parties relative to Development of the Property for the Project. The authority for the CITY's approval of this Agreement is contained in the Statute, the City Charter, the Procedural Ordinance, other applicable City ordinances, resolutions and procedures. CITY and LANDOWNER desire to enter into this Agreement pursuant to the provisions of the Statute in order to provide for the orderly Development of the Project on the Property.

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

D. **Procedural Requirements.** The City Planning Commission and the City Council held duly noticed public hearings on the approval of the Project Entitlements, and approval of this Agreement.

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

F. [This section intentionally omitted.]

G. **Plan Compliance.** LANDOWNER desires to facilitate implementation of the General Plan and Community Plan, (collectively "Plans"), and LANDOWNER therefore agrees to develop the Property for the Project in a manner consistent with the policies, terms and conditions of the Plans, provided that LANDOWNER is assured that no subsequent changes in the Plans after the Effective Date which would affect LANDOWNER's Vested Rights shall apply to the Property or the Project during the term of this Agreement, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

H. **Project Entitlements.** Development of the Property for the Project in accordance with the terms and conditions of this Agreement will provide for the orderly growth and Development of the Property in accordance with the requirements, policies, goals, standards, and objectives of the General Plan, Community Plan, Zoning Ordinance, Subdivision Ordinance and other applicable provisions of the City Code. This Agreement limits the CITY's rights to revoke, terminate, change or amend the

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Project Entitlements, or to require the LANDOWNER to comply with any ordinances or resolutions enacted after the Effective Date that conflict with or impede Development of the Property for the Project, except as expressly provided herein, particularly in regards to Subsequent Approvals and application of a Subsequent Rule.

I. **Procedural Ordinance.** The City Council adopted the Procedural Ordinance by which CITY will consider, adopt, amend and subsequently review development agreements by and between CITY and a given landowner. The Procedural Ordinance, and as it may be amended in the future after the Effective Date in accordance with the Statute, shall apply to the approval, review, amendment and enforcement of this Agreement. CITY and LANDOWNER have taken all actions mandated by, and have fulfilled all requirements set forth in, the Procedural Ordinance for the adoption of this Agreement by the City Council.

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

K. **Consideration.** Development of the Property in accordance with the terms of this Agreement requires major investment by LANDOWNER in Public Facilities, as well as Dedications and Reservations of land for public benefit and purposes, and a substantial commitment of the resources of LANDOWNER to achieve the public purposes and benefits of the Project for the CITY. By entering into this Agreement, CITY will receive such benefits, the assurances of implementation of the General Plan and Community Plan as applied to the Property, and the Development of the Property, which is currently vacant and/or underutilized, that will generate new tax revenues for the CITY. By entering into this Agreement, LANDOWNER will obtain a Vested Right to proceed with Development of the Property for the Project in accordance with the Agreement's terms and conditions and CITY's approval of the Project Entitlements may increase the value of LANDOWNER's Property.

L. **Consistency Findings.** The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, and Land Use and Development Regulations. The implementation of this

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Agreement is in the best interest of CITY because it promotes the health, safety and general welfare of its existing and future residents. The potential environmental impacts of Development of the Project on the Property were adequately considered in the environmental documentation prepared by CITY and adoption of the Adopting Ordinance complies in all respects with the CEQA. This Agreement provides assurances that the Project will not proceed without the timely provision of Public Facilities and Public Services required to serve the Project. This Agreement is just, reasonable and fair and equitable under the circumstances facing the CITY, and it provides sufficient benefits to the community to justify entering into this Agreement.

AGREEMENT

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

[The remainder of this page intentionally left blank.]

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1.0 DEFINITIONS AND EXHIBITS

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

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

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

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

1.3 **Annual Review:** The process and procedures whereby CITY reviews, pursuant to Government Code Section 65865.1, the nature and extent of compliance by LANDOWNER and Assignee(s) with all of the terms and conditions of this Agreement, which process and procedures are as specified in the Procedural Ordinance, and in Section 5.10 of this Agreement.

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

1.5 **Assessment District Policy Manual:** The document entitled "City of Sacramento Policy and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities," as adopted by the City Council on June 29, 1993 (Resolution 93-381), as said document may be amended from time to time.

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

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

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

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

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

1.11 **City:** The City of Sacramento.

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

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

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

1.15 **Community Plan:** The Land Park Community Plan as adopted by the City Council on March 3, 2009, as said plan may be amended from time to time.

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

1.17 **Dedication:** The transfer of real property, or a defined interest therein, under an Irrevocable Offer of Dedication to CITY, City Agency or Public Agency free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public

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Agency, at no cost as specifically set forth in the Project Entitlements, Special Conditions, or Mitigation Measures. Exhibit H summarizes for the Parties' convenience the contemplated approximate location and amount of land which LANDOWNER will be required to transfer to CITY or Public Agency, together with a categorical listing of the types of Public Facilities to be developed on said lands, as of the Effective Date.

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

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

1.20 **Development (or Develop):** The use(s) to which the Property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements in accordance with the Land Use and Development Regulations, Building Permits, and all other Project Entitlements.

1.21 **Development Fee:** All fees now or in the future to be imposed on and/or collected by the CITY from LANDOWNER or Assignees as a condition of Development of the Property for the funding of construction or rehabilitation of Public Facilities, including those lawfully imposed by another Public Agency having jurisdiction and which CITY is required or authorized to collect pursuant to federal or State law, local ordinance, or agreement.

1.22 **Development Plan:** The LANDOWNER's plan for Development of the Property for the Project as set forth or referenced in Exhibit B.

1.23 **Development Milestone:** The level of Development necessary for LANDOWNER to qualify for an extension of the Term of this Agreement, as set forth in Sections 2.1 and 2.1.1.

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

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

1.26 **Extension Period:** A specified period of time, in five (5) year increments, by which LANDOWNER may extend the Term of this Agreement consistent with the requirements set forth in Section 2.1.1.

1.27 **Final Environmental Impact Report:** The report prepared for the Project in accordance with CEQA that was certified by the Planning Commission by its record of decision and/or by the City Council by its resolution, as described in Exhibit D.

1.28 [This section intentionally omitted.]

1.29 **General Plan:** The General Plan of the City of Sacramento, as adopted by the City Council on January 19, 1988, as amended on March 3, 2009, and as said plan may be amended from time to time.

1.30 [This section intentionally omitted.]

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

1.32 [This section intentionally omitted.]

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

1.34 [This section intentionally omitted.]

1.35 [This section intentionally omitted.]

1.36 **Land Use and Development Regulations:** The Zoning Ordinance, Subdivision Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with any other City ordinances,

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resolutions, rules, regulations and official policies of the City as they exist on the Effective Date, which govern or regulate land use and/or development in the Community Plan area which encompasses the Property.

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

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

1.39 **Mitigation Measures:** The measures adopted by the Planning Commission and/or by the City Council as part of the certification of the Final Environmental Impact Report as of the Effective Date which apply to Development of the Property for the Project and as may be referenced in the Project Entitlements and as described in Exhibit D, as well as those which may be added or amended and incorporated into this Agreement pursuant to this Agreement.

1.40 **Mitigation Monitoring Program:** The plan for implementation of the Mitigation Measures as of the Effective Date and as may be referenced in the Project Entitlements and as described in Exhibit D, and as may be amended and incorporated into this Agreement pursuant to this Agreement.

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

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

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

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

1.45 **Plans:** The General Plan and Community Plan. The reference to "Plans" may also include the Development Plan as the context indicates.

1.46 **Phase:** One of the four (4) anticipated phases of development of the Project as set forth in the Development Plan.

1.47 **Procedural Ordinance:** Chapter 18.16 of the City Code, which sets forth procedures for application, review, approval, implementation, amendment, recordation, compliance review and related matters with respect to development agreements for lands outside of the North Natomas Community Plan area (which is governed by Ordinance No. 95-012).

1.48 **Project:** The permitted uses, location, density or intensity of use, height or size of buildings and including, without limitation, the provisions for Dedication and Reservation of land for public purposes, as set forth in the Plans, Project Entitlements, Special Conditions, and Mitigation Measures.

1.49 **Project Entitlements:** The plans, ordinances, resolutions, maps, plan review, design review, preservation review, and permits and approvals which have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which are set out in Exhibit C, as well as all Subsequent Approvals. The Project Entitlements also include minor changes to the Development Plan approved pursuant to Section 2.3.4 and substantive changes to the Development Plan for which an amendment to this Agreement has been approved pursuant to Section 2.3.3.

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

1.51 **Protest Waiver:** The agreement set forth in Exhibit G and executed by LANDOWNER pursuant to this Agreement or in connection with the condition of any Project Entitlements.

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

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1.53 **Public Facilities:** All public infrastructure, facilities, improvements and amenities needed to serve the Project as identified in the Plans, the Development Plan, Project Entitlements, Special Conditions, or Mitigation Measures; or as may otherwise be constructed or owned by, or conveyed to, CITY, City Agency or Public Agency, including, without limitation: (i) streets, alleys, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) bus turnouts and stops; (iii) surface and storm drainage improvements; (iv) sanitary sewer improvements; (v) water storage and transmission facilities; (vi) flood control improvements; (vii) solid waste facilities; (viii) electrical and gas utilities; (ix) street lighting; (x) parks, plazas, open space, greenbelts, trails, and landscaping; (xi) community centers; and (xii) publicly owned artwork. The Public Facilities to be constructed by LANDOWNER pursuant to the Project Entitlements, Mitigation Measures and Special Conditions are summarized for the convenience of the Parties in Exhibit H.

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

1.55 **Public Services:** All services provided by CITY, City Agency and Public Agency to serve the residents and the businesses to be located on the Property, as may be identified in the Plans, Development Plan, Project Entitlements, Special Conditions, or Mitigation Measures; including, without limitation, the maintenance, operation or the provision of, as the context implies: (i) streets, alleys, pedestrian and bicycle paths, parking lots and freeway improvements; (ii) bus transit services; (iii) surface and storm drainage improvements and pollution control services; (iv) sanitary sewer improvements and pollution control services; (v) water storage and transmission facilities and water services; (vi) flood control improvements; (vii) solid waste services; (viii) electrical and gas utilities; (ix) street lighting; (x) parks, plazas, open space, greenbelts, trails, and landscaping; (xi) community centers; and (xii) publicly owned artwork.

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

1.57 [This section intentionally omitted.]

1.58 **Reservation:** In accordance with the provision of Government Code Section 66479 et seq., the transfer of real property, or a defined interest therein, to CITY, City Agency or Public Agency, free of all encumbrances, mortgages, liens, leases,

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easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency at a purchase price set out in the Reservation Agreement, the form of which is provided as Exhibit J.

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

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

1.61 [This section intentionally omitted.]

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

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

1.64 **Subsequent Rule**: All City ordinances, resolutions, rules, regulations and official policies that are adopted after the Effective Date.

1.65 **Tentative Map**: The tentative subdivision map for Phase 1 that subdivides LANDOWNER's Property into legal parcels pursuant to the Subdivision Map Act (commencing at Section 66410 of the Government Code) as approved by the City Council as part of the Project Entitlements, as more particularly described in Exhibit C.

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

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

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

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

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

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2.0 GENERAL TERMS AND CONDITIONS.

2.1 **Term.** The Term of this Agreement shall mean and include the Initial Term plus any Extension Period, unless it is sooner cancelled by a Party for default as provided in Section 7.6, or terminated for convenience or for other reasons as provided in Section 7.8.

2.1.1 **Initial Term and Extensions.** The Term of this Agreement shall commence on the Effective Date and may extend for specified periods thereafter based on the length of the Initial Term and the Extension Period, contingent on the LANDOWNER's completion of the level of Development as defined below (Development Milestone) relating to the Extension Period. The Extension Period shall consist of five years, commencing as of the last day of the Initial Term. Upon a failure of LANDOWNER to achieve the Development Milestone, there shall be no extension of the Term and the Agreement shall expire as of the ending date of the Initial Term.

2.1.1.1 **Initial Term:** Ten (10) years after the Effective Date.

2.1.1.2 **Extension:** Additional five (5) year extension if final subdivision maps have been recorded and special permits have been approved for at least 400 residential dwellings (Development Milestone) as of the end of the Initial Term.

