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RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT

FOR

SACRAMENTO RAILYARDS PROJECT

Project No. P15-040

Between

CITY OF SACRAMENTO

and

DOWNTOWN RAILYARD VENTURE, LLC

Approved on:

_____, 2016

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
DOWNTOWN RAILYARD VENTURE, LLC
FOR
THE RAILYARDS PROJECT

This AMENDED AND RESTATED DEVELOPMENT AGREEMENT (hereinafter "Agreement") is made and entered into as of this __ day of _____("Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereinafter the "CITY"), and DOWNTOWN RAILYARD VENTURE, LLC, a Delaware limited liability company (hereinafter the "LANDOWNER"). The CITY and LANDOWNER hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

RECITALS

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

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

B. **Authority.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risks of development, in 1979 the Legislature of the State of California adopted Article 2.5 of Chapter 4 of Division 1 of the Government Code, commencing at Section 65864 (the "Statute"), which authorizes the CITY

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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, Community Plan, Specific Plan, and other Project Entitlements, as those plans may have been adopted, approved and amended as part of the process for approval of the Project.

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

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

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

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Plan, and the Parties' commitment to participate in the implementation of the Financing Plan was a material factor in making the finding of consistency of the Project and this Agreement with the General Plan, Community Plan and Specific Plan.

G. **Plan Compliance.** LANDOWNER and CITY desire to facilitate implementation of the General Plan, Community Plan, Specific Plan, Financing Plan (collectively "Plans"), and LANDOWNER therefore intends to develop the Property for the Project consistent with the Development Plan, provided that LANDOWNER is assured that no subsequent changes in the Plans after the Effective Date which would affect LANDOWNER's Vested Rights shall apply to the Property or the Project during the term of this Agreement, except as expressly provided herein, 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, Specific Plan, and the Planning and Development Code, Subdivision Ordinance, and other applicable provisions of the City Code. This Agreement limits the CITY's rights to revoke, terminate, change, impair or amend the Project Entitlements, or to require the LANDOWNER to comply with any ordinances or resolutions enacted after the Effective Date that 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. **Infill Goals and Policies.** This Agreement and Development of the Property for the Project is in furtherance of and substantially consistent with the City of Sacramento 2035 General Plan adopted on March 3, 2015, by City Resolution 2015-0061. The adopted General Plan includes the following goals and policies for infill development: 1) promote infill development, rehabilitation, and reuse that contributes positively to the surrounding area and assists in meeting neighborhood and other CITY goals; 2) remove regulatory obstacles and create more flexible development standards for infill development; 3) provide improvements to infrastructure to allow for increased infill development potential; 4) provide financial incentives and project assistance to assist in infill development that provides the greatest infill opportunity in terms of number of vacant lots, total potential for new infill development, or overall economic or environmental benefit; and 5) engage the community to ensure new infill

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development addresses neighborhood concerns and to gain greater acceptance and support for infill development.

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

K. **Agreement Voluntary.** This Agreement is voluntarily entered into by LANDOWNER in order to secure 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, Community Plan, Specific Plan, Financing Plan and in consideration of the agreements and undertakings of LANDOWNER as specified in the Project Entitlements and Special Conditions. The Parties are entering into this Agreement voluntarily in consideration of the rights conferred and the obligations incurred as specified herein.

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

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M. **Consistency Findings.** The City Council has reviewed and approved this Agreement. It finds that this Agreement is consistent with the General Plan, Community Plan, Specific Plan, and the Land Use and Development Regulations. The implementation of this Agreement is in the best interest of CITY because it promotes the health, safety and general welfare of its existing and future residents. The environmental impacts of Development of the Property for the Project 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 implementing the General Plan, Community Plan and Specific Plan, and Development of the Property for the Project will not proceed without the timely provision of Public Facilities and Public Services required to serve the Project. This Agreement is just, reasonable and fair and equitable under the circumstances facing the CITY, and it provides sufficient benefits to the community to justify entering into this Agreement.

AGREEMENT

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

[The remainder of this page intentionally left blank.]

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1. **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 by which the City Council approves this Agreement.

1.2 **Allocation Procedures**: Those procedures set forth in Section 5.2 of this Agreement, by which 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 **Approved LUC(s)**: One or more land use covenants between the LANDOWNER and DTSC, and recorded against the Property in accordance with Civil Code Section 1471 and Health and Safety Code Section 25355.5, to restrict use of the Property because of the presence of hazardous materials, as defined in Health and Safety Code Section 25260, on or under the Property.

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

1.5 **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 Property 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.

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1.6 **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.

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

1.8 **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.

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

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

1.11 **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. The term “Building Permit”, for the sole and limited purpose of the triggering of payment of applicable fees required under this Agreement, also includes a building permit issued by OSHPD for improvements over which OSHPD has jurisdiction.

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1.12 **Central Shops Historic District**: Lots 19, 20, 21b, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 32 on the Tentative Map as the boundaries of said District approved by the City Council and as said boundary may be amended. The formation of the Central Shops Historic District establishes the process for the review and approval of the rehabilitation and adaptive reuse of the existing and new improvements located on such lots in accordance with Chapter 17.134 of the City Code.

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

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

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

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

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

1.18 **Community Plan**: The Central City Community Plan contained in the General Plan adopted by the City Council on March 3, 2015.

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

1.20 **Days**: As used in this Agreement, “days” shall mean calendar days.

1.21 **Dedication**: The transfer of real property, including an easement or other defined interest less than a fee interest in real property, under an Offer of Dedication to CITY, City Agency or Public Agency, subject to limitations on use and reserved access and other rights to

LANDOWNER as set out herein and in the Tentative Map conditions, and free of all encumbrances, mortgages, liens, leases, easements and other matters affecting the title except as may otherwise be expressly agreed to by CITY, City Agency or Public Agency, at no cost as specifically set forth in the Financing Plan or Project Entitlements.

1.22 **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).

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

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

1.25 **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 Public Facilities, including Backbone Infrastructure, including those lawfully imposed fees by another Public Agency having jurisdiction and which CITY is required or authorized to collect pursuant to federal or State law or local ordinance or agreement.

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

1.27 **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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1.28 **Effective Date**: The date on which the Adopting Ordinance becomes effective (not the date the Adopting Ordinance was approved by the City Council), which is thirty (30) days following City Council approval of the Adopting Ordinance.

1.29 **Financing Plan**: The Railyards Specific Plan Public Facilities Financing Plan dated _____ that encompasses the Property and the Project as approved by the City Council by its resolution, as more particularly described in Exhibit E, as the financing plan may be amended from time to time.

1.30 **Financing Plan Area**: The lands within the area covered by, and obligated by, the Railyards Financing Plan, as that area may exist from time to time.

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

1.32 **Funding Agreement Business Terms**: The outline of the conditions under which CITY perform the matters described in Exhibit G.

