

ORDINANCE NO. 87-102

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

OCT 20 1987

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF
AN ORDINANCE RELATING TO APPROVAL OF A DEVELOPMENT
AGREEMENT FOR THE FARMERS MARKET PLACE PROJECT

SECTION 1

Attached hereto is a Development Agreement for a project known as FARMERS MARKET PLACE (hereinafter "Agreement"). This ordinance incorporates, and by this reference makes part hereof, that Agreement.

SECTION 2

The City Manager is hereby directed to execute said Agreement on behalf of the City of Sacramento; provided, however, that such execution by the City Manager shall not occur until and unless (a) the State Office of Planning and Research ceases to restrict City execution of Development Agreements; and (b) the Agreement is executed by FARMERS MARKET PLACE within thirty (30) days after adoption of this Ordinance. This Agreement shall not be binding on the City and shall not create any type of vested right until such time as the City Manager, as authorized by this Ordinance, executes the Agreement.

In consideration of the City's expedited approval of land use entitlements for this project, FARMERS MARKET PLACE shall not rescind its execution of this Agreement prior to execution by the City Manager.

SECTION 3

The City Clerk shall record said Agreement no later than ten (10) days after final execution by both parties of the Agreement as required by Government Code Section 65868.5.

ENACTED: 10-20-87

EFFECTIVE: 11-19-87



ANNE RUDIN, MAYOR

ATTEST:

DEPUTY 
CITY CLERK

DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF SACRAMENTO AND
FARMERS MARKET PROJECT,
A CALIFORNIA LIMITED PARTNERSHIP, RELATIVE
TO THE DEVELOPMENT KNOWN AS FARMER'S MARKET PLACE

This Development Agreement is entered into this ____ day of _____, 1987, by and between FARMERS MARKET PROJECT, a California Limited Partnership, hereinafter "Developer", and the City of Sacramento, hereinafter "City", pursuant to the authority of Sections 65864 through 65869.5 of the Government Code.

RECITALS

1. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted Section 65864 et seq. of the Government Code which authorizes the City of Sacramento and an applicant for a development project to enter into a development agreement, establishing certain development rights in the property which is the subject of the development project application.

2. Developer owns in fee that certain property described in Exhibit "A" (hereinafter "subject property") attached hereto and incorporated herein by this reference. Developer seeks City approval of various land use entitlements to permit development on the subject property of an office building and parking structure (hereinafter the "project").

3. An Application for said project and California Environmental Quality Act (CEQA) documentation required for prior to approval of said project were considered by the City Planning Commission at a duly noticed public hearing conducted on September 10, 1987, and by the City Council at a duly noticed public hearing conducted on October 20, 1987.

4. On October 20, 1987, the City Council approved as adequate and complete a Negative Declaration for this development agreement. The City Council has determined that no further environmental documentation is required.

5. Following consideration and approval of the aforementioned Negative Declaration, the City Plans Commission on September 10, 1987, approved the following land use entitlements to permit development of a retail complex with a parking structure on the subject property:

- A. A Special Permit to allow 100% office use in the Heavy Commercial (C-4) Zone;
- B. A Special Permit to develop a major project exceeding 75,000 gross square feet in the Central City;
- C. A Variance to locate required parking spaces off-site;
- D. A Lot Line Adjustment to merge two lots; and
- E. Ordinance No. 87- _____, adopting this Agreement (The Adopting Ordinance).

6. The City Council finds and declares that development of subject property in accordance with the conditions of approval will provide orderly growth and development in a manner which is consistent with the policies set forth in the General Plan and the Central City Community Plan.

7. The Conditions imposed by the City on approval of the above-specified land use entitlements permitting development of the

consistent with the policies set forth in the General Plan and the Central City Community Plan.

7. The conditions imposed by the City on approval of the above-specified land use entitlements permitting development of the project are contained in the resolution adopted concurrently with this Agreement for application P87-122.

AGREEMENT

Section 1. General Provisions

A. Property Description and Binding Covenants. The subject property is that property described in Exhibit "A". It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with said property and the benefits and burdens hereof shall bind and inure to all successors in interest to the parties hereto.

B. Term. The term of this Development Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall extend for a period of ten years thereafter, unless said term is terminated, modified or extended by circumstances set forth in the Agreement or by mutual consent of the parties hereto. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination shall not effect any right or duty emanating from City entitlement on the subject property approved concurrently or subsequently to the approval of this Agreement.

C. Assignment. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and

interests therein to any person, firm or corporation at any time during the term of this Agreement. Express assumption of any of the obligations of the Developer under this Agreement by any such assignee shall relieve Developer from said obligation or obligations under this Agreement.

D. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if dispatched by postage prepaid first class mail to the principal offices of the City and Developer or such person or entity designated in notice to the City pursuant to this Section 1D. Such written notices, demands, correspondence and communications may be directed in the same manner to such other persons and addressees as either party may from time to time designate. Developer shall give written notice to City, within ten (10) days after close of escrow, of any sale or transfer of any portion of subject property and any assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the amount and location of the land sold or transferred, the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

E. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the parties, with City costs incurred incidental to amendment proceedings payable by the amendment applicant, in accordance with the provisions of Government Code Sections 65867 and 65868. Any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, the maximum height or size of

buildings, or monetary contributions by Developer shall not require notice or public hearing before the parties may execute an amendment hereto.