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

2.1.2.1 As of the end of the Initial Term, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto, as determined by the CITY in its sole discretion and subject to a default hearing pursuant to Section 7.7.1 if LANDOWNER protests CITY's determination.

2.1.2.2 The option to extend the Term shall be exercisable by delivering to CITY written notice of LANDOWNER'S intention to exercise the option to extend the Term not later than close of business of the last day of the Initial Term.

2.1.3 **Maximum Term.** Except as provided in sections 2.1.4 and 2.1.5 with respect to moratoriums and litigation, the Parties specifically intend that under no circumstances shall the Term of this Agreement extend beyond fifteen (15) years, unless this Agreement is amended in accordance with Section 2.3.

2.1.4 **Effect of Moratoriums on Term of Agreement.** If a Subsequent Rule is enacted prior to the expiration of the Term of this Agreement that limits the rate of

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Development over time or governs the sequence of Development of the Project, and that Subsequent Rule applies to the Property as provided in Section 4.10, the Term of this Agreement shall be extended by the amount of time that the Subsequent Rule is in effect on the Property.

2.1.5 Effect of Litigation on Term of Agreement. Pursuant to Section 4.4.3, if litigation is filed under Section 4.4.3, the Term of this Agreement shall be extended by the amount of time between the date the litigation was filed and the date of the final judgment if the law, regulation or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

2.2 Development Timing.

2.2.1 Project Schedule. Other than for the purpose of determining whether the Term of the Agreement shall be extended as described in Section 2.1, above, this Agreement contains no requirement that LANDOWNER must initiate or complete Development of the Project or any phase thereof, or Development of the Property or any portion thereof, within the Term of this Agreement or within any period of time set by CITY. It is the intention of this provision that LANDOWNER be able to Develop the Property for the Project in accordance with LANDOWNER's own schedule; provided, however, that Development of the Property is substantially consistent with the Development Plan, as evaluated in the Final Environmental Impact Report and subject to the conditions set out in the Project Entitlements, Special Conditions, and Mitigation Measures. Any act which is required to be completed within a specific time period, as set out in the Project Entitlements, Special Conditions, and Mitigation Measures, shall be timely completed as provided therein. Pursuant to further environmental review in the event that such further review is required by law or addressed in the Project Entitlements, Special Conditions, Mitigation Measures, the Land Use and Development Regulations, or other provisions of this Agreement, any phasing provisions that are set out in a Subsequent Approval shall be applicable to the Project.

2.2.2 Application of Subsequent Rule Affecting Rate of Development. Except for moratoriums as addressed in Section 4.10, no Subsequent Rule which limits the rate of development over time shall be applicable to the Property or the Project. However, nothing herein shall be construed to relieve LANDOWNER from any time conditions, phasing provisions or schedule compliance as set out herein, or to excuse the timely completion of any act which is required to be completed within a specified time period, as set out in: (i) the Project Entitlements, Special Conditions, or Mitigation Measures; (ii) any other provision of this Agreement; (iii) any applicable provision in the City Code or the Land Use and Development Regulations in effect as of the Effective Date; or (iv) any applicable Subsequent Rule.

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2.3 Amendments, Suspension or Termination of Agreement.

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

2.3.2 Requests for Development Plan and Project Changes. The Parties acknowledge that nothing contained herein is intended to limit LANDOWNER or an Assignee's right to apply to CITY for changes in the Development Plan and Project Entitlements, and amendments to the Plans and Land Use and Development Regulations to allow for additional or different Development, or for a reduction in the level of Development, from that set out in and contemplated by this Agreement, subject to compliance with CEQA, Subsequent Rules, applicable state and City laws and regulations, and the applicable provisions of this Agreement. Nothing herein shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any such application.

2.3.3 Substantive Changes to Development Plan and Project . Substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions by LANDOWNER will necessitate an amendment to this Agreement to incorporate the revised Development Plan and the applicable changes to the terms and conditions of the Project Entitlements, Special Conditions, Mitigation Measures, and related documents and agreements. A "substantive change" to this Agreement, the Development Plan, Project Entitlements, or Special Conditions is one that changes the Term of this Agreement or for which an application is made to modify any of the following: the permitted uses; density or intensity of use; height or size of buildings; provisions for reservation and dedication of land; conditions, terms, restrictions and requirements relating to subsequent discretionary actions; monetary contributions by a landowner; or any other material term or condition of this Agreement. If either Party notifies the other Party that an amendment is needed due to the proposed substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions, the Parties shall meet and negotiate in good faith the terms of an amendment to this Agreement. The scope of the good faith negotiation is limited to such amendment(s) necessary to effectuate the substantive changes to the Development Plan contemplated in this Section 2.3.3, and shall not reopen other provisions of this Agreement not affected by the proposed amendment(s). The CITY may suspend or withhold a Subsequent Approval if reasonably required by the circumstances then existing at the time of the proposed change in the Development

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Plan until the Parties can come to an agreement on the terms of such an amendment or mutually agree to the termination of this Agreement.

2.3.4 Minor Changes. This Agreement need not be amended to allow for changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions that are not substantive, as described in section 2.3.3 and the Procedural Ordinance, but rather are minor in character. The Parties acknowledge that refinement and further implementation of the Development Plan may demonstrate that certain minor changes may be appropriate with respect to Project details and performance of the Parties under this Agreement, and the Parties desire to retain a certain degree of flexibility with respect to such details and performances. If and when the Parties find and mutually agree that clarifications, minor changes, or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, changes or adjustments through an operating written memorandum approved by the Parties, with the city manager acting on behalf of CITY. After execution, the operating memorandum shall be attached to this Agreement. Further minor changes as necessary from time to time may be agreed upon by the Parties by subsequent written approval of the Parties. Unless required by the Statute or the Procedural Ordinance, no operating memorandum shall require prior notice or public hearing, nor shall it constitute an amendment to or termination for convenience in whole or in part of this Agreement. Minor changes subject to this subsection 2.3.4 shall include planning director plan review amendments and special permit minor modifications.

2.3.5 Suspension. Subject to prior notice and opportunity to review the factual basis therefore and further subject to a hearing of such facts, the CITY may suspend this Agreement, or a portion thereof, if the CITY finds and determines, based on specific findings of fact, and in the reasonable exercise of its sole discretion, that suspension is necessary or desirable to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the suspension, and the Term of this Agreement shall be extended by amendment in accordance with Section 2.3.

2.3.6 Termination. This Agreement will terminate at the earlier of the date when (i) the Term expires, (ii) it is terminated for convenience as provided in Section 4.4.1 or 7.8, or (iii) it is cancelled for default as provided in Section 7.6.

2.4 Interests of LANDOWNER. LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal or equitable interests in the Property, including the Lender, if any, have executed and are bound by this Agreement. The Parties acknowledge that Setzer currently holds legal

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title to Phases 2, 3 and 4 of the Project and NWLP currently holds legal title to Phase 1 of the Project. NWLP intends to purchase Phases 2, 3 and 4 as the market allows. The Parties agree that LANDOWNER shall have the right, but not the obligation, to continue existing commercial and industrial operations in Phases 2, 3 and 4 as they exist as of the date of adoption of the Adopting Ordinance, until such time that LANDOWNER elects to develop a Phase pursuant to the Entitlements.

2.5 **Binding Covenants.** The burdens of this Agreement shall be covenants that run with the land and be binding upon the owners of the Property including, without limitation, LANDOWNER, affiliates of LANDOWNER, Lender and Assignees. The benefits of this Agreement shall inure to the Parties and to their Assignees subject to compliance with Section 2.6.

2.6 **Assignment.**

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

2.6.1.1 In addition, LANDOWNER shall be permitted to assign all or any portion of its interests under this Agreement without CITY consent and without formal notice requirements set forth in Section 2.6.1 by either:

(A) any of the following instances (collectively, "Permitted Affiliate Transfers"): (1) to, by or among members of NWLP or Setzer and (2) to new or additional development entities provided that majority control (51% or greater) of such entity (directly or indirectly through one or more intermediaries) remains with NWLP or Setzer ("Permanent Affiliates"). With respect to any Permitted Affiliate Transfer, such assignee shall assume all of Landowner's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and LANDOWNER shall be

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released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.; or

(B) the assignment by any of the Setzer entities of all of its rights and interest in either Phase 2, 3 or 4 to NWLP, or to new or additional development entities, which constitute Permanent Affiliates as identified above ("Setzer Transfer"). With respect to any Setzer Transfer, such assignee shall assume all of Setzer's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and Setzer shall be released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.

2.6.2 Release. LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, CITY shall release LANDOWNER from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

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

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2.7 Plan or Project Entitlement Amendments Involving Assignees.

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

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

2.7.3 Approval Rights. LANDOWNER shall be solely responsible for obtaining any prior approval rights over applications to amend the Plans, Project Entitlements or the Land Use and Development Regulations by an Assignee(s), and for obtaining any waivers of LANDOWNER's applications by an Assignee(s), at the time LANDOWNER sells, transfers or assigns a portion of the Property to a third party which may become an Assignee to this Agreement. The provisions in this Section 2.7 shall apply to LANDOWNER's successors in interest, to each initial Assignee(s) and its successors in interest, and to all property owners and affiliates of all or a portion of the Property during the Term of this Agreement.

2.7.4 CITY Processing. In processing an application as described in this Section 2.7, CITY shall have the sole exclusive discretion to approve or deny a Discretionary Action or a Ministerial Action after the Effective Date, subject to Section 3.2, and consistent with the terms of this Agreement.

2.7.5 Indemnity. LANDOWNER and an Assignee(s) that files an application as described in this Section 2.7 shall defend and indemnify CITY in any third-party action claiming that CITY has violated LANDOWNER's and/or an Assignee(s)'s Vested Right under this Agreement in approving such application, in accordance with the provisions of Section 7.1; provided, however, that the indemnity provided in this Section 2.7.5 shall

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not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

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3.0 VESTED DEVELOPMENT RIGHTS.

3.1 Entitlement to Develop Project. Subject to the express terms, conditions, reservations, and exclusions as set out in this Agreement, CITY hereby grants to LANDOWNER a Vested Right to develop the Property for the Project in accordance with the terms and conditions set out in the Development Plan, Project Entitlements, Special Conditions, and Mitigation Measures, and in accordance with the Land Use and Development Regulations. The General Plan shall control in regards to any conflicts between LANDOWNER's Vested Right and the Land Use and Development Regulations. In Development of the Property for the Project, LANDOWNER shall not be subject to compliance with any Subsequent Rule except as expressly set forth in this Agreement. The Plans, Project Entitlements, Special Conditions, Mitigation Measures, and Vested Rights, which authorize and limit Development of the Property for the Project in accordance with their respective terms, are intended to be construed in harmony with each other.

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

3.1.2 Development Inconsistent with Development Plan. If LANDOWNER submits an application to CITY for Development that differs from the Development Plan, but does not require an amendment to this Agreement as provided in Section 2.3.4, then upon approval by CITY, LANDOWNER's Vested Rights under this Agreement will be adjusted to include the modification in the Development. Such adjustment in the Vested Rights shall be considered and implemented as a minor change under Section 2.3.4 of this Agreement. If an application proposes or requires a substantive change to the Plans, Project Entitlements, Special Conditions, Mitigation Measures, or Land Use and Development Regulations under Section 2.3.3, then the right to develop the Property in accordance with the terms and conditions of that application, if approved, will not be vested under this Agreement unless and until this Agreement is amended to incorporate the approval pursuant to Section 2.3.3.

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3.2 Subsequent Approvals.

3.2.1 **Scope.** Development of the Property for the Project is subject to all required Discretionary Actions and Ministerial Actions that have not otherwise been approved by CITY or City Agency prior to the Effective Date. Subsequent Approval would include, without limitation, approval of tentative and final parcel and subdivision maps, additional tentative subdivision maps to further subdivide a parcel, special permits, variances, plan review, design review, preservation review, and grading permits and Building Permits required for Development of the Project and consistent with the Development Plan. Upon approval by CITY, LANDOWNER's Vested Rights under this Agreement shall be deemed to include the Subsequent Approval.