1.33 **General Plan**: The General Plan of the City of Sacramento, as adopted by the City Council on March 3, 2015.

1.34 **Infrastructure**: All public facilities and improvements needed to serve urban development, as identified in the General Plan, Specific Plan, or in subdivision maps or parcel maps, or as may otherwise be constructed and conveyed to CITY or another public agency, including but not limited to street improvements, drainage improvements, sanitary sewer improvements and water storage and transmission facilities.

1.35 **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 Development Plan, Project Entitlements, or Special Conditions. Exhibit L provides the form of the Dedication agreement if the Irrevocable Offer of Dedication is not set out on the tentative

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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.

1.36 **Land Use and Development Regulations**: The Planning and Development Code, Special Planning District Ordinance, Subdivision Ordinance, Mixed Income Housing Ordinance, and the other provisions of the City Code (including the Sign Code) applicable to Development of the Property, together with the General Plan, Specific Plan, Design Guidelines, Central Shops Historic District, and any other City ordinances, 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 Special Planning District, 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**: An approval or disapproval that merely requires a determination whether there has been compliance with applicable statutes, ordinances, resolutions, regulations or conditions of approval including, without limitation, the Development Plan, Project Entitlements, Special Conditions, and Mitigation Measures.

1.39 **Mitigation Measures**: The measures adopted by the City Council as part of the certification of the Subsequent Environmental Impact Report as of the Effective Date that apply to Development of the Property for the Project and as may be referenced in the Project Entitlements, as well as those that 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 adopted by the City Council as of the Effective Date and as may be referenced in the Project Entitlements, and as may be amended and incorporated into this Agreement pursuant to this Agreement.

1.41 **Mixed Income Housing Ordinance**: Chapter 17.712 of the City Code.

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1.42 **Mixed Income Housing Strategy**: The strategy prepared by LANDOWNER in accordance with the Mixed Income Housing Ordinance, and approved by the City Council in accordance with the Mixed Income Housing Ordinance and City Code Section 17.808.260. The Mixed Income Housing Strategy is set forth in Exhibit I.

1.43 **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.

1.44 **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.

1.45 **Office of Statewide Health Planning and Development (OSHPD)**: The state office that is responsible for the enforcement of all building standards published in the Title 24, California Building Standards Code relating to the regulation of hospital buildings, acute psychiatric hospitals, skilled nursing facilities, intermediate-care facilities, and under certain circumstances clinics, as codified in the California Health and Safety Code. OSHPD is designated as the enforcing agency for these health facilities, including plan checking and inspection of the design and details of the architectural, structural, mechanical, plumbing, electrical, and fire and panic safety systems, issuance of building permits, and the observation of construction.

1.46 **Owner Participation Agreement or RASA Agreement**: The agreement between LANDOWNER and RASA regarding the provision, under the Railyards Redevelopment Plan, of tax increment revenues generated from the Property, as more particularly described in the Financing Plan and Funding Agreement, and as consistent with the applicable redevelopment law, that may be paid to LANDOWNER for Development of the Project.

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

1.48 **Parties**: The CITY and LANDOWNER.

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

1.50 [Intentionally omitted]

1.51 **Plans**: The General Plan, Specific Plan, and Financing Plan. The reference to "Plans" may also include the Development Plan as the context indicates.

1.52 **Planning and Development Code**: The Planning and Development Code of the City of Sacramento, which is set out in Title 17 of the City Code.

1.53 **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).

1.54 **Project**: The permitted uses, location, density or intensity of use, height or size of buildings, including, without limitation, the provisions for Dedication and Reservation of land for Public Facilities and Backbone Infrastructure, implementation of the Mitigation Measures, the financing of Public Facilities and Backbone Infrastructure, the development of mixed income housing, and the rehabilitation of the Central Shops, as set forth in the Development Plan, Project Entitlements, and Special Conditions.

1.55 **Project Entitlements**: The actions, plans, ordinances, resolutions, maps, plan review, conditional use permits, design review, preservation review, Mixed Income Housing Strategy, and permits and approvals, including certification of the Subsequent Environment Impact Report, Mitigation Measures, and Mitigation Monitoring Program, that have been approved by CITY for the Project based on the Development Plan as of the Effective Date, which are set out

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in Exhibit C, as well as all Subsequent Approvals. The Project Entitlements also include minor changes to the Development Plan approved pursuant to Section 2.4.4 and substantive changes to the Development Plan for which an amendment to this Agreement has been approved pursuant to Section 2.4.3.

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

1.57 **Proposition 1C Agreement**: The agreement between LANDOWNER and the State Department of Housing and Community Development or other State agency for receipt of funding under the Infill Incentive Grant Program of 2007 and the Transit Oriented Development Implementation Development Program that were funded under Proposition 1C, which was approved by the electorate in November 2006 and implemented under Senate Bill 86 (Peralta) and Assembly Bill 1091 (Bass), Statutes of 2007.

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

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

1.60 **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 Subsequent Approvals; or as may otherwise be constructed or owned by, or conveyed to, CITY, City Agency or Public Agency, including, without limitation: (i) streets, alleys, bridges, pedestrian and bicycle paths, surface and structure parking facilities, and interchanges and freeway improvements; (ii) heavy and light rail and trolley tracks, lines, stations, platforms, tunnels, and passenger facilities; (iii) bus rapid transit lanes and bus transfer facilities, turnouts and stops; (iv) surface and storm drainage improvements; (v) sanitary sewer improvements; (vi) water storage and transmission facilities; (vii) flood control improvements; (viii) solid waste facilities; (ix) electrical and gas utilities; (x) street lighting; (xi) police and fire

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stations; (xii) parks, plazas, open space, greenbelts, trails, and landscaping; (xiii) habitat conservation areas; (xiv) drainage retention and flood control basins; (xv) schools and educational facilities; (xvi) community centers, performing arts centers, and museums; and (xvii) publicly owned artwork.

1.61 **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.

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

1.63 **Quimby In-Lieu Fees**: The fees referenced in City Code Chapter 16.64 relating to the Quimby Parkland Dedication Requirement, as modified by this Agreement.

1.64 **Quimby Parkland Dedication Requirement**: The obligation to dedicate land pursuant to City Code Chapter 16.64, as modified by this Agreement.

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

1.66 **Reconfiguration**: The adjustment of lot lines, re-subdivision, re-parcelization, creation or elimination of air rights, reversions to acreage, 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.

1.67 **Reimbursement**: The reimbursement of monies to LANDOWNER who has advanced funds for Public Facilities, including Backbone Infrastructure, required for Development of the Property for the Project, or the entity who has advanced funding for particular Public Facilities and Backbone Infrastructure which are required by the Plans and Project Entitlements, and where such Public Facilities have benefit to land beyond the final map parcels and the Property in accordance with the terms of the Financing Plan, Funding Agreement, Special Conditions, Assessment District Policy Manual, and/or a reimbursement agreement approved by CITY and executed by the Parties and as may more particularly be described herein and in the Funding Agreement Business Terms and the Owner Participation Agreement.