Section 2. Development of the Property.

A. Permitted Uses, Intensity, Height and Size of Development.

1. A 176,400 square feet of office space with on-site parking with a roof plateline not to exceed 70.5 feet and parapet height not to exceed 87.5 feet.

B. Monetary Contributions by Developer. Developer shall contribute "fair share" funding, as determined by the City Council, for the cost of

1. The Alhambra Corridor EIR; and
2. Those mitigation measures recommended in the EIR and approved by the City Council.

C. Rules, Regulations and Official Policies.

(1) Development of subject property shall be subject to such rules, regulations, ordinances and official policies applicable to such development on a City-wide basis at the time of subsequent entitlement for subject property except to the extent any such future rules, ordinances, regulations or policies are inconsistent with the permitted uses, intensity of use, the maximum height and size of the proposed buildings, specified in this Agreement.

(2) This section shall not preclude the application to development of subject property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State, or federal laws or regulations. In the event such changes in State, or federal laws

prevent or preclude compliance with one or more provisions of this Agreement, City and Developer shall take such action as may be required pursuant to Section 3A and Section 3D of this Agreement.

(3) This section shall not be construed to limit the authority or obligation of City to hold necessary public hearings, to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlement of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions shall not prevent development of the subject property for the uses and to the intensity of development specified in Section 2A of this Agreement.

Section 3. Default, Remedies, Termination.

A. General Provisions. In the event the State or federal laws or regulations enacted after this Agreement has been executed, or action of any governmental jurisdiction, prevent or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such State or federal laws or regulations or the regulations of other governmental jurisdictions. Each party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default. In the

event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notices in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings, or issuance of any building permit.

After notice and expiration of the thirty (30) day period, the other party to this Agreement at its option may institute legal proceedings pursuant to this Agreement or give notice of intent to terminate the Agreement pursuant to California Government Code Section 65868 and regulations of the City implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Section 65865, 65867, and 65868 and City regulations implementing said sections.

Following consideration of the evidence presented in said review before the City Council, either party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normal scheduled periodic review, said party may give written

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notice of termination of this Agreement as set forth in this section specifying in said notice the alleged nature of the default, and potential actions to cure said default where appropriate. If the alleged default is not cured within thirty (30) days or within such longer period specified in the notice, or the defaulting party waives its right to cure such alleged default, this Agreement shall be deemed terminated.

B. Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Developer with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review.

Upon not less than thirty (30) days written notice by the Planning Director of City, Developer shall provide such information as may be reasonably requested by the Planning Director and deemed by him to be required in order to ascertain compliance with this Agreement. The costs incurred by City for the annual review conducted by City pursuant to this Section shall be borne by City.

The City shall deposit, in the same manner prescribed in Section 1D, in the mail to developer a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least ten (10) calendar days prior to any such

periodic review. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or if the matter is referred to the Planning Commission before said Commission.

C. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance. If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

E. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation.

F. Applicable Law and Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable

attorney's fees, court costs and such other costs as may be fixed by the Court.

Section 4. Hold Harmless Agreement.

Developer hereby agrees to, and shall hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, we well as from claims for property damage which may arise from developer's or developer's contractors', subcontractors', agents' or employees' operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer agrees to and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of the aforesaid operations.

Section 5. Project as a Private Undertaking.

It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and Developer is that of a government entity regulating the development of private property and the owner of such private property.

Section 6. Cooperation in the Event of Legal Challenge.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action.

Section 7. The City agrees that unless this Agreement is amended or cancelled pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by City which change, alters or amends the rules, regulations and policies applicable to the development of said property at the time of approval of this Agreement, as provided by Government Code Section 65866. Nothing herein shall be construed to limit the authority of the City to fix the amount of fees of general application which may otherwise be lawfully imposed by City, as set forth in Section 1D of this Agreement.

Section 8. This Agreement is executed in two duplicated originals, each of which is deemed to be an original. This Agreement consists of thirteen (13) pages are one Exhibit which constitute the entire understanding and agreement of the parties. Said Exhibit is identified as follows:

Exhibit A: Property Description

IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the date set forth above.

FARMERS MARKET PROJECT,
a California limited
partnership

CITY OF SACRAMENTO, a municipal
corporation

By _____
George Separovich
General Partner

By _____
City Manager

By _____
Dain Domich,
General Partner

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

STATE OF CALIFORNIA)
 : ss.
COUNTY OF SACRAMENTO)

On this _____ day of _____, 1987, before me, Irvin E. Moraes, a Notary Public in and for the County and State, residing therein, duly commissioned and sworn, personally appeared _____ known to me to be the _____, known to me to be the and _____ known to me to be the _____ of the CITY OF SACRAMENTO, a municipal corporation, the municipal corporation that executed the within and foregoing instrument, and to be the officers who executed the said instrument of behalf of said municipal corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the said County and State aforesaid, the day and year in this certificate first above written.

(Seal)

Notary Public in and for the County
of Sacramento, State of California.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On _____, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____ of the partners of _____ the partnership that executed the within instrument, and acknowledged to me that the executed the same on behalf of _____, a partnership, and that said last named partnership executed the same.
WITNESS my hand and official seal.

Signature _____