3.2.2 **Processing.** 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. CITY shall not unreasonably deny, delay or condition any Subsequent Approval required for Development of the Project that is necessary or desirable to the exercise of LANDOWNER's Vested Rights under this Agreement as long as the application is in compliance with the Plans, Project Entitlements, and the Land Use and Development Regulations.

3.2.3 **Conditions.** In reviewing and approving applications for Subsequent Approvals that are Discretionary Actions, CITY may exercise its independent judgment and may attach such terms, conditions, restrictions and requirements (collectively "Conditions") as follows:

3.2.3.1 Conditions that are consistent with the policies, goals, standards and objectives of the Plans, Design Guidelines and Land Use and Development Regulations as may be necessary to comply with all applicable legal requirements and policies of CITY pertaining to such Discretionary Actions.

3.2.3.2 Any conditions imposed as a condition of approval of a Subsequent Approval shall be consistent with the provisions of this Agreement unless: (i) CITY and LANDOWNER mutually agree to such changed Conditions, (ii) the Subsequent Approval is subject to compliance with the Subsequent Rule as provided herein, (iii) the conditions are imposed as a mitigation measure for compliance with CEQA, NEPA or a related environmental statute as described in Section 4.1, and/or (iv) additional Public Facilities are necessary to serve the Development of the Property as proposed in LANDOWNER's entitlement application or changes in the location or size of Public Facilities is required as described in Section 4.9.

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3.2.4 Additional Discretionary Actions. CITY shall not apply any Subsequent Rule that create a requirement for any new or additional Subsequent Approvals for the Project, other than additional Ministerial Actions, except as provided in Section 3.3.

3.3 Subsequent Rules.

3.3.1 Limitation on Application of Subsequent Rules.

3.3.1.1 Subject to Section 4.0 and except as otherwise set forth in this Agreement, during the Term of this Agreement, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if it would conflict with or impede the Vested Rights of LANDOWNER as set out in this Agreement without LANDOWNER's express written consent. The terms "conflict" and "impede" would include, without limitation, Subsequent Rules that would directly or indirectly modify the Project Entitlements or would substantially increase the cost of Development in order to comply with the Subsequent Rule. Application of a Subsequent Rule relating to new or increases in Development Fees and Assessments are addressed in Section 4.0.

3.3.1.2 [This section intentionally omitted.]

3.3.1.3 To the extent that any Subsequent Rule which is applicable to the Property or the Project is not in conflict with or does not impede the Vested Rights of LANDOWNER as set out in this Agreement, or is otherwise made applicable by other provisions of this Agreement, such Subsequent Rule shall be applicable to Development of the Property.

3.3.2 No General Limitation on Future Exercise of Police Power. The CITY retains its right to exercise its broad and general police powers and to apply such powers within the Property, except when such exercise would expressly conflict with or impair a Vested Right granted to LANDOWNER under this Agreement, as provided in Section 3.3.1.

3.3.3 [This section intentionally omitted.]

3.3.4 [This section intentionally omitted.]

3.3.5 No Limit on Power of CITY to Adopt Subsequent Rule. Notwithstanding anything contained herein to the contrary, this Agreement does not limit the power and right of the CITY to amend, repeal, suspend, or otherwise modify the Plans or Land Use and Development Regulations, or to adopt and amend from time to time other ordinances, resolutions, rules, and procedures governing development within

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the City, provision and financing of Public Facilities or Public Services, and any other matters that may be related to or affect Development of the Project on the Property or the subject matter of this Agreement; however, such Subsequent Rule shall only apply to the Property or the Project as provided in Sections 3.3 and 4.0 or as otherwise provided in this Agreement.

3.3.6 [This section intentionally omitted.]

3.3.7 **Beneficial Changes.** To the extent that any Subsequent Rules would benefit LANDOWNER and LANDOWNER desires that the Land Use and Development Regulations as amended should be applicable to Subsequent Approvals, LANDOWNER shall notify CITY in writing of its desire to be subject to the amended Land Use and Development Regulations, and the Parties shall mutually agree to amend this Agreement in accordance with Section 2.3.

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4.0 EXCLUSIONS FROM VESTED RIGHTS.

4.1 Environmental Compliance.

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

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

4.2 Retained Right to Discretionary Design Review. Notwithstanding anything contained herein to the contrary, this Agreement does not limit CITY's Discretionary Actions regarding design review of all buildings and structures proposed to be developed on the Property in accordance with the Land Use and Development Regulations. However, in conducting its design review, CITY will apply the Design Guidelines and CITY shall exercise its review in such a manner that does not reduce the square footage or the floor area ratio for the subject site as otherwise allowed under the Land Use and Development Regulations and the Project Entitlements. CITY retains the right to reasonably modify or amend the Design Guidelines as long as such

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amendments are consistent with the Project Entitlements, Plans, and Land Use and Development Regulations and do not conflict with or impede LANDOWNER's Vested Rights.

4.3 [This section intentionally omitted.]

4.4 Changes Mandated by Other Agencies.

4.4.1 Amendment or Suspension of Agreement. Nothing in this Agreement shall preclude the application to the Property of a Subsequent Rule if the terms and conditions set out in a Subsequent Rule are specifically mandated by changes in state or federal laws or regulations or by action of a Public Agency after the Effective Date. In the event state or federal laws or regulations or an action by a Public Agency either (i) prevents or precludes LANDOWNER's or CITY's compliance with one or more provisions of this Agreement, or (ii) requires changes in the Project Entitlements, Special Conditions, or Subsequent Approvals, the Parties shall meet and confer in good faith to determine whether the laws, regulations or actions apply to the Property and/or the Project and whether suitable amendments to this Agreement can be made in order to maintain LANDOWNER's Vested Rights and the CITY and LANDOWNER obligations as set out in this Agreement. If the Parties are unable to agree on the terms of an amendment to this Agreement to comply with such laws, regulations and actions, the Parties shall consider whether suspension of the applicable provision(s) of this Agreement is appropriate, and if so, the terms and conditions of such suspension. If the Parties are unable to agree on the terms of an amendment or suspension with respect to the applicable provision(s) of this Agreement, either Party shall have the right to terminate this Agreement for its convenience in whole or in part by complying with the noticing procedures set out in Section 9.2.

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

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construed as precluding CITY's contractual defenses of impossibility of performance or frustration of purpose to the extent recognized by California law.

4.4.3 Reserved Right to Contest Laws, Regulations and Actions. CITY and/or LANDOWNER shall have the right to institute litigation challenging the validity of the laws, regulations or actions of federal and state agencies and Public Agencies as described in Section 4.4.1. If such litigation is filed, this Agreement shall remain in full force and effect until final judgment is issued; provided, however, that if any action that CITY would take in furtherance of this Agreement would be rendered invalid, facially or otherwise, by the contested law, regulation or action, CITY shall not be required to undertake such action until the litigation is resolved or the law, regulation or action is otherwise determined invalid, inapplicable or is repealed. If the final judgment invalidates the law, regulation or action, or determines that it does not affect the validity of this Agreement or the obligations of the Parties as set out in this Agreement, this Agreement shall remain in full force and effect. The Term of this Agreement shall be extended by the amount of time between the date when the litigation was filed and the date of the final judgment if the law, regulation or action had the effect of preventing or suspending Development of the Property for the Project and the final judgment allowed this Agreement to remain in full force and effect.

4.5 Building Codes.

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

4.5.2 Green Building Ordinance. Notwithstanding anything in this Agreement to the contrary, if the CITY enacts an ordinance that would require buildings on a city-wide basis or within the Community Plan area to be designed and constructed with materials, methods or in a manner that would reduce energy consumption, greenhouse gas emissions, and/or heat island effects (the "Green Building Ordinance" or "Ordinance"); such Ordinance shall apply to the Property and the Project.

4.6 No Effect on Right to Tax, Assess, or Levy Fees or Charges. Notwithstanding anything in this Agreement to the contrary, this Agreement does not limit the power and

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right of the CITY to impose new or increases in existing taxes or assessments on, or require payment of application, processing, inspection, or building permit fees, and related charges by LANDOWNER or by any other entity or owner of property in the City. All applications by LANDOWNER for CITY approvals, permits and entitlements shall be subject to the application fees, processing fees, inspection fees and other similar fees within the control of the CITY that are in force and effect as of the date that the application or other request for approval is filed.

4.7 Development Fees. Except as provided in Exhibit M, LANDOWNER shall be subject to the imposition of any new or increased development impact fees (Government Code § 66000 *et seq.*) or other fee, as defined in Section 1.21 as Development Fees, pursuant to the nexus study that is prepared to implement the new or increased development impact fee or program, as such nexus study may be amended from time to time.

4.8 Health and Safety and Supervening Laws. Notwithstanding the provisions in Section 3.3.1, during the Term of this Agreement the CITY may adopt and apply a Subsequent Rule to Subsequent Approvals if: (i) CITY upon notice and hearing, in the reasonable exercise of its discretion and based upon findings of fact and determinations of law, certifies to LANDOWNER that application of a Subsequent Rule is necessary to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property; or (ii) such Subsequent Rule is mandated or required by supervening federal, state, or Public Agency law, regulation or action enacted prior to or after the Effective Date. The foregoing two options include, without limitation, any flood control restrictions or requirements that may be adopted on a city-wide basis or that may only apply to the Community Plan area that encompasses the Property.

4.9 Changes in Location or Size of Public Facilities. If at the time of the required Dedication or Reservation of land to CITY, City Agency or Public Agency for Public Facilities as specified in this Agreement, the location of or the quantity of land required for the Public Facilities has changed from that depicted or specified in the Plans or Project Entitlements to such a significant degree or extent that could not reasonably have been anticipated as of the Effective Date such that the location or quantity is inconsistent with the Development Plan, and/or Project Entitlements, the Parties shall meet and negotiate and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow Development of the Property for the Project in a reasonable manner, taking into account the changes in Public Facilities needed to serve the Project that arose after the Effective Date. If agreement is reached between the Parties, the procedures specified in Section 2.3 shall apply to amend this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience in whole or in part by providing notice as specified in Section 9.2.

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4.10 Suspension of Development. No Subsequent Rule enacted prior to the expiration of the Term of this Agreement which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall apply to the Property, except when the CITY enacts a moratorium pursuant to a declaration of a local emergency or a state of emergency which suspends development rights, the moratorium encompasses the Property or the Project, and the basis for enactment of the moratorium complies with the provisions of Section 4.8.

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5.0 CITY'S OBLIGATIONS AND COMMITMENTS.

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

5.2 Allocation Procedures for Uses, Units, and Building Sizes. CITY procedures and approvals for allocating the land uses, housing unit numbers and types, and densities and building square footages approved for the Project among the various parcels of land and portions thereof comprising the Property shall be in conformance with the Development Plan, Project Entitlements, Plans, and Special Conditions. Unless otherwise specified in the Development Plan, Project Entitlements, Plans, and Special Conditions, the allocation of nonresidential square footages and housing units shall be as identified in Subsequent Approvals for the Project. The appropriate entitlement to address the allocation of building square footage and housing units shall be determined by CITY. Except as otherwise set forth in Exhibit M, allocations for residential development by type of housing unit and density shall be determined in the subdivision mapping process, unless CITY determines that some other method is appropriate under the circumstances.

5.3 Extension of Entitlements. All subdivision tentative maps, special permits, or any other land use entitlements of potentially limited duration previously, contemporaneously or subsequently approved for the Property subject to this Agreement, as set out in the Development Plan, Project Entitlements, and Subsequent Approvals, shall be valid for a minimum term equal to the full Term of this Agreement (including the Initial Term and any Extension Period resulting from exercise by LANDOWNER of the options provided for in Section 2.1), or for a period of thirty-six (36) months from date of approval of the entitlement, whichever is longer, but in no event for a longer period than the maximum period of time permitted by the Subdivision Map Act or Government Code for such land use entitlements. The provisions of Section 8.5 relating to estoppel certificates shall apply to any request made by LANDOWNER to

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CITY with respect to the life of any entitlement covered by this Section 5.3. Nothing in this Section 5.3 shall be construed, or operate, to extend the Term of this Agreement.