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

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

1.70 **Sign Code**: Chapters 12.36 (awnings and canopies) and 15.148 (signs) of the City Code, as each chapter may be amended from time to time.

1.71 **Special Conditions**: Those conditions, terms, and requirements specified in Exhibit P.

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1.72 **Special Planning District**: The Railyards Special Planning District as set out in Chapter 17.440 of the City Code as approved by the City Council by ordinance on _____.

1.73 **Specific Plan**: The Sacramento Railyards Specific Plan as approved by the City Council by resolution on _____.

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

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

1.76 **Subsequent Environmental Impact Report**: The Subsequent Environmental Impact Report prepared for the Project in in accordance with CEQA that was recommended for certification by the Planning and Design Commission by record of decision and certified by the City Council by its resolution as more particularly described in Exhibit D.

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

1.78 **Tentative Map**: The tentative subdivision map 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.

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

1.80 **Two-Party MOA**: The Memorandum of Agreement dated May 10, 2016, between DTSC and LANDOWNER, as amended, regarding, among other things, (i) implementation of the Approved LUC(s), and (ii) DTSC providing written assessment of whether proposed uses at the Property are consistent with the restrictions imposed in the Approved LUC(s).

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

1.82 **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 Planning and Development Code.

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

1.84 **2015 Railyard Agreement.** The Railyards Agreement Among UPRR, DRV, and IAH, dated February 12, 2015, by Union Pacific Railroad Company, Downtown Railyard Venture, LLC, and IA Sacramento Holdings, LLC, as amended, that allocates among the parties work and liabilities in connection with completion of remediation and development of the Property.

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2. GENERAL TERMS AND CONDITIONS.

2.1 **Term**. The term of this Agreement shall mean and include the Initial Term plus the First and Second Extensions (individually an "Extension Period") as made applicable below, 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 each Extension Period and the LANDOWNER's completion of the various levels of development as defined below (Development Milestones) relating to each Extension Period. Each Extension Period shall consist of five years, commencing as of the last day of any prior Extension Period. Upon a failure to achieve the Development Milestone, there shall be no further extensions of the Term and the Agreement shall expire as of the ending date of the last Extension Period provided hereunder.

2.1.1.1 **Initial Term**: Twenty (20) years following the Effective Date.

2.1.1.2 **First Extension**: Additional five (5) year extension if at least the following amount of Development has been constructed, based on occupancy permits or certificates issued (1st Development Milestone), as of end of the Initial Term.

Non-Residential Sq. Ft.	Residential Units
2,000,000	4,000

2.1.1.3 **Second Extension**: Additional five (5) year extension if at least the following additional amount of Development has been constructed, based on occupancy permits or certificates issued, (2nd Development Milestone), as of end of the First Extension.

Non-Residential Sq. Ft.	Residential Units
2,750,000	5,000

2.1.1.4 **Total Development**: If LANDOWNER develops more than the Development Milestone as required for commencement of the next Extension Period, that

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additional amount of Development shall be credited for the purpose of determining whether the Development Milestone has been met for the next Extension Period.

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

2.1.2.1 On the Exercise Date, LANDOWNER shall not be in default in any material respect under this Agreement, including any amendments hereto, as determined by the CITY and subject to a default hearing pursuant to Section 7.7.1 if LANDOWNER's protests CITY's determination. For purposes of this subsection, "Exercise Date" shall mean the date that CITY receives LANDOWNER's written notice of intention to exercise the option to extend the term of this Agreement, in accordance with the provisions of Sections 2.1.1 and 9.2.

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

2.1.3. **Maximum Term.** Except as provided in Sections 2.1.4, 2.1.5, and 2.1.6 with respect to moratoriums, litigation, and cancellation or modification for default, The Parties specifically intend that under no circumstances shall the term of this Agreement extend beyond thirty (30) years, unless this Agreement is amended in accordance with Section 2.4.

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 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 4.3.3, if litigation is filed under Section 4.3.3, 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.

2.1.6. **Effect of Litigation Over Cancellation or Modification for Default.** Pursuant to Section 7.7.2, if LANDOWNER institutes legal proceedings to obtain judicial relief from CITY modifying or canceling this Agreement for LANDOWNER's default, the expiration of the Term of this Agreement shall be tolled during the period of the legal proceedings if there be a judicial determination invalidating or reversing the CITY's cancellation or modification of this Agreement.

2.2 **Development Timing.**

2.2.1. **Project Schedule.** Other than for the purpose of determining whether the Term of this Agreement shall be extended as described in Section 2.1, above, and except as may be provided in Section 2.3.2., 3.3.7., or the Funding Agreement, 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 Subsequent Environmental Impact Report and subject to the Project Entitlements and the Special Conditions. Any act which is required to be completed within a specific time period, as set out in the Project Entitlements, shall be timely completed as provided therein.

2.2.2. **Application of Subsequent Rule Affecting Rate of Development.** Except as provided in Section 4.10, no Subsequent Rule that limits the rate of development over time shall be applicable to the Property or the Project. However, nothing in this Agreement shall be construed to relieve LANDOWNER from any time conditions, phasing provisions, or schedule compliance as set forth in this Agreement, or to excuse the timely completion of any act that is required to be completed within a time period as set out in the Financing Plan, Project Entitlements, Special Conditions, any other provision of this Agreement, any applicable

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provision in the City Code provision or the Land Use and Development Regulations, or any applicable Subsequent Rule.

2.2.3. **2015 Railyard Agreement.** The Parties recognize that the 2015 Railyard Agreement may affect the timing, uses, and extent of the Development of the Property for the Project. Nothing contained in this Agreement is intended to alter or modify the terms and conditions of the 2015 Railyard Agreement or to allow LANDOWNER to Develop the Property in a manner that is inconsistent with DTSC's enforcement orders or the Approved LUC(s).

2.2.4. **Two-Party MOA / Approved LUC(s)**. The Parties recognize that the Two-Party MOA and the Approved LUC(s) may affect the timing, uses, and extent of the Development of the Property for the Project. Nothing contained in this Agreement is intended to alter or modify the terms and conditions of the Two-Party MOA or the Approved LUC(s) or to allow LANDOWNER to Develop the Property in a manner that is inconsistent with the Two-Party MOA or Approved LUC(s).

2.2.5. **Two-Party MOA / Approved LUC(s) / Building Permits**. The Parties recognize that the Approved LUC(s) set forth criteria required by DTSC for development activities within the Property, which include, but may not be limited to compliance with a DTSC-approved soil and groundwater management plan, DTSC-approved engineered controls relating to vapor mitigation in specified areas, and DTSC approved native soil coverage criteria. As part of each application for a Building Permit for Development of a part of the Property that is subject to an Approved LUC, the application shall include a certification or other writing from DTSC satisfactory to the CITY that, as applicable, (i) DTSC has approved a soil and groundwater management plan for the parcel described in the application, (ii) DTSC has approved a vapor mitigation plan for the improvements described in the application, (iii) any other DTSC approvals required by the Approved LUC for construction of the improvements on the parcel described in the application have been obtained, and (iv) the proposed use of the parcel described in the application is permitted under the Approved LUC. Consistent with the requirements of the Two-Party MOA, LANDOWNER (or its permitted designee) shall report on compliance with the Approved LUC(s) and shall provide the CITY with copies of all required reporting concurrent with submission to DTSC.

2.3 **Sacramento Intermodal Transportation Facility.** The CITY owns the property where the Sacramento Valley Station is located and intends to develop the property as the future Sacramento Intermodal Transportation Facility. Nothing contained in this Agreement or in the Specific Plan, Subsequent Environmental Impact Report, or the Project Entitlements shall be construed as a commitment by CITY to LANDOWNER that the concept plan for the Sacramento Intermodal Transportation Facility will be developed during the term of this Agreement. CITY commits to LANDOWNER to make a good faith effort to develop the Sacramento Intermodal Transportation Facility during the term of this Agreement, subject to receipt of the necessary federal and state funding, permits, and approvals.

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

2.3.2 **Intermodal Related Improvements.** LANDOWNER shall complete improvements for (i) an ingress and egress gateway structure on lot 22 to service intermodal passengers, and (ii) a related bicycle/pedestrian walkway to the intersection of Stevens Street or Camille Lane and 5th Street, so that these improvements are open to the public no later than the opening of a multi-purpose outdoor stadium or a major medical facility on the Property, whichever occurs first. LANDOWNER shall obtain a staff-level site plan and design review permit for the improvements before undertaking construction of the improvements. Such improvements may be required in advance of the filing of the tentative map for the Central Shops Historic District and/or the Development of the Central Shops Historic District and, to the extent that such improvements are interim and constructed in advance of such Development, LANDOWNER

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shall provide reasonable detour routing for the bicycle/pedestrian ingress and egress during subsequent Development of the Central Shops Historic District. Upon the Development of the Central Shops Historic District, interim structures and the related bicycle/pedestrian ingress and egress may be reconstructed and relocated by LANDOWNER, however, the above described ingress and egress connectivity shall be maintained.

2.4 **Amendment, Suspension or Termination of Agreement.**

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

2.4.2 **Requests for Development Plan and Project Changes.** The Parties acknowledge that in the future it may be feasible to propose Development of the Property at a density which exceeds the Development Plan, but that is consistent with the Specific Plan. Nothing in this Agreement is intended to limit LANDOWNER or an Assignee's right to request CITY to consider amending the Plans, Project Entitlements and Land Use and Development Regulations to allow for additional Development or for a reduction in the level of Development from that set out in this Agreement, subject to compliance with CEQA and applicable state and City laws and regulations and the applicable provisions of this Agreement. Nothing in this Agreement shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any requests to amend the Plans, Project Entitlements and Land Use and Development Regulations.

2.4.3 **Substantive Changes Related to the Project and Project Entitlements.** Substantive changes to this Agreement, the Development Plan, Project Entitlements, or Special Conditions proposed by LANDOWNER, as well as substantive changes to the Plans necessitated by such changes, 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, 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 LANDOWNER's 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 2.4.3, and shall not reopen other provisions of this Agreement not affected by the proposed amendment(s). The CITY may withhold a Subsequent Approval that relates to the proposed change if reasonably required by the circumstances then existing at the time of the proposed change in the Development Plan, Project Entitlements, or Special Conditions until the Parties can come to an agreement on the terms of such an amendment or mutually agree to the termination of this Agreement.

2.4.4 **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 2.4.3 and the Procedural Ordinance, but rather are minor in character. The Parties acknowledge that refinement and further implementation of the Development Plan, Project Entitlements, or Special Conditions may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Agreement, and the Parties desire to retain a certain degree of flexibility with respect to such details and performances. If and when the Parties find and mutually agree that clarifications, minor changes or minor adjustments are necessary or appropriate, they shall effectuate such clarifications, changes or adjustments through an operating written memorandum approved by the Parties with the City Manager acting on behalf of the CITY. After execution, the operating memorandum shall be attached to this Agreement and may be further changed and amended from time to time as necessary by subsequent written approval of the Parties, without the necessity of action by the City Council. Unless required by the Statute or the Procedural Ordinance, no operating memorandum shall require prior notice or public hearing, nor shall it constitute an amendment to or termination for convenience in whole or in part of this Agreement. Minor changes subject to this subsection 2.4.4 include conditional use permit minor modifications.

2.4.5 **Suspension.** Subject to prior notice and opportunity to review the factual basis therefore and further subject to a hearing of such facts, the CITY may suspend this Agreement, or a portion thereof, if the CITY finds and determines, based on specific findings of fact, and in the reasonable exercise of its discretion, that suspension is necessary to protect persons or property from a condition which could create a serious risk to the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property. Such suspension shall be limited only to that portion of this Agreement necessary to mitigate such risk. The Term of this Agreement shall be extended by the period of such suspension unless the Agreement is amended by the mutual written consent of the Parties.

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

2.5 **Interests of LANDOWNER.** LANDOWNER represents that LANDOWNER owns a legal or equitable interest in the Property and that all other Persons holding legal interests in the Property and the Lender have executed and are bound by this Agreement. Lender's rights and obligations are subject to Article 8.0 of this Development Agreement.

2.6 **Binding Covenants.** The benefits and burdens of this Agreement shall be covenants that run with the land and shall be binding upon the owners of the Property including, without limitation, LANDOWNER, affiliates of LANDOWNER, Lender and Assignees. The benefits of this Agreement shall inure to the Parties and to their Assignees subject to compliance with Section 2.7.

2.7 **Assignment.**

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

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

2.7.2 **Release.** 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 under this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project ("Full Assignment"). If the purchaser, transferee, or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume less than all of the obligations of LANDOWNER under this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project ("Partial Assignment"), LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement unless CITY agrees to, and executes, the Partial Assignment, which is subject to agreement by the parties. CITY shall release LANDOWNER from the duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred as set forth in the Full Assignment or Partial Assignment only if LANDOWNER is not in default under this Agreement as of the effective date of the Full Assignment or Partial Assignment.