5.4 Reconfiguration of Parcels. LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be processed and Discretionary Action taken in accordance with the provisions of this Agreement. Where Reconfiguration requires a special permit, variance, planned unit development designation, or other entitlement applicable to the Property or portion thereof which is subject to the application, CITY reserves the right to require such entitlements as a condition of approving the application. CITY shall process such Subsequent Approvals in a manner consistent with the Plans and Project Entitlements as provided in Section 3.2.

5.5 [This section intentionally omitted.]

5.6 [This section intentionally omitted.]

5.7 Public Facilities Financing Proceedings.

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

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

5.7.3 [This section intentionally omitted.]

5.7.4 Maintenance Districts. LANDOWNER may, following the procedures specified in Section 5.7.1, request that CITY establish one or more maintenance districts for the purpose of financing the maintenance of landscaping, lighting or other Public Facilities, whereunder lands benefiting from the Public Facilities and their maintenance are assessed for a proportionate share of the maintenance cost.

5.8 [This section intentionally omitted.]

5.9 [This section intentionally omitted.]

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

5.10.1 Proceedings. The procedures specified in the Procedural Ordinance for conduct of the Annual Review by the City Manager and City Council shall apply to each Annual Review of this Agreement. At least ten (10) days prior to the commencement of any Annual Review by the City Council, CITY shall deliver to LANDOWNER a copy of any public staff reports and other documents to be used or relied upon in conducting the review. LANDOWNER shall be permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects. At the conclusion of the Annual Review, CITY shall make written findings and determinations on the basis

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of substantial evidence, as to whether or not LANDOWNER or its successors and any Assignees have complied in good faith with the terms and conditions of this Agreement.

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

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6.0 LANDOWNER'S OBLIGATIONS AND COMMITMENTS.

6.1 Project Entitlements, Mitigation Measures and Special Conditions.

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

6.2 [This section intentionally omitted.]

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

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

6.5 Park and Open Space Development. LANDOWNER shall develop some or all of the parks and open spaces located within that final map, as provided in the Special Conditions set forth in Exhibit M and as may be specified in the Tentative Map conditions, under the terms of CITY's standard form Park Credit/Reimbursement Agreement. LANDOWNER shall receive credit for the cost of developing those parks and open spaces as provided in City Code Chapter 18.44 and Exhibit M.

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

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

6.8 **Transfer of Land.** As set forth in the Plans, Project Entitlements, and Special Conditions, LANDOWNER has agreed to transfer lands by Dedication or Reservation that are needed for Public Facilities to CITY, City Agency, or Public Agency as specified or appropriate. LANDOWNER shall transfer the land required to be transferred by Dedication to CITY, City Agency, or Public Agency utilizing the Irrevocable Offer of Dedication agreement form provided as Exhibit I or by placing a Dedication or an Irrevocable Offer of Dedication, as directed by CITY, on a final subdivision or parcel map in accordance with Government Code Sections 66439 and 66447. LANDOWNER shall transfer the land required to be transferred by Reservation to CITY or to a Public

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

6.9 Allocation Dispute Resolution.

6.9.1 Where a dispute exists between LANDOWNERS with respect to the terms of this Agreement, LANDOWNERS may pursue all remedies available in law or equity, consistent with the terms of their "Option Agreement and Escrow Instructions dated September 11, 2009 ("Option Agreement") or any other agreement between LANDOWNERS related to the Property and/or development of the Project ("Property Agreement"). The terms of this Development Agreement in no way expand or limit the remedies set forth in the Option Agreement or Property Agreement. In the event of such dispute between LANDOWNERS, LANDOWNERS shall hold harmless the CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees from and against any and all damages relating to LANDOWNERS' dispute.

6.9.2 Where a dispute exists between LANDOWNER, Assignee, and/or any successor or successors in interest with respect to any matter involving the CITY's allocation of the land uses, housing units, densities and building square footages for or on the Property in compliance with the Development Plan and Project Entitlements as set out in Section 5.2, 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, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees be a party to such dispute or to the dispute resolution procedures. All of the provisions of this Agreement relating to LANDOWNER's obligation to defend and indemnify CITY and payment of CITY costs shall apply to all disputes relating directly or indirectly to such allocation.

6.10 Annual Report. LANDOWNER shall annually, within thirty (30) days after each anniversary of the Effective Date, submit to the City Manager a brief written report on the progress of Development of the Property for the Project as authorized under this Agreement during the prior twelve (12) month period. The annual report shall include,

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at a minimum, (i) the additional square footage of commercial and office development and the number of housing units constructed or under construction, (ii) the Public Facilities constructed or under construction by LANDOWNER, and (iii) the land Dedications and Reservations conveyed to CITY, City Agency, or Public Agency. The CITY will review the annual report in accordance with Section 5.10. LANDOWNER shall pay a processing fee for each annual review in the amount established by resolution of the City Council.

6.11 **Indemnification.** LANDOWNER agrees to defend and indemnify CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees against any liability for damage or claims for damage for personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to Develop the Property, whether undertaken by LANDOWNER or LANDOWNER's affiliates, contractors, subcontractors, agents or employees. Said indemnification pursuant to this Section 6.11 shall not extend to claims that are based on an indemnified Party's gross negligence or willful misconduct.

6.12 **Reimbursement for Agreement Costs.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER or by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is \$140.00 per hour. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

6.13 [This section intentionally omitted.]

6.14 [This section intentionally omitted.]

6.15 **Setzer's Limited Obligations as Landowner.** Setzer, as owner of any Phase(s) within the Property for which no Subsequent Approval for Development thereof has been approved, will not oppose any Development of the other Phase(s) not owned by Setzer and will cooperate with and support NWLP, or any successor owner of such other Phase(s), at no cost or expense to Setzer, with respect to any Development of such other Phase(s) consistent with the Project Entitlements, Special Conditions, Mitigation Measures and this Agreement. In particular, if and to the extent required by this Agreement, Setzer will transfer any lands within the Phase(s) owned by Setzer in accordance with and as may be required by Section 6.8 above to support Development of any other Phase(s) consistent with the Project Entitlements, Special Conditions,

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Mitigation Measures and this Agreement. Setzer's cooperation with and support of such Development shall not affect any obligation of NWLP under the Option Agreement to compensate Setzer for any such land transfer.

Unless and until Setzer obtains approval of a Subsequent Approval to Develop a Phase owned by Setzer, Setzer shall not be obligated to comply with or perform any of the "LANDOWNER" obligations under Sections 6.1, 6.4, 6.5 (except with respect to the transfer of land under Section 6.8), 6.6 or 6.7 of this Agreement applicable to Development of the other Phase(s) not owned by Setzer, and the City shall look solely to NWLP, or any successor thereof involved in Development of the other Phase(s), for satisfying those obligations. Similarly, Setzer's waiver of Protest Rights under Section 6.3 above shall not obligate Setzer or any Phase owned by Setzer to pay any Development Fees or any fees, taxes or assessments that may be imposed or levied by any Public Financing Mechanism related to Development of the Project unless and until Setzer obtains a Subsequent Approval to Develop such Phase. Upon any application for any Subsequent Approval for Development of a Phase owned by Setzer, such Setzer entity would assume all rights and obligations as a LANDOWNER for Development of such Phase.

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7.0 LITIGATION, DEFAULT, AND TERMINATION.

7.1 Litigation by Others.

7.1.1 Challenge to Agreement or Entitlements. In the event of any action is instituted by a third party challenging the validity of any portion of this Agreement, or its application or effectiveness at any time during its Term, including, without limitation (i) any action by a third party challenging the proceedings taken for its approval (including the CEQA requirements), (ii) any action challenging the validity of any of the Project Entitlements (including CEQA challenges), (iii) any action by a third party to enforce the application of a voter approved initiative to Development of the Property for the Project, or (iv) any action by a third party challenging any other act undertaken by the Parties in furtherance of this Agreement or its terms including, without limitation, Subsequent Approvals; the Parties agree to cooperate in the defense of the action.

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

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

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

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

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7.1.3 Effect of Judgment. If, in such litigation, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement or the Agreement itself, or any Project Entitlement or Subsequent Approval, the following shall apply:

7.1.3.1 If the judgment or order includes a provision for attorney fees and/or costs of the successful party or parties, LANDOWNER shall pay the entire cost thereof, without right of offset, contribution or indemnity from CITY, irrespective of anything to the contrary in the judgment or order.

7.1.3.2 CITY and LANDOWNER shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow Development of the Property for the Project to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order. If agreement is reached, the procedures for amending this Agreement as specified in Section 2.3 shall apply. If agreement is not reached, either party shall have the right to terminate this Agreement for its convenience by giving the other party notice as provided in Section 9.2.

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

7.1.4 No CITY Liability for Damages. Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable to LANDOWNER in damages in any litigation instituted by a third party as described in this Section 7.1.

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

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either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay and the Term of this Agreement shall be extended by amendment in accordance with Section 2.3.

7.3 **Waiver.** Except as otherwise expressly provided herein to the contrary, by entering into this Agreement LANDOWNER waives its right to challenge the fairness or appropriateness, as applied to the Property and/or the Project: (i) the Plans, Project Entitlements, Special Conditions, and Mitigation Measures; (ii) Public Financing Mechanisms and Development Fees; (iii) the Dedications and Reservations for Public Facilities and Public Services, (iv) the Inclusionary Housing Ordinance, (iv) the Design Guidelines, (v) the Land Use and Development Regulations, and (vi) all actions implemented in furtherance of the foregoing as specified herein.

7.4 **Legal Actions by Parties.** In addition to the provisions set out in Section 7.6 and any other rights or remedies as set out in this Agreement; either Party may institute legal action to cure, correct, or remedy any default by any other Party to this Agreement, to enforce any covenant or obligation herein, or to enjoin any threatened or attempted violation hereunder. Subject to any mutual extensions, notice and opportunity to cure, the term "default" shall mean a material failure of performance or a substantial and unreasonable delay in performance by either Party of any of term, condition, obligation or covenant of this Agreement. Default by either Party may include, without limitation, a material failure to: (i) transfer land for Public Facilities as required by Dedication or Reservation, (ii) undertake construction of Public Facilities, and/or (iii) implement or comply with the terms and conditions of the Project Entitlements, including the Mitigation Measures, Mitigation Monitoring Plan, and Special Conditions.

7.4.1 **CITY Liability.** Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

7.4.2 **Limitation of Legal Actions.** No initiation of legal proceedings shall be filed by a Party unless such action is filed within one hundred and eighty (180) days from the date of discovery by the aggrieved Party of the facts underlying the claim of default, and the date of discovery being that the date that the facts became known or should have become known to the aggrieved Party based on the circumstances of the default.

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

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

7.5 Attorney Fees. In any arbitration, quasi-judicial, administrative or judicial proceeding (including appeals), brought by either Party to enforce or interpret any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief; the prevailing party shall be entitled to reasonable attorneys' fees and all costs, expenses and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party. For purposes of this Section 7.5 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, including direct, indirect and overhead costs.

7.6 Default. Subject to any extensions of time by mutual consent of the Parties, and subject to the cure provisions set forth herein, any default (as that term is defined in Section 7.4) of this Agreement shall constitute a breach and the non-defaulting Party may cancel this Agreement for default.

7.6.1 LANDOWNER Default. In addition to any other remedy specified in this Agreement, in the event that notice of default has been given by CITY to LANDOWNER, CITY shall not be obligated to issue any Building Permit or grant any Subsequent Approval for the Project until such time as the default is cured. If cancellation of this Agreement for default is proposed by CITY with respect to only a portion of the Property or the Project that is affected by LANDOWNER's default as

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specified in the CITY's notice of default, only those Building Permits and Subsequent Approvals applicable to that portion of the Property and/or the Project shall be affected by the suspension of Building Permits and Subsequent Approvals until the such time as the default is cured. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent an Assignee from receiving Building Permits and Subsequent Approvals for Assignee's portion of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default by NWLP on any portion of the Property or the Project impair Setzer's right to continue operating existing commercial and industrial uses.

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

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

7.6.4 No Cross Default. Where a portion of the Property has been transferred in accordance with the Assignment provisions of this Agreement and notice of default has been given by CITY to an Assignee: (i) neither LANDOWNER nor any non-defaulting Assignee shall be liable for the default of that Assignee; (ii) the rights of LANDOWNER and non-defaulting Assignees under this Agreement shall not be affected by the default of that Assignee; and (ii) CITY shall not be in default or otherwise liable to LANDOWNER or a non-defaulting Assignee for the CITY's action to declare a default. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER or non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. In no event shall a default of LANDOWNER prevent non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement, except as specified herein. Notwithstanding the foregoing, CITY, in its sole discretion, shall have the right, following notice and hearing, to terminate this Agreement, as to the LANDOWNER and the non-defaulting Assignees, for CITY's convenience if CITY certifies to LANDOWNER and any non-defaulting Assignees that the default of the defaulting Assignee would prevent or

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impede CITY's performance of its obligations to LANDOWNER and non-defaulting Assignees under this Agreement.

7.6.5 Cure Period. In the event of an alleged default of any term or condition of this Agreement, the Party alleging such default shall give the other Party notice in writing as provided in Section 9.2 specifying the nature of the alleged default, the manner in which said default may be satisfactorily cured, and a reasonable period of time in which to cure the default, which shall not be less than thirty (30) days. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

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

7.7.1 Public Hearing. In the event that notice of intent to cancel this Agreement is given by either Party, CITY shall schedule the matter for public hearing before the City Council to review the matter and make specific written findings regarding the alleged default pursuant to Government Code Section 65868 and the Procedural Ordinance. Where LANDOWNER is the Party alleged to be in default, CITY shall provide LANDOWNER: (i) a reasonable opportunity to respond to all allegations of default at such public hearing; (ii) at least thirty (30) days prior written notice of the date, time and place of the public hearing; and (iii) copies of all CITY staff reports prepared in connection therewith at least five (5) days prior to the hearing. LANDOWNER shall be given an opportunity to be heard at the public hearing. The burden of proof whether the LANDOWNER is in default shall be on CITY, the burden of proof whether the CITY is in default shall be on the LANDOWNER, and the burden on whether default has been properly cured shall be on the Party alleged to be in default.

7.7.2 Cancellation of Agreement. At the conclusion of the public hearing, if the City Council finds, based on substantial evidence, that the LANDOWNER was in default and the default has not been cured to the satisfaction of CITY, or if the City Council determines that because of the default a serious risk to the public health or safety exists, this Agreement shall be either be cancelled for breach as of the date of the City Council's determination, or the City Council may modify this Agreement and impose such conditions as are reasonably necessary to address the default and/or protect the

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interests of the CITY and the public. LANDOWNER may thereafter institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief. Expiration of the Term of this Agreement shall be tolled during the period of legal proceedings if there be a judicial determination invalidating or reversing the CITY's cancellation of this Agreement.

7.8 Termination for Convenience.

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

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

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

7.8.4 Termination by Expiration of Term. This Agreement shall expire as of the date of the expiration of the Term, without notice or any further action of either Party, unless at least one hundred and eighty (180) days prior to said expiration, the Term is extended by mutual agreement of the Parties as set out in an amendment.

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

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

7.10 Effect of Cancellation/Termination on LANDOWNER's Obligations. Cancellation or termination of this Agreement as to the Property or any portion thereof shall not affect any of the LANDOWNER's obligations to comply with the Plans, Project Entitlements, Mitigation Measures, Special Conditions, Public Financing Mechanisms, Development Fees, Land Use and Development Regulations, Design Guidelines, and Subsequent Approvals. The foregoing includes, without limitation, tentative maps, special permits, variances, Building Permits, and all other entitlements and permits issued for the Property and/or the Project prior to the effective date of cancellation or termination which are required: (i) for LANDOWNER to complete construction of any improvements on the Property for which a final map or Building Permit had been issued; (ii) for CITY to provide any Public Facilities and/or Public Services to serve improvements on the Property either completed prior to the effective date of cancellation or termination or to be completed under the Building Permits and final maps issued prior to the effective date, or to serve residents and businesses that are then occupying the Property or will occupy the Property under the Building Permits and final maps issued prior to the effective date; and (iii) for LANDOWNER's performance of obligations under the Land Use and Development Regulations, Project Entitlements, Mitigation Measures or Special Conditions which had otherwise been deferred under the terms of this Agreement. Notwithstanding the cancellation or termination of this Agreement or anything contained herein to the contrary, LANDOWNER shall also be obligated to comply with any covenants of this Agreement that are to survive after cancellation or termination of this Agreement, whether express or implied, or which have been recorded against the Property under the terms of a separate agreement.

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8.0 LENDER PROVISIONS.

8.1 Lender Rights and Obligations.

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

8.1.2 Prior to Lender Possession. No Lender shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion, and shall not be obligated to pay any fees or charges which are liabilities of LANDOWNER or LANDOWNER's successors in interest, but 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 8.1 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, without limitation, suspension, cancellation for breach and/or refusal to grant entitlements with respect to the Property.

8.1.3 Lender In Possession. A Lender who comes into possession of the Property, or any portion thereof, pursuant to foreclosure of a Mortgage or Deed of Trust, or a deed in lieu of foreclosure, shall not be obligated to pay any fees or charges which are obligations of LANDOWNER, and which remain unpaid as of the date such Lender takes possession of the Property or portion thereof. However, a Lender shall not be eligible to apply for or receive entitlements with respect to Development of the Property for the Project, 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 entering into an Assignment and Assumption Agreement to assume of all obligations of LANDOWNER hereunder. 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 2.6 of this Agreement and Lender cures LANDOWNER's default to the CITY's satisfaction as provided in Section 8.3.

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8.2 **Notice of LANDOWNER's Default.** If CITY receives notice from a Lender requesting a copy of any notice of default given LANDOWNER hereunder and specifying the address for service thereof, then CITY shall deliver to such Lender within thirty (30) days of sending the notice of default to LANDOWNER a copy of the default notice.

8.3 **Lender's Right to Cure.** Each Lender shall have the right (but not the obligation) during the same period of time available to LANDOWNER to cure or remedy, on behalf of LANDOWNER, the default claimed set forth in CITY's written default 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 under the terms of the Assignment and Assumption Agreement.

8.4 **Other CITY Notices.** If CITY receives notice from a Lender requesting a copy of any notice, including a notice of default, issued by CITY to LANDOWNER pursuant to the terms of this Agreement, a copy of said notices shall be sent to Lender at the address provided herein within thirty (30) days of sending the notice to LANDOWNER.

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

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9.0 MISCELLANEOUS PROVISIONS.

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

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

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

Notice to NWLP: Northwest Land Park, LLC
 12275 El Camino Real, Suite 110
 San Diego, CA 92103
 ATTN: Randall Jenson

with copies to:
 Remy, Thomas, Moose and Manley LLP
 455 Capitol Mall, Suite 210
 Sacramento, CA 95814
 ATTN: Tina Thomas

and copies to:
 Foley & Lardner LLP
 402 West Broadway, Suite 2100
 San Diego, CA 92101
 ATTN: Richard Moskitis

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Notice to SETZER:

Setzer Forest Products
2555 Third Street #200
Sacramento, CA 95818

with copies to:

Weintraub Genshlea Chediak
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
ATTN: Kenneth J. Silva

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

9.3 Integrated Documents/Entire Agreement. This Agreement, the Exhibits and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document and default of any of the provisions contained herein or therein shall be considered a default of this Agreement. This Agreement, including the Exhibits and documents incorporated herein by reference, integrates all of the terms and conditions related or incidental to its subject matter and constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement.

9.4 Severability. If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 2.3. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, any portion thereof, prior to the termination date except as specified in Section 7.10.

9.5 Precedence. If any direct conflict or inconsistency arises between this Agreement and the Land Use and Development Regulations, or between this Agreement and a Subsequent Rule, the provision of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the Land Use and Development Regulations or the Subsequent Rule, except as provided in Section and 3.3 and 4.0.

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

9.7 **Referendum.** CITY shall not submit the Adopting Ordinance to a referendum by action of the City Council on its own motion without LANDOWNER's written consent. This Agreement shall not become effective if a referendum petition is filed challenging the validity of the Adopting Ordinance. If the Adopting Ordinance is the subject of a referendum, LANDOWNER shall have the right to terminate this Agreement for its convenience by providing written notice to CITY as provided in Section 9.2 not later than thirty (30) days after the referendum petition is certified as valid by the County elections officer, or such later time as allowed in writing by the City Manager. The Parties' obligation to perform under this Agreement shall be suspended pending the outcome of any such the referendum election.

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

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

9.10 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

9.11 **No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of Parties and their successors and Assignees, including Lenders. No Person who is not a qualified successor of a Party or an Assignee pursuant to Sections 2.6 and 8.1.3 of this Agreement, or who has not become a party by

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ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

duly adopted amendment to this Agreement, may claim the benefit of any provision of this Agreement.

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

9.13 Survivorship. The LANDOWNER's obligations arising under this Agreement pertaining to indemnity and attorneys fees as set out in Sections 2.7.5, 6.9, 6.11, 7.1 and 7.5, and LANDOWNER's rights and obligations regarding approved entitlements as set out in Section 7.10, shall survive the expiration, termination or cancellation of this Agreement.

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

9.15 Prior Agreements. There are no oral or written representations, understandings, undertakings or agreements between the Parties related to Development of the Property that are not contained in or expressly referred to in this Agreement, and any such representations, understandings, undertakings or agreements are superseded by this Agreement. No evidence of any such representations, understandings, undertakings and agreements shall be admissible in any proceeding of any kind or nature related to the terms and conditions of this Agreement, its interpretation or default. This Agreement is specifically intended by the Parties to supersede all prior written agreements, if any, for the Development of the Property which may exist between CITY and LANDOWNER, except as may be specified in the Special Conditions. The provisions of Sections 2.7.5, 6.9, 6.11, and 7.1 of this Agreement relating to indemnification and defense of CITY by LANDOWNER shall be applicable to any claim whatsoever against CITY by an Assignee or a third party arising out of or in any way relating to any existing or future agreement between the Parties, or between LANDOWNER and City Agency, relating to the Development of the Property.

9.16 Power of Eminent Domain. It is understood that LANDOWNER may be required by CITY to utilize its best good faith efforts to acquire certain parcels and land and rights-of-way which are not currently owned by LANDOWNER and necessary to

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

construct the Public Facilities as required by CITY to serve the Project. Should it become necessary due to LANDOWNER's failure to acquire such lands and rights-of-way, the CITY shall negotiate the purchase of the needed land and rights of way to allow LANDOWNER or CITY to construct the Public Facilities that are required to be constructed by LANDOWNER or CITY to serve the Project under this Agreement. If necessary, in accordance with the procedures established by State law, CITY may use its power of eminent domain to condemn such lands and rights-of-way. LANDOWNER shall pay for CITY's costs associated with CITY's acquisition and condemnation proceedings unless such costs are paid through a Public Financing Mechanism or Development Fee. If CITY is unable or prevented from acquiring or condemning the necessary land and rights-of-way to enable LANDOWNER or CITY to construct the Public Facilities required under this Agreement, then the Parties will meet to negotiate the terms of an amendment to this Agreement, including, without limitation, changes to the Project Entitlements and LANDOWNER's Vested Rights. Nothing in this Section 9.16 is intended or shall be deemed to constitute a determination or resolution of necessity by CITY to initiate condemnation proceedings and nothing in this Section 9.16 or in this Agreement is intended or shall be construed to constitute a prohibition against CITY or City Agency to exercise its power of eminent domain to condemn LANDOWNER's Property.

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

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

[The remainder of this page intentionally left blank]

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

IN WITNESS WHEREOF, the CITY and LANDOWNER have executed this Agreement as of the dates set forth below.