2.7.3 **Assignees.** The Assignee shall be obligated and bound by the terms and conditions of this Agreement if Assignee, LANDOWNER, and CITY execute a Full Assignment or Partial Assignment, 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 portion of the Property sold, assigned, or transferred to Assignee is referred to herein is the "Assignee's Parcel"). The Assignee shall observe and fully perform the duties and obligations of LANDOWNER under this Agreement that relate to the Assignee's Parcel as set forth in the Full Assignment or Partial Assignment. CITY shall release Assignee from LANDOWNER's duties, liabilities and obligations under this Agreement with respect to the interest(s) that are not sold, assigned or transferred to Assignee as set forth in the Full

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Assignment or Partial Assignment. A Full Assignment 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 J and incorporated herein by this reference, or such other form as is proposed by LANDOWNER, and approved by the City Attorney prior to the effective date of the assignment. A Partial Assignment is subject to approval by the City Attorney and must be approved by the City Attorney prior to the effective date of the assignment.

2.8 **Plan or Project Entitlement Amendments.**

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

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

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

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

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

2.9 **School District Mitigation.** Under the Specific Plan, all of the proposed residential development will be located within the boundaries of one or more school districts. LANDOWNER is required under applicable state law (Government Code Chapter 4.7 of Division 1 commencing at Section 65970) to provide for school facilities funding, and the CITY is required to make certain findings and may condition the approval of the Project Entitlements to mitigate the effects of overcrowded schools. LANDOWNER intends to comply with applicable law by the terms of agreements to be entered into with the school districts to provide for siting of the necessary school facilities needed to serve the Project students and to comply with applicable state law including the payment of school impacts fees. CITY may condition or deny a Subsequent Approval if a school district provides written notice to CITY that either LANDOWNER is in default of its agreement with the school district or has not paid the required impact fees. LANDOWNER shall defend and indemnify CITY in any action by any school district or a third party against CITY based on a claim that LANDOWNER has violated the terms of such an agreement or the applicable law imposing mitigation obligations on LANDOWNER; provided, however, that the indemnity provided in this Section 2.9 shall not extend to claims that are caused by the gross negligence or willful misconduct of CITY.

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3. VESTED DEVELOPMENT RIGHTS.

3.1 **Entitlement to Develop Project.** Subject to the express terms of this Agreement, CITY grants 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, and Special Conditions, 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 exercising its Vested Rights, LANDOWNER shall not be subject to any Subsequent Rule unless expressly set forth herein. The Plans, Project Entitlements and Vested Rights, which authorize and limit Development of the Property for the Project in accordance with their respective terms, are intended to be construed in harmony with each other.

3.1.1 **Compliance with Project Entitlements.** The Parties acknowledge that the Subsequent Approvals will be consistent with and apply the terms and conditions of the Development Plan, Specific Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, Tentative Map conditions, and Central Shops Historic District), and the Special 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, the DTSC requirements as referenced in Section 3.1.3 and as otherwise provided herein. Nothing contained in this Agreement is intended or may be construed as an assurance or representation by CITY to LANDOWNER that the Development Plan can be fully implemented within the Term of this Agreement or that LANDOWNER will be able to fully exercise its Vested Rights.

3.1.2 **Build-Out Consistent with Specific Plan.** As provided in the Special Planning District, the type, amount and density of land uses specified in the Specific Plan may be adjusted by relocating uses to adjoining or nearby parcels, except that surface parking granted by conditional use permit may not be relocated except as provided in the Special Conditions. Significant changes in the Development Plan may require subsequent environmental review. If LANDOWNER submits applications to CITY for Development that differs from the Development Plan, Specific Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, Tentative Map conditions, or Central Shops Historic District), or the Special Conditions and such applications do not require preparation of a subsequent or supplemental Subsequent

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Environmental Impact Report or an amendment to this Agreement as referenced in Section 2.4.3, LANDOWNER's Vested Rights under this Agreement will be adjusted to include the modifications upon approval of the application by CITY. Such adjustment in the Vested Rights shall be considered and implemented as a minor change under Section 2.4.4 of this Agreement. If an application proposes or requires a substantive change to the Development Plan, Specific Plan, Project Entitlements (including the Design Guidelines, Mitigation Measures, Tentative Map conditions, or Central Shops Historic District), the Special Conditions, or Land Use and Development Regulations under Section 2.4.3, 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 2.4.3.

3.1.3 **DTSC Requirements.** As of the Effective Date and during the term of this Agreement, DTSC has or will record, or may cause LANDOWNER to record, land use covenants against the Property to limit the type of land uses that may be developed on the Property due to the past or continued presence of hazardous substances on or underneath the Property. Notwithstanding LANDOWNER's Vested Rights, the Parties agree that nothing contained in this Agreement or in the Plans and Project Entitlements is intended to alter or modify the terms and conditions of any DTSC enforcement order, recorded land use covenants, which include the Approved LUC(s), or the Two-Party MOA to allow LANDOWNER to Develop the Property in a manner that is inconsistent with DTSC's enforcement orders and recorded covenants, which include the Approved LUC(s).

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

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

3.2 [Intentionally Omitted]

3.3 **Subsequent Approvals.**

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

3.3.2 **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 modified by the Special Planning District, 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, Special Conditions, and the Land Use and Development Regulations.

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

3.3.3.1. CITY may impose Conditions that are consistent with this Agreement and the policies, goals, standards and objectives of the Development Plan, Project Entitlements, Special Conditions, 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.

3.3.3.2. CITY may impose Conditions that are inconsistent with the provisions of this Agreement, if: (i) CITY and LANDOWNER mutually agree to the inconsistent Conditions, or (ii) the Subsequent Approval is subject to compliance with a Subsequent Rule as provided in this Agreement, or (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, 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 are required as described in Section 4.8.

3.3.4 **Additional Discretionary Actions**. CITY shall not apply any Subsequent Rule that creates a requirement for any new or additional Subsequent Approvals for the Project, other than additional Ministerial Actions, except as provided in Sections 3.4 and 4.0.

3.3.5 **Processing Fees.** Imposition of application and processing fees shall be based on the adopted fee schedule at the time the application for a Building Permit is submitted.

3.3.6 **Design Guidelines Amendments.** Notwithstanding Section 3.4.4, after the Initial Term the Design Guidelines may be amended by CITY without LANDOWNER's consent unless the amendments would "materially alter" the remaining amount of Development permitted under the Development Plan. Conflicting standards or the imposition of new and substantive design obligations would not be prohibited. The CITY shall coordinate with LANDOWNER in

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identifying the proposed amendments and provide LANDOWNER with notice of the hearings for the Design Guidelines amendments. The term "materially alter" means that compliance with the Design Guidelines amendments would require a significant reduction in the remaining amount of Development permitted under the Development Plan or would change the planned land uses as specified in the Development Plan or increase the cost of Development permitted under the Development Plan.