CITY:

CITY OF SACRAMENTO,
a Municipal Corporation

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sabrina D. Gelbart
City Attorney

LANDOWNER: NORTHWEST LAND PARK, LLC

By: *Nathan S. Birchall*
Nathan S. Birchall,
Chief Financial Officer,
Northwest Land Park, LLC

Date: 8/15/11

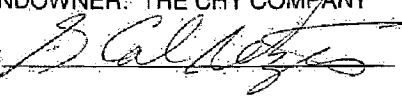
FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

LANDOWNER: THE CHY COMPANY

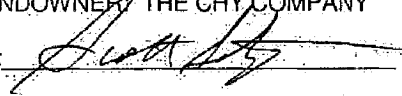
By: 

Name: G. Cal Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: THE CHY COMPANY

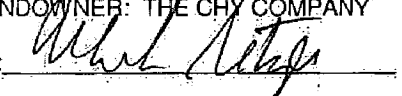
By: 

Name: Scott Setzer, Trustee, H.C. Setzer Administrative Trust

Title: General Partner

Date: August 16, 2011

LANDOWNER: THE CHY COMPANY

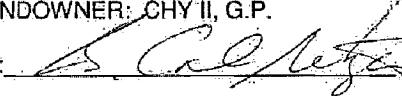
By: 

Name: Mark Setzer, Trustee, H.C. Setzer Administrative Trust

Title: General Partner

Date: August 16, 2011

LANDOWNER: CHY II, G.P.

By: 

Name: G. Cal Setzer

Title: General Partner

Date: August 16, 2011

Northwest Land Park Development Agreement

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Revision Date: _____

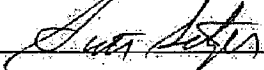
FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

LANDOWNER: CHY II, G.P.

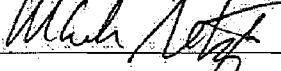
By: 

Name: Scott Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: CHY II, G.P.

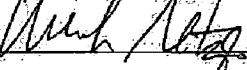
By: 

Name: Mark Setzer

Title: General Partner

Date: August 16, 2011

LANDOWNER: COUSINS MARKET, LLC

By: 

Name: Mark Setzer

Title: Manager

Date: August 16, 2011

(ATTACH NOTARY ACKNOWLEDGMENTS)

Northwest Land Park Development Agreement

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Revision Date: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On 01/15/11 before me, MICHELLE WILCOX

Here Insert Name and Title of the Officer

personally appeared NATHAN BIRCHALL, CFO

Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature MICHELLE WILCOX

Signature of Notary Public

Place Notary Seal Above



OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

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

Signer's Name: _____

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

Signer Is Representing: _____

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

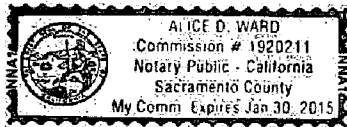
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On Aug 16 2011 before me, Alice D. Ward, A Notary Public

personally appeared G. Cal Setzer



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: Alice D. Ward

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement with the City of Chico

Document Date: August 16 2011 Number of Pages: 104

Signer(s) Other Than Named Above: G. Cal Setzer, Smith Setzer, Mark Setzer

Capacity(ies) Claimed by Signer(s)

Signer's Name: G. Cal Setzer

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: The City Company

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

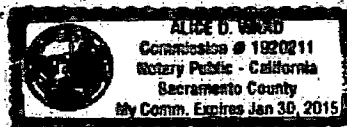
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On Aug 14 2011 before me, Alice D. Ward A Notary Public

personally appeared Scott Setzer and Mark Setzer



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward

Place Notary Seal and/or Stamp Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement, Rockwood, Calif., CHX Chap

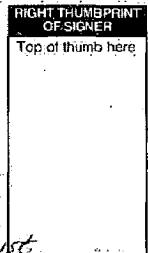
Document Date: Aug 16 2011 Number of Pages: 104

Signer(s) Other Than Named Above: Scott Setze, Mark Setzer, CAH Setzer

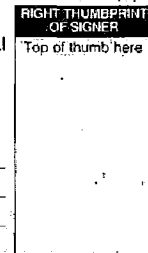
Capacity(ies) Claimed by Signer(s)

Signer's Name: Scott Setzer and Mark Setzer Signer's Name: _____

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



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



Signer Is Representing: H.C. Setzer Almond Trust

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On Aug 16, 2011 before me, Alice D. Ward, A Notary Public

personally appeared G. Cal Setzer, Scott Setzer, Mark Setzer



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward

Place Notary Seal and/or Stamp Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement, Northstar City, CH4, CH5

Document Date: Aug 2011 Number of Pages: 104

Signer(s) Other Than Named Above: Scott Setzer, Mark Setzer, G. Cal Setzer

Capacity(ies) Claimed by Signer(s)

Signer's Name: G. Cal Setzer, Scott Setzer, Mark Setzer Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

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

RIGHT THUMBPRINT
OF SIGNER
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Signer Is Representing: _____

CH4, CH5

Signer Is Representing: _____

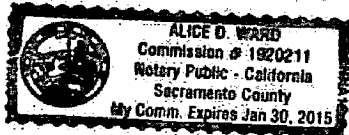
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Sacramento

On August 14, 2011 before me, Alice D. Ward, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared MARK SETZER
Name(s) of Signer(s)



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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alice D. Ward
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Development Agreement Northwest City, CA, CH, II

Document Date: August 14, 2011 Number of Pages: 104

Signer(s) Other Than Named Above: Cal Setzer, Scott Setzer, MARK SETZER

Capacity(ies) Claimed by Signer(s)

Signer's Name: MARK SETZER

- ☐ Corporate Officer — Title(s): _____
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☒ Other: MANAGER

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: COUSINS MARKET

Signer's Name: _____

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

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXECUTION PAGE FOR LENDER

_____, a _____ (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 _____, 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 8.1.

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

Attn: _____

LENDER:

By: _____

Name: _____

Title: _____

Dated: _____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____

DATE ADOPTED: _____

EXHIBIT A

**DESCRIPTION OF LANDOWNER'S
PROPERTY**

THE PROPERTY CONSISTS OF PARCELS OF LAND DESIGNATED AS ASSESSOR
PARCELS NOS. 009-0030-008-0000, 009-0030-019-0000, 009-0030-043-0000, 009-
0030-045-0000, 009-0223-007-0000, 009-0223-012-0000, 009-0223-013-0000, 009-
0223-016-0000, 009-0237-018-0000, 009-0270-009-0000, 009-0270-015-0000, 009-
0270-017-0000, 009-0270-028-0000, 009-0270-029-0000, 009-0270-032-0000, 009-
0270-033-0000, 009-0286-001-0000, 009-0286-012-0000, 009-0286-013-0000, 009-
0286-014-0000, 009-0286-018-0000. THE PROPERTY IS LOCATED WITHIN THE
STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS
MORE PARTICULARLY DESCRIBED IN EXHIBIT A-1 ATTACHED, WHICH IS
INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT B

PROJECT DEVELOPMENT PLAN

SEE ATTACHED COPIES OF THE APPROVED ZONING MAP, SCHEMATIC PLAN,
AND TENTATIVE MAP EXHIBITS LABELLED AS EXHIBITS B- ____.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

NOTE: SUBSTANTIVE CHANGES TO THE ATTACHED MAPS AND PLANS OR
THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS
AGREEMENT TO BECOME VESTED UNDER § 2.3.3 OF THE
AGREEMENT.

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT C

PROJECT ENTITLEMENTS

THE FOLLOWING APPROVED ENTITLEMENTS FOR THE PROJECT, WHICH IS REFERENCED AS P -10-039, AND THE ORDINANCES, RESOLUTIONS, PERMITS AND FINDINGS AND CONDITIONS ATTACHED TO SUCH ENTITLEMENTS **AS OF THE EFFECTIVE DATE OF THIS AGREEMENT** ARE HEREBY INCORPORATED INTO THIS AGREEMENT BY THIS REFERENCE.

NOTE: SUBSTANTIVE CHANGES TO THE FOLLOWING ENTITLEMENTS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER §2.3.3 OF THE AGREEMENT.

Commission or City Council	Date of Hearing	Description of Approved Entitlements	Ordinance, Resolution or Record of Decision	Conditions of Approval and Exhibits - Attached as:
				Exhibit C-1
				Exhibit C-2
				Exhibit C-3
				Exhibit C-4
				Exhibit C-5

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE _____

EXHIBIT D

**FINAL ENVIRONMENTAL IMPACT REPORT
AND MITIGATION MEASURES**

THE RESOLUTION CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT AND ADOPTING FINDINGS OF FACT, MITIGATION MONITORING PROGRAM, AND STATEMENT OF OVERRIDING CONSIDERATIONS WAS APPROVED BY THE CITY COUNCIL ON _____ BY RESOLUTION NO. _____.

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

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

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT E

[INTENTIONALLY OMITTED]

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT F

[INTENTIONALLY OMITTED]

Northwest Land Park Development Agreement
Exhibits

Revision Date: _____

- 65 -

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE

EXHIBIT G

PROTEST WAIVER PROVISIONS

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

Accordingly, LANDOWNER agrees for itself, its constituents, successors and assigns that it fully, finally, and forever waives and relinquishes any right it may have to protest or contest the formation or implementation of any Public Financing Mechanism to fund and maintain Public Facilities, together with any rights it may have to contest the imposition of any related fees, assessments, taxes, or other charges. Nothing in this Agreement, however, shall prevent LANDOWNER from presenting CITY any information or opinions regarding any Public Financing Mechanism that 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.

If a Public Financing Mechanism or Development Fee is proposed for adoption by CITY, which Public Financing Mechanism or Development Fee directly and significantly conflicts with the Nexus Study adopted by the City Council in connection with establishment of the financing mechanism or fee, 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 Public Financing Mechanism or Development Fee. However, LANDOWNER's right to protest, or object shall be waived unless LANDOWNER's protest or objection is made at or before the time of the public hearing wherein the proposed Public Financing Mechanism or Development Fee is established by the City Council.

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

CITY AGREEMENT NO. _____
ADOPTED: _____

DATE _____

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

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

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

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

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

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

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

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EXHIBIT H

**MAP AND SUMMARY LISTING
OF LAND DEDICATIONS AND RESERVATIONS AND PUBLIC
FACILITIES TO BE CONSTRUCTED BY LANDOWNER**

A MAP OF THE APPROXIMATE LOCATION AND PURPOSES OF THE LAND
DEDICATIONS AND RESERVATIONS IS ATTACHED AS EXHIBIT H-2.

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EXHIBIT H-2

SUMMARY OF LAND DEDICATIONS, RESERVATIONS
AND CONSTRUCTION OF PUBLIC FACILITIES BY LANDOWNER

A. Streets (dedicated easements):

PUE adjacent to public streets
Dedication of public streets
PUE over private streets
Access easement over private alleys
Access easement over private Festival Way

B. Parks, Greenbelts, Trails, Plazas and other Public Open Space (dedications in fee):

Twenty foot wide public trail easement over trails, Setzer Run
Neighborhood park (+/- 4.3 acres)

C. Land for CITY and Public Agencies (by dedication or reservation):

Blanket PUE over residential lots, excepting building footprints (dedication)
Easement over residential lots for mail delivery boxes (dedication)
Storm drainage maintenance easement over detention basin (temporary) (dedication)

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D. Public Facilities to be Constructed by LANDOWNER (dedicated in fee or easement as determined by CITY):

Tunnel (as described in Exhibit M Section G)
Setzer Run
Neighborhood park

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EXHIBIT I
IRREVOCABLE OFFER OF DEDICATION FORM

SEE ATTACHED

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

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

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

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

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

GRANTOR acknowledges and agrees as follows:

1. This offer is given pursuant to Government Code Section 7050, and is irrevocable
upon its recordation in the office of the County Recorder, County of Sacramento.

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2. This offer may be accepted at any time by the City Council of CITY. This offer may be terminated only in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.
3. CITY assumes no responsibility or liability whatsoever with respect to the Property or occurrences thereon, as a consequence of the offer set forth herein.
4. GRANTOR shall not create, nor permit to be created, any lien, encumbrance or other title impediment of any sort or nature on or affecting the Property.
5. At the time CITY accepts this offer, GRANTOR shall insure that the Property is free and clear of all rights, restrictions, easements, impediments, encumbrances, liens, assessments or other security interests of any kind, except (a) easements or rights-of-way for public utilities, if any, and (b) item which CITY has expressly consented in writing, if any.
6. In the event that there are improvements upon the Property placed thereon either before or after this offer is recorded, GRANTOR shall have full legal responsibility, without cost to CITY, to remove such improvements, if this offer is accepted by CITY.
7. To the best of GRANTOR's knowledge, there are no notices or other information giving GRANTOR reason to believe that any conditions existing on the Property or in the vicinity thereof subject or could subject an owner of the Property to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Property shall be governed by the provisions of section 8 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by CITY prior to acceptance of the offer.