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

3.4 **Subsequent Rule.**

3.4.1 **Limitation.** Subject to Section 4 and except as otherwise set forth in this Agreement, during the Initial Term of this Agreement, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if the Subsequent Rule would conflict or impede with the Vested Rights of LANDOWNER as set out in this Agreement without LANDOWNER's express written consent. The terms "conflict" and "impede" would include, without limitation, Subsequent Rules that would directly or indirectly modify the Project Entitlements or would significantly increase the cost of Development in order to comply with the Subsequent Rule. For purposes of determining whether a Subsequent Rule significantly increases the cost of Development, if the Subsequent Rule applies to the Project generally, then significance is evaluated on a Project-wide basis, but if the Subsequent Rule applies only to certain parcels, then significance is evaluated on a parcel-specific basis.

After the Initial Term, CITY shall not apply any Subsequent Rule as a term, condition, restriction or requirement of a Subsequent Approval if the Subsequent Rule would materially alter the remaining amount of Development permitted under the Development Plan without LANDOWNER's express written consent. The term "materially alter" means that

compliance with the Subsequent Rule would require a reduction in the remaining amount of Development permitted under the Development Plan or would change the planned land uses as specified in the Development Plan. After the Initial Term, increases in the cost of Development to comply with the Subsequent Rule including, without limitation, increases in fees and assessments, is not a material alteration in the amount of Development permitted under the Development Plan.

3.4.2 [Intentionally Omitted]

3.4.3 **Development Phasing.** No Subsequent Rule enacted prior to the expiration of the Initial Term which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall apply to the Property, except when the CITY enacts a moratorium pursuant to Government Code section 8558 pursuant to a declaration of a local emergency or a state of emergency which suspends development rights, and the moratorium encompasses the Property or the Project, and the basis for enactment of the moratorium otherwise complies with the provisions of Section 4.7. After expiration of the Initial Term, a Subsequent Rule which purports to limit the rate of Development over time or to govern the sequence of Development of the Project shall only apply to the Property as provided in Section 4.7.

3.4.4 **No Limit on Power of CITY to Adopt Subsequent Rule.** Nothing in this Agreement limits the power and right of the CITY to amend, repeal, suspend, or otherwise modify the Land Use and Development Regulations, or to adopt and amend from time to time other ordinances, resolutions, rules, and procedures governing development within the City, provision and financing of Public Facilities or Public Services, and any other matters that may be related to 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 3.4 and 4 or as otherwise provided in this Agreement.

3.4.5 [Intentionally Omitted]

3.4.6 **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

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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 the provisions for Minor Changes in Section 2.4.2.

3.5 **Public Park and Open Space Requirements.** In consideration for LANDOWNER's agreement to develop all of the parks and open spaces within the Project as provided in the Tentative Map conditions consistent with the Specific Plan and Design Guidelines ("Turnkey Development Requirement") pursuant to a credit/reimbursement agreement ("Turnkey Park Agreement"), the form of which shall be based on a standard CITY agreement as approved by the City Attorney, the Quimby Parkland Dedication Requirement for the Project shall be two and one half (2.5) acres per one thousand (1,000) residents, calculated by the formula prescribed in the provisions of Section 16.64.030 of the City Code. This acreage shall be provided on-site within the Property. At the time of filing each final map, the 2.5 acre per 1,000 park and open space dedication requirement must have been satisfied for the amount of residential development proposed within that final map, based on the total amount of park and open space acreage that has been dedicated as of the filing date and the total number of housing units that have been approved at the time of filing the final map application. If LANDOWNER dedicates and develops more than 2.5 acres per 1,000 population during the initial phase of Development, LANDOWNER shall be entitled to apply such excess acreage as credit towards the Quimby Parkland Dedication Requirement for later phases of the Project, subject to the provision in Section 3.5.2. In addition, at the time of filing each final map, LANDOWNER must be in compliance with its Turnkey Development Requirements for development of the parks and open spaces previously dedicated as determined by CITY.

3.5.1 **Location, Type and Acreage.** The Specific Plan and Design Guidelines designate certain areas as park and open space lands within the Property, the particulars of which along with the acreage are set forth in Exhibit N and the Tentative Map conditions. The Quimby Parkland Dedication Requirements specify the parkland acreage requirement per proposed project dwelling unit count and provide a formula for parkland dedication credits that can be applied toward the acreage dedication requirement. The lands designated in Exhibit N, together with the credit calculated pursuant to the Quimby Parkland Dedication Requirements for parkland dedication credits, are hereby deemed to satisfy the type and size of the park and open spaces to be acceptable for dedication under the provisions of Chapter 16.64 of the City Code.

3.5.2 **Development of Fewer Units.** Should the amount of residential development proposed for the Project during the Term of this Agreement be substantially reduced from that specified in the Development Plan, the LANDOWNER may request modification of the park and open space dedications set out in Exhibit N to comply with the provisions of the Chapter 16.64 of the City Code, as modified in this Section 3.5. However, CITY shall determine, in consultation with LANDOWNER, which parks and open space lots and areas as shown in the Specific Plan and specified in the Tentative Map conditions shall be eliminated and such changes in the Project Entitlements and Exhibit N shall be subject to the procedures for Subsequent Approvals and amendments to this Agreement.

3.5.3 **Park Development Impact Fees.** LANDOWNER shall improve the dedicated parks and open space to the standards and designs set forth in the Plans and Project Entitlements or to other standards as approved by CITY in accordance with the Turnkey Development Requirement under Turnkey Park Agreements in lieu of paying the applicable Park Development Impact Fees. Accordingly, if LANDOWNER meets its Turnkey Development Requirement and Quimby Parkland Dedication Requirement as specified in this Section 3.5, LANDOWNER shall have no obligation to pay Park Development Impact Fees if the cost to develop those parks and open spaces is equal to or greater than the amount of the Park Development Impact Fees that would otherwise be assessed were it not for LANDOWNER's improvement of the parks and open spaces under a Turnkey Park Agreement in accordance with the Turnkey Park Requirement.

3.5.4 [Intentionally Omitted]

3.6 [Intentionally Omitted]

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

billboards within the Property. In addition, LANDOWNER and/or Clear Channel may be entitled to change the size of the billboards and to convert one or both of them to illuminated billboards, referred to as Message Center Displays in Section 5405 of the Business and Professions Code, subject to compliance with the City Sign Code and State law.

3.8 **Mixed Income Housing Requirements.** LANDOWNER shall comply with the Mixed Income Housing Strategy as set forth in this Section 3.8. LANDOWNER shall develop the number of affordable housing units within the Property set forth in Table 1 of the Mixed Income Housing Strategy by (i) construction of affordable housing units, (ii) dedication of land, or (iii) a combination of construction of affordable units and dedication of land. In determining whether LANDOWNER is in compliance with the Mixed Income Housing Strategy, CITY shall determine whether LANDOWNER has satisfied the specified obligations applicable to the affordable housing units upon reaching the identified phases of developed residential units at the Property in accordance with Table 1 of the Mixed Income Housing Strategy. CITY may withhold issuance of residential Building Permits if CITY determines that LANDOWNER is not in compliance with LANDOWNER's obligations under this section.

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

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4. EXCLUSIONS FROM VESTED RIGHTS.

4.1 Environmental Compliance.

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

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

4.2 **Retained Right to Discretionary Design Review.** Notwithstanding anything contained herein to the contrary and excepting matters over which OSHPD has exclusive jurisdiction, this

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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, Specific Plan, and Special Planning District. 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 below what is allowed under the Land Use and Development Regulations and the Project Entitlements.

4.3 **Changes Mandated by Other Agencies.**

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

4.3.2. **No Liability of CITY.** To the extent that any actions of federal or state agencies, actions of Public Agencies, or actions of CITY required by federal or state agencies or Public Agencies and taken in good faith in order to prevent adverse impacts upon CITY by state or federal agencies or Public Agencies, have the effect of preventing, delaying or modifying

Development of the Property for the Project; CITY shall not in any manner be liable to LANDOWNER for such prevention, delay or modification. Such actions may include, without limitation,: (i) flood plain or wetlands designations, (ii) the imposition of air quality measures or sanctions, (iii) the imposition of traffic congestion or travel restriction measures, or (iv) the imposition of new or additional restrictions related to environmental contamination of the Property, regardless as to whether such conditions were known or unknown as of the Effective Date. CITY's actions to comply with such federal or state laws and regulations or actions of Public Agencies shall not be arbitrary or capricious. Nothing contained herein shall be construed as precluding CITY's contractual defenses of impossibility of performance or frustration of purpose to the extent recognized by California law.

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

4.4 **Building Codes.**

4.4.1. **No Limit on Right of CITY Regarding Uniform Codes or Standards**. Notwithstanding anything contained herein to the contrary, and excepting matters over which OSHPD has jurisdiction, this Agreement does not limit the right of CITY to adopt building, plumbing, electrical, fire and similar uniform codes, and Public Facilities standards and specifications, to adopt modifications of those uniform codes and standards and specifications

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from time to time, and to require compliance with those uniform codes and standards and specifications in effect at the time of plan review or Building Permit issuance for the Project, regardless as to whether the plans and Building Permits are requested for the Project Entitlements or for Subsequent Approvals.

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

4.5 **Development Fees.** LANDOWNER shall be subject to compliance with any changes to the Financing Plan that may be approved by the City Council after the Effective Date and subject to the imposition of new or increased development impact fees (Government Code § 66000 *et seq*.), defined in Section 1.25 as Development Fees, pursuant to the nexus study that is to be prepared to implement the development fee program specified in the Financing Plan, as such nexus study may be amended from time to time. As set out in Section 5.5, the amount of the Development Fees may differ from what is specified in the Financing Plan. Once the Development Fees are established by ordinance based on the first nexus study completed after the Effective Date, for the remainder of the Initial Term, the Development Fees may not be increased except for: (i) the annual adjustment to account for construction costs in accordance with Exhibit F and the Financing Plan, or (ii) adjustments because of updates to the Financing Plan and nexus study required by the passage of time or variations from the expected land uses or densities.

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

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4.7 **Health and Safety and Supervening Laws**. Notwithstanding the provisions in Section 3.4.1, during the Term of this Agreement the CITY may adopt and apply a Subsequent Rule to Subsequent Approvals if: (i) CITY upon notice and hearing, in the reasonable exercise of its discretion and based upon findings of fact and determinations of law, certifies to LANDOWNER that application of a Subsequent Rule is necessary to protect persons or property from a condition which could create a 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 (a Subsequent Rule under this subsection (i) shall not directly conflict with an Approved LUC or a determination by DTSC within its jurisdiction over 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 or lesser basis that encompasses the Property.

4.8 **Location or Size of Public Facilities.** In the event that, at the time of the required Dedication or Reservation of land to CITY, City Agency or Public Agency for Public Facilities as specified in this Agreement, the location of or the quantity of land required for the Public Facilities has changed from that depicted or specified in this Agreement, the Development Plan, Project Entitlements, or Special Conditions to such a significant degree or extent that could not reasonable have been anticipated as of the Effective Date such that (i) the location or quantity is inconsistent with this Agreement, the Development Plan, Project Entitlements, or Special Conditions, and (ii) such change to the location of or the quantity of land required for the Public Facilities was not previously approved by the City, the Parties shall meet and negotiate and in good faith endeavor to reach agreement on any amendments to this Agreement needed to allow Development of the Property for the Project in a reasonable manner, taking into account the changes in Public Facilities needed to serve the Project that arose after the Effective Date. If agreement is reached between the Parties, the procedures specified in Section 2.4 shall apply to amend this Agreement. If agreement is not reached, either Party shall have the right to terminate this Agreement for its convenience by providing notice as specified in Section 9.2.

4.9 **LANDOWNER's Right to Propose Additional Development.** Nothing in this Agreement is intended to limit the right of LANDOWNER to apply for changes in the Development Plan and Project Entitlements, and amendments to the Plans and Land Use and Development Regulations to allow for additional or different development within the Property. CITY will

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process and decide whether to approve any such applications in accordance with the Subsequent Rules. Nothing herein shall be construed as limiting the exercise of the discretion by CITY in reviewing and approving or denying any such application.

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 4.7.

4.11 **I-5 Mitigation Program Commitment**. As part of this Development, and to help decrease vehicle miles traveled in the region, improve air quality, and support downtown urban development, LANDOWNER agrees to pay the voluntary I-5 Sub-regional fee for all construction within the Project and CITY shall use its best efforts to update and amend the I-5 Sub-regional Fee Programs list of projects, to include funding for the 7th Street/Railyards Blvd. light rail station, the 10th Street Extension from Railyards Blvd. to North B Street, and the connection of Railyards Blvd. to Highway 160 (collectively "I-5 Sub-regional Projects"). These I-5 Sub-regional Projects may directly mitigate cumulative traffic impacts on I-5 and may help achieve broader goals of SACOG, the region, and the City by supporting environmental urban infill development. To the extent the construction of any of the I-5 Sub-regional Fee Projects must occur prior to the amendment (or subsequent funding) of the I-5 Sub-regional Fee Program for these projects, CITY and LANDOWNER shall enter a Reimbursement Agreement to reimburse LANDOWNER if funding is procured through the I-5 Sub-regional Fee Program.

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5. CITY'S OBLIGATIONS AND COMMITMENTS.

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

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

5.3 **Extension of Entitlements.** All subdivision tentative maps, conditional use 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 then remaining Term of this Agreement (including the Initial Term and any Extension Period), or for the period stated in the Planning and Development Code as it

reads on the date of the approval of the entitlement, whichever is longer. The provisions of Section 8.5 relating to estoppel certificates shall apply to any request made by LANDOWNER to CITY with respect to the life of any entitlement covered by this Section 5.3. Nothing in this Section 5.3 shall be construed, or operate, to extend the Term of this Agreement.