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

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

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

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

GRANTOR(s):

By: _____

Title:

Print Name:

Date: _____

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ADOPTED: _____

DATE

EXHIBIT J
RESERVATION AGREEMENT FORM

SEE ATTACHED

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

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

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

RESERVATION OF REAL PROPERTY AGREEMENT

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

RECITALS

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

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

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

AGREEMENT

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

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1. Property Ownership

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

2. Consideration for Reservation

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

3. Reservation Parcel

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

4. Purchase Price

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

5. Documents and Agreements

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

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

6. Acquisition Schedule

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

7. Acquisition of Reservation Parcel

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

8. Encumbrances and Improvements

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

9. Hazardous Substances

To the best of LANDOWNER's knowledge, there are no notices or other information giving LANDOWNER reason to believe that any conditions existing on the Reservation Parcel or in the vicinity thereof subject or could subject an

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owner of the Reservation Parcel to potential liabilities under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use. As used in this offer, the term "Hazardous Substances" means any substance, material, waste or other pollutant or contaminant that is or becomes designated, classified and/or regulated as hazardous or toxic under any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement now in effect or later enacted. Any liability associated with the presence of any Hazardous Substances on or adjacent to any portion of the Reservation Parcel shall be governed by the provisions of Section 10 below, regardless of whether any inspection, examination, sampling, testing, assessment or other investigation is conducted by PUBLIC AGENCY prior to close of escrow.

10. Hazardous Substances Indemnity

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

11. Notices

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

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Notice to the PUBLIC AGENCY:

Notice to the LANDOWNER:

Notice to Lender:

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

12. Successors and Assigns

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

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

LANDOWNER:

By: _____

PUBLIC AGENCY:

By: _____

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EXHIBIT K
ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED

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ASSIGNMENT AND ASSUMPTION AGREEMENT

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

RECITALS

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

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

C. LANDOWNER has agreed to assign to ASSIGNEE, and ASSIGNEE has agreed to assume from LANDOWNER, all of the rights and obligations under the Development Agreement as they relate to the Assigned Parcel(s).

AGREEMENT

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

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

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

3. **Assumption Terms and Conditions.** LANDOWNER and ASSIGNEE understand and agree that this Assignment is subject in particular to Section 2.6 of the Development Agreement, which reads as follows:

2.6 Assignment.

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

2.6.1.1 In addition, LANDOWNER shall be permitted to assign all or any portion of its interests under this Agreement without CITY consent and without formal notice requirements set forth in Section 2.6.1 by either:

(A) any of the following instances (collectively, "Permitted Affiliate Transfers"): (1) to, by or among members of NWLP or Setzer and (2) to new or additional development entities provided that majority control (51% or greater) of such entity (directly or indirectly through one or more intermediaries) remains with NWLP or Setzer ("Permanent Affiliates"). With respect to any Permitted Affiliate Transfer, such assignee shall assume all of Landowner's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and LANDOWNER shall be released from any

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continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.; or

(B) the assignment by any of the Setzer entities of all of its rights and interest in either Phase 2, 3 or 4 to NWLP, or to new or additional development entities, which constitute Permanent Affiliates as identified above ("Setzer Transfer"). With respect to any Setzer Transfer, such assignee shall assume all of Setzer's obligations under this Agreement with respect to the portion of the Property so transferred in connection with such assignment, and Setzer shall be released from any continuing liability under this Agreement with respect to such portion following such assignment and assumption, upon delivery to CITY of a fully executed Assignment and Assumption Agreement evidencing such assignment and assumption.

2.6.2 Release. LANDOWNER shall remain obligated to perform all of terms and conditions of this Agreement unless the purchaser, transferee or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume all of the obligations of LANDOWNER and to comply with all of the terms and conditions of this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project. Upon such execution and delivery of the Assignment and Assumption Agreement, CITY shall release LANDOWNER from all duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred only if LANDOWNER is not in default under this Agreement as of the effective date of the Assignment.

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

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reference, or such other form as shall be proposed by LANDOWNER and approved by the City Attorney prior to the effective date of the assignment."

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

5. **No Cross-Default.** The Parties acknowledge and agree that the respective obligations of LANDOWNER and ASSIGNEE under the Development Agreement shall be separate and independent from one another, such that a default by LANDOWNER of any of the LANDOWNER's duties and obligations will not constitute a default under the Development Agreement by ASSIGNEE, and a default by ASSIGNEE of any of the ASSIGNEE's duties and obligations will not constitute a default under the Development Agreement by LANDOWNER, and the City's rights and remedies under the Development Agreement shall apply only to the Party, and the Property or Assigned Parcel(s), that is the subject of the default. Any duties and obligations under the Development Agreement that apply to both the Property and the Assigned Parcel(s) must be complied with by both LANDOWNER and ASSIGNEE, but as separate obligations.

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

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

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

9. **Further Assurances.** The Parties agree to execute all such additional instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.

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

Notice to the LANDOWNER:

Notice to the ASSIGNEE:

Notice to Lender:

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

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

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

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

By: _____
LANDOWNER

By: _____
ASSIGNEE

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EXHIBIT L
DESIGN GUIDELINES

THE NORTHWEST LAND PARK PLANNED UNIT DEVELOPMENT GUIDELINES
(DESIGN GUIDELINES) DATED AS OF _____ AND APPROVED BY THE
CITY COUNCIL ON _____ BY RESOLUTION NO. _____
_____ ARE INCORPORATED IN THIS AGREEMENT BY THIS
REFERENCE AS IF SET FORTH IN FULL.

NOTE: SUBSTANTIVE CHANGES TO THE DESIGN GUIDELINES REQUIRE AN
AMENDMENT TO THIS AGREEMENT TO BECOME VESTED, UNDER §2.3.3
OF THE AGREEMENT.

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**EXHIBIT M
SPECIAL CONDITIONS**

I. PURPOSE AND INTENT

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

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

II. PARTIES' OBLIGATIONS

A. Agreements With Public Agencies. As required by CITY and subject to limitations as may be set forth in this Agreement, LANDOWNER shall enter into agreements with Public Agencies, including, without limitation:

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

B. Parks and Open Space Development and Phasing.

Park Land Dedication. Pursuant to City Code Chapter 16.64, LANDOWNER shall satisfy its park dedication (Quimby) obligation of 5.0 acres per 1,000 people through the on-site dedication of a 4.32 acre± neighborhood park and payment of Quimby in-lieu fees for any remaining obligation. The neighborhood park dedication shall be made with the Final Subdivision Map for Phase 3. The Project shall satisfy its Quimby park dedication obligation on a Phase-by-Phase basis as set forth below. Any change in the sequence of development or in the boundaries of any of the Phases as shown on Map 1.D in the Design Guidelines shall constitute a substantive change in the Development Plan and this Agreement and shall be subject to Section 2.3 of this Agreement.

Phase 1. The total Quimby park dedication requirement for Phase 1 of the Project will be 2.214± acres, based on the development of 60 multi-family, 112 halfplex, and 29 single family residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by

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multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 1 (60) by 0.0088, which equals 0.528 acres; (2) the number of halfplex units in Phase 1 (112) by 0.0112, which equals 1.254 acres; and (3) the number of single family units in Phase 1 (29,) by 0.0149, which equals 0.432 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 1 through the payment of Quimby in lieu fees.

Phase 2. The total Quimby park dedication requirement for Phase 2 of the Project will be 1.652± acres, based on the development of 35 multi-family and 120 halfplex residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 2 (35) by 0.0088, which equals 0.308 acres; and (2) the number of halfplex units in Phase 2 (120) by 0.0112, which equals 1.344 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 2 through the payment of Quimby in lieu fees.

Phase 3. The total Quimby park dedication requirement for Phase 3 of the Project will be 2.30± acres, based on the development of 113 multi-family, 75 halfplex, and 31 single family residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 3 (113) by 0.0088, which equals 0.994 acres; (2) the number of halfplex units in Phase 3 (75) by 0.0112, which equals 0.840 acres; and (3) the number of single family units in Phase 3 (31) by 0.0149, which equals 0.462 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 3 through the dedication of a 4.32± net acre neighborhood park parcel as shown in the Project PUD Schematic Plan and Design Guidelines. Upon doing so, LANDOWNER will have exceeded its aggregate Quimby requirement for Phases 1, 2, and 3 and shall receive a credit for 2.02± net acres that shall be applied to Phase 4.

A temporary detention basin will be located in Phase 1 and will be removed on or before commencement of construction for Phase 2. The temporary detention basin will be located on a portion of the area that will ultimately be developed as the neighborhood park. LANDOWNER shall include the detention basin parcel in its Phase 3 tentative map, which shall include the neighborhood park site as one parcel.

Phase 4. The total Quimby park dedication requirement for Phase 4 of the Project will be 2.474± acres, based on the development of 136 multi-family and 114 halfplex residential units. If the unit count or unit type changes, the dedication requirement may also change. This dedication requirement was generated by multiplying the number of

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dwelling units by the factors established in City Code section 16.64.030 as follows: (1) the number of multi-family condominium units in Phase 4 (136) by 0.0088, which equals 1.197 acres; and (2) the number of halfplex units in Phase 4 (114) by 0.0112, which equals 1.277 acres. The 2.02+ acre credit received with the dedication of the neighborhood park site with the Final Subdivision Map for Phase 3 shall be applied, leaving a park dedication requirement for Phase 4 of 0.454 acres. LANDOWNER shall satisfy its Quimby park dedication obligation for Phase 4 through the 2.02+ acre credit received with the Final Subdivision Map for Phase 3 and payment of Quimby in lieu fees for the remainder.

Community Investment: Use of Quimby Fees. LANDOWNER and CITY agree that Quimby in-lieu fees paid by LANDOWNER for the Project under this Agreement shall be utilized for community-serving recreational improvements and for development of the neighborhood park. Specifically, the Parties agree that LANDOWNER's Quimby in-lieu fees for the Project shall be applied in the following priority order to improve community serving recreation facilities: (1) on the adjacent school property which may include, but not be limited to, Jedediah Farms, an educational inner city farm utilizing sustainable green technology (see below for a detailed description of Jedediah Farms), or (2) the neighborhood park, or (3) other community parks or schools within a three mile radius of the Project site. Use of Quimby in lieu fees on school property shall be contingent on CITY receipt of a recreation easement over the school property to be improved with Quimby in lieu funds. The recreation easement will ensure that public use of the recreational improvements is protected in perpetuity. Consistent with City Code and the Park Development Impact Fee Nexus Study, as adopted in Resolution 1999-474 and as amended, Quimby in lieu fees shall not be used for the tunnel improvements and security features necessary to create a bicycle and pedestrian link to Front Street and Miller Park, nor for exterior, structural improvements to the shell of the Neighborhood Center.

Community Investment: Use of Park Development Impact Fees. LANDOWNER shall pay Park Development Impact Fees consistent with City Code and this Agreement. LANDOWNER and CITY agree that City shall utilize these fees in the following priority order: (1) to develop the neighborhood park, (2) on the adjacent school property which may include, but not be limited to Jedediah Farms, an educational inner city farm utilizing sustainable green technology (see below for a detailed description of Jedediah Farms), or (3) other community parks or schools within a three mile radius of the project site. Use of Park Development Impact Fees on school property shall be contingent on CITY receipt of a recreation easement over the school property to be improved with Park Development Impact Fee funds. The recreation easement will ensure that public use of the recreational improvements is protected in perpetuity. Consistent with City Code and the Park Development Impact Fee Nexus Study, as adopted in Resolution 1999-474 and as amended, Park Development Impact fees may not be used for the

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tunnel improvements and security features necessary to create a bicycle and pedestrian link to Front Street and Miller Park, nor for exterior, structural improvements to the shell of the Neighborhood Center.

Community Investment: Jedediah Farms. Jedediah Farms is envisioned as a vibrant small-scale working farm in an urban neighborhood setting. The proposed location of Jedediah Farms is a 2 acre Sacramento City Unified School District parcel, adjoining Jedediah Smith Elementary School. The farm will be intimately connected to the elementary school and a high school, city park, and nearby public housing community. The Parties intend the farm to become a showcase for urban farming practices, employing the principles of green technology, sustainability and safety; to provide opportunities for community and student education; to foster partnerships between the public and private sectors; and to positively engage both the students and the adjacent housing community. Participation by these stakeholders will generate a sense of "ownership" for the farm and is intended to increase daily school attendance, improve test scores, and create a greater sense of community pride.

Park Master Plan. Prior to recordation of a Final Map for Phase 3, LANDOWNER shall prepare a park master plan for the neighborhood park. Prior to recordation of a Final Map for Phase 2 and contingent upon CITY's receipt of a recreation easement over the school property to be developed, LANDOWNER shall prepare a master plan for Jedediah Farms. The master plans shall be prepared to the satisfaction of the Department of Parks and Recreation, Park Planning and Development Services (PPDS) and shall be submitted for review and shall be approved by PPDS, CITY's Parks and Recreation Commission and City Council. The neighborhood park master plan shall be designed to the appropriate neighborhood park standard as outlined in Table 18 of the City of Sacramento Parks and Recreation Master Plan 2005-2010 and as determined by PPDS. Park design shall comply with Crime Prevention through Environmental Design (CPTED) principles.

Park Development. LANDOWNER shall develop the neighborhood park and Jedediah Farms as 'turnkey' projects under a Credit/Reimbursement Agreement with CITY. LANDOWNER shall enter into a CITY standard form Credit/Reimbursement Agreement with the CITY prior to recordation of a Final Map for Phase 2 for Jedediah Farms, and prior to recordation of a Final Map for Phase 3 for the neighborhood park. The Credit/Reimbursement Agreement shall address (1) the preparation and approval of the park and farm design and improvement plans, (2) time of completion of the park and farm improvements, (3) any credits or reimbursement to be awarded to the LANDOWNER against the CITY's Park Development Impact Fee (PIF) that would be payable as a condition of issuance of building permits for the dwelling units to be constructed in the subdivision (4) any credits to be awarded to the LANDOWNER against the CITY's Quimby in lieu fees for future maps, and (5) maintenance of all improvements to be accepted into a maintenance financing district for a minimum of one

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year and until a minimum of 50% of the residential units to be served by the park have received final inspections or occupancy permits, unless the City agrees to accept park maintenance into the district at an earlier date. The maintenance period shall begin following the issuance by the CITY of a notice of completion for the improvements.

C. **Nonconforming Uses.** The Project is seeking a rezone to R4 for the residential development (see Exhibit C). Several existing uses and structures located within Phases 2 through 4, and within the area planned for R-4 zoning, do not conform to the land use regulations for the R-4 zone and, upon the Project's rezone to R-4, such uses will be considered "nonconforming uses" under Chapter 17.88 of the City's Zoning Code. CITY agrees to allow the following nonconforming uses in the R4 zone, upon the terms and conditions provided herein:

1. **Office Uses.** An existing office is currently located in Phase 4, APN 009-0237-018. LANDOWNER shall be permitted to continue to use the office for commercial purposes until such time as the LANDOWNER with legal ownership of Phase 4 (NWLP or Setzer, depending on market conditions) seeks building permits for residential construction on APN 009-0237-018, consistent with the Project Entitlements, Special Conditions, Mitigation Measures, and the terms of this Agreement. Issuance of a building permit for residential construction within Phase 4 shall not affect LANDOWNER's right to continue existing commercial and industrial operations in any other Phase.

2. **Industrial Uses.** Industrial buildings owned by Setzer are currently located in Phases 2, 3 and 4. LANDOWNER shall be permitted to continue using such buildings for industrial uses, regardless of any lapse in use, until such time as the LANDOWNER with legal ownership over Phase 2, 3 and/or 4 seeks building permits for residential construction for such Phase(s), consistent with the Project Entitlements, Special Conditions, Mitigation Measures, and the terms of this Agreement. Issuance of a building permit for residential construction within one Phase shall not affect LANDOWNER's right to continue existing commercial and industrial operations in any other Phase.

In the event LANDOWNER wishes to repair or remodel or, in the event of a fire or other natural disaster, reconstruct the existing nonconforming uses identified in Sections (C)(1) [office uses] and (C)(2) [industrial uses], above, CITY shall waive the requirements as set forth in Chapter 17.88 of the City Code and shall require LANDOWNER to obtain a building permit for necessary repairs, remodeling or reconstruction.

Nothing in this Agreement shall be interpreted to require operations in existing office/commercial and industrial buildings to be halted or interrupted until such time as

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LANDOWNER seeks building permits for residential construction for the Project consistent with the terms of this Agreement.

D. **Planned Densities.** Project density shall be calculated on a Project-wide basis, and not phase by phase. The actual densities approved for some of the Phases may be greater or less than the densities set forth in the Project Entitlements and Development Plan for each Phase (the "Planned Densities"), as provided in this Section D.

CITY and LANDOWNER agree that, in LANDOWNER's discretion, LANDOWNER may file applications for Subsequent Approvals that propose densities that vary from the Planned Densities for each Phase and from the minimum and maximum density limits for the General Plan Land Use Designation for the project site, as long as (1) the proposed density is within the maximum density limits of the zoning designation of the project site, and (2) when combined with the density of all previously approved Phases and the range of permitted densities in future phases, is within the maximum and minimum density limits for the Project as a whole, as contained in the Development Plan and Project Entitlements.

If NWLP's election to increase or reduce the actual density for a Phase will impact density requirements for future Phases owned by Setzer, NWLP shall obtain written approval from Setzer consenting to such density increase or reduction prior to applying for a tentative map for the Phase to be developed at densities different than the Planned Densities.

The above notwithstanding, CITY may deny a Subsequent Entitlement if it determines that the proposed increase or decrease in density for a Phase will alter the character of the Project as described in the Design Guidelines and analyzed in the Project EIR, or that the proposed density will render infeasible development of any later Phase due to the resulting density required for that later Phase for the Project as a whole to conform with the Development Plan and Project Entitlements.

E. **Neighborhood Center.** LANDOWNER and CITY agree that a neighborhood center that would enhance and support the education and service needs of the community, and that may include uses such as health services, day care, and preschool, would be a positive addition to the Project and community. The location of the neighborhood center may include an existing brick building located in the center of the neighborhood park, which may be suitable for such adaptive reuse. LANDOWNER shall be responsible for all costs associated with preparation of a structural analysis of the building by a qualified professional to determine its suitability for public use, along with inspection of and remediation for any hazardous materials common to the age of the structure. LANDOWNER shall also be responsible for all improvements needed to

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enable LANDOWNER to deliver to CITY a structurally sound building, free of any hazardous materials, that meets current code standards as of the date the transfer of ownership is made, for public use by CITY or a CITY lessee.

F. **Tunnel.** An elevated section of I-5 is located immediately adjacent to the project site to the west, with a railroad tunnel and existing rail spur located beneath the freeway. (See Design Guidelines §1.5.2.) The existing rail spur connects the western boundary of the project site, via the tunnel under I-5, to Front Street and Miller Park. LANDOWNER would like to improve the tunnel to provide an important connection to Miller Park, the River and the Promenade; the bikeway tunnel will provide a key link to these amenities and an attractive means of travel for biking and walking to downtown and Old Sacramento. Tunnel improvements shall be designed in accord with CITY and State Department of Parks and Recreation. The State Department of Parks and Recreation (State Parks) is the current owner of the tunnel and rail spur. CITY shall work with LANDOWNER in good faith to acquire the railroad tunnel and rail spur from State Parks and to implement the tunnel improvements. In the event CITY and LANDOWNER cannot acquire the tunnel and rail spur from State Parks on terms reasonably acceptable to CITY and LANDOWNER, the obligations set forth in this Section II-G of the Special Conditions shall terminate.

In the event CITY and LANDOWNER are successful in acquiring the tunnel and rail spur from State Parks, CITY and LANDOWNER shall work together in good faith to identify and obtain mutually acceptable funding for the tunnel improvements. Funding for the tunnel improvements may not utilize Quimby in lieu fees or Park Development Impact Fees, but would instead be dependent upon grants, gifts, or other funding sources. LANDOWNER shall use its best efforts to commence construction of necessary improvements to the tunnel, including security features, on or before completion of Phase 4. All improvements, including safety features, are expected to be complete on or before completion of Phase 4. Upon completion of the improvements, CITY shall assume responsibility for maintenance of the tunnel and all related features, as part of its park maintenance obligations.

G. **Fair Share Mitigation.** Pursuant to mitigation measures required in the EIR, LANDOWNER shall pay its fair share of mitigation fees to CITY for the Project's impacts to peak hour operations at the I-5 NB off-Ramp/Broadway intersection.

Mitigation Measure 5.9-16 requires the applicant to pay its fair share toward the cost of installation of a traffic signal at the I-5 NB off-ramp/Broadway intersection. Payment shall be made at the time of approval of the final subdivision map for Project Phase 1. CITY and LANDOWNERS agree that LANDOWNERS' fair share fee for the traffic signal shall be 3% of the total traffic signal cost as determined by CITY at the time

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payment. As of the Effective Date, the estimated cost for this improvement is \$400,000. "Total traffic signal cost" shall include all costs associated with implementation of Mitigation Measure 5.9-16, including without limitation traffic signal installation, equipment, signing, striping, electrical and electrical conduit work, and the reconstruction of round corners if needed to accommodate signal mast arms and electrical cabinets.

Mitigation measure 5.9-15 requires the applicant to contribute its fair share toward restriping the southbound approach to the W Street/9th Street intersection to add an exclusive right-turn lane while maintaining the two existing through lanes and one existing shared through/right lane.

CITY agrees that mitigation measures 5.9-15 and 5.9-16 (discussed above) constitute LANDOWNER's total obligation to provide fair share mitigation for the Project's potential traffic impacts.

H. Special Limited Time Exemption from Certain Development Fees.

1. Definitions. For purposes of this Section H,

a. Development Fee means development impact fee (Government Code §66000 *et seq.*) or other development fee, as defined in Section 1.21.

b. Initial Exemption Period means year one through and including year five of the Initial Term of this Agreement:

c. Exemption Extension Period means the period commencing as of the last day of the Initial Exemption Period until December 31, 2018.

2. Exemption. Notwithstanding Section 4.7 of this Agreement, during the Initial Exemption Period, LANDOWNER shall not be subject to any new Development Fee imposed by CITY after the Effective Date.

Additionally, during the Exemption Extension Period, LANDOWNER shall not be subject to any new Development Fee imposed by CITY after the Effective Date if, prior to the end of the Initial Exemption Period, City has issued building permits for the construction of 300 or more residential units for the Project.

The exemption from the payment of Development Fees under this Section H applies only to Development Fees imposed by CITY and shall not apply to Development Fees imposed by a Public Agency which CITY is required or authorized to collect pursuant to Federal or State law, local ordinance, or agreement.

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Exhibit B: Status of Contract Requiring Council Approval Form

Status of Contract Requiring Council Approval

**** Form to be completed by City Attorney****

- ☒ The contract is signed by the other party(ies), is approved as to form by the City Attorney, and is attached as an exhibit to the Resolution.

Contract Title Northwest Land Park Development Agreement

- ☐ The contract recommended for award by the City Council is for a public project (SCC Ch. 3.60); is NOT signed by the contractor; is in a form that the City Attorney will approve upon proper execution by the contractor; and is attached as an exhibit to the Resolution.

Contract Title

- ☐ The contract is with another governmental agency or agencies that require approval and execution by the City prior to execution by the other agency(ies). In this case, the contract is NOT signed by the other agency(ies), but is in a form that the City Attorney will approve upon proper execution by the agency(ies), and is attached as an exhibit to the Resolution.

Contract Title

- ☐ The contract is NOT signed by the other party(ies); however, due to special circumstances documented in writing by the Department presenting the contract, the City Attorney has confirmed in writing the legal propriety of the City Council approving and authorizing the action recommended. The unsigned contract:


Contract Title

- ☐ is attached as an exhibit to the Resolution
☐ is NOT attached as an exhibit to the Resolution

General
Comments

Agreement is attached to the Development Agreement Ordinance (Attachment 5).

Signature Field



Form Approved by City Attorney 12/31/10