5.4 **Reconfiguration of Parcels.** LANDOWNER shall have the right to file applications with CITY for subdivision, lot line adjustment, lot mergers, or for master parcelization of all or part of the Property, for the purpose of Reconfiguration of the Property. Such applications shall be processed and Discretionary Action taken in accordance with the provisions of this Agreement. Where Reconfiguration requires a conditional use 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 Development Plan and Project Entitlements as provided in Section 3.3.

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

5.5.1 **Backbone Infrastructure.** The Financing Plan recognizes that there is a regional cost associated with certain Backbone Infrastructure, and that that fair share will ultimately have to be paid from other sources and other property owners that benefit from such Backbone Infrastructure as identified in the Financing Plan. If a community facilities district or other Public Financing Mechanism is formed or a Development Fee is implemented to finance Backbone Infrastructure, the district may purchase the real property dedicated by LANDOWNER for Backbone Infrastructure as set out at the time of formation of the district.

5.5.2 **Development Fees and Financing Mechanisms.** CITY commits to making a good faith effort to adopt and implement the Development Fees and Public Financing Mechanisms as set out in the Financing Plan in order to provide the Public Facilities required for Development of the Property for the Project. Decisions as to whether to issue bonds pursuant to such Public Financing Mechanisms, and the timing and manner of issuance thereof, shall be within the sole

and exclusive discretion of CITY; provided, however, that CITY shall exercise its discretion in a good faith manner, so as to provide for timely construction of the Public Facilities and Backbone Infrastructure in order not to impede Development of the Property for the Project. The Parties intend that to the extent that federal, state and local funding has been committed or becomes available for the Public Facilities and Backbone Infrastructure improvements, the costs of those improvements would not be included in the Development Fees and Public Financing Mechanisms.

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

5.6 [Intentionally Omitted]

5.7 [Intentionally Omitted]

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

5.9 **Public Facilities Financing Proceedings.**

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

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

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5.10 **Maintenance.**

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

5.10.2 **Park and Open Space Maintenance.** The Tentative Map conditions imposed as part of the Project Entitlements require LANDOWNER to annex into an existing parks maintenance and community facilities district or initiate and fund the proceedings to create a Public Financing Mechanism that will encompass the Property to fund the maintenance of all of the Public Facilities as permitted under the applicable statute. The Public Financing Mechanism would provide funding for maintenance of the Project's public park and open space features that are owned or controlled by CITY which include, without limitation, the parks, parkways, greenbelts, plazas, fountains, trails, pedestrian pathways and facilities, lighting, landscaped medians, and decorative paving treatments. CITY will collect the assessment to fund maintenance of the Public Facilities and will determine whether LANDOWNER will have the option to undertake the maintenance work for all or part of the Project's public park and/or open space features, or to use CITY's work force or contractors to undertake such maintenance. In the event that LANDOWNER is selected to be responsible for any such maintenance, LANDOWNER shall be entitled to receive the benefit of the Public Financing Mechanism revenues collected for such purpose under the terms of a maintenance agreement. The Parties acknowledge that CITY will contract with LANDOWNER for maintenance of all parks and open space, including the plazas and parks within the Central Shops Historic District, under the terms of a maintenance agreement.

5.10.3 **Park and Open Space Maintenance Standards.** Because the park and open space features in this Project are unique and will be developed with high quality materials and fixtures which are non-standard, the CITY recognizes that it is important that the maintenance work is performed at a level that will protect and enhance these Public Facilities and that materials and fixtures should be replaced on an as-needed basis with the same or substantially similar materials (including plantings) and fixtures. CITY commits to LANDOWNER that it will in

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good faith maintain the park and open space features funded under the assessment district in accordance with the Design Guidelines and at a higher quality level of maintenance, and LANDOWNER acknowledges that the CITY's obligation to maintain these Public Facilities to such standards may require a higher level of assessments. The CITY commits that it will communicate and collaborate with LANDOWNER and/or the property owners association(s) in regards to the frequency, cost, and scope of maintenance of the Project park and open space features.

5.11 **Reimbursement to LANDOWNER.**

5.11.1 **From Financing Proceeds.** Subject to the terms of the Financing Plan, where LANDOWNER has provided advance funding for Public Facilities, including Backbone Infrastructure, required by the Financing Plan or has constructed such Public Facilities under the direction and control of CITY, and under the terms of the Financing Plan or reimbursement agreement LANDOWNER is be entitled to Reimbursement; CITY will pay LANDOWNER the Reimbursement in such amounts and at such times as CITY determines is feasible based on establishment of a Public Financing Mechanism and receipt of funding under such financing program. Those items and costs incurred by LANDOWNER that qualify for Reimbursement shall be determined pursuant to CITY policies in existence at the time of establishment of the Public Financing Mechanism. CITY agrees to entertain reasonable requests from LANDOWNER for exceptions to such policies; provided, however, that CITY may, in its reasonable discretion, deny any such request upon specified grounds, including but not limited to consistency of application of its policies. Nothing in this Agreement shall authorize reimbursement of any cost which, in the opinion of CITY's bond counsel, is not permissible for purposes of establishing or retaining tax free status of any bonds issued, or contemplated to be issued by CITY.

5.11.2 **From Others Benefited.** In any case where CITY requires or permits LANDOWNER to plan, design, construct, or fund the planning, design or construction of Public Facilities, including Backbone Infrastructure, required for development of the Project by the terms of the Financing Plan or as set out in the conditions of approval of the Project Entitlements or in the Special Conditions, and either: (i) LANDOWNER's costs are in excess of or beyond those required to be incurred by LANDOWNER as specified in the Funding Agreement, Public Financing Mechanisms and/or in a reimbursement agreement, or (ii) CITY determines that LANDOWNER was required to make Dedications, provide mitigation or incur costs in

connection with Public Facilities in excess of or beyond those required for Development of the Property, (collectively "Excess Costs"); CITY shall utilize its best efforts to require that all other landowners benefited by the Public Facilities shall reimburse (through fee districts, agreements, conditions of approval, or otherwise) LANDOWNER for such landowner's proportionate share of such Excess Costs, as determined in accordance with the nexus study that implements the Financing Plan, Public Financing Mechanism, reimbursement agreement, or by CITY. Such Reimbursement shall be subject to the limitations specified in Section 5.11.1, and shall not exceed the amount of actual and reasonable Excess Costs LANDOWNER incurred.

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

5.12 [Intentionally Deleted]

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

5.13.1 **Proceedings.** The procedures specified in the Procedural Ordinance for conduct of the Annual Review by the City Manager and City Council shall apply to each Annual Review of this Agreement. At least 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

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permitted an opportunity to respond to CITY's evaluation of LANDOWNER's performance by written and oral testimony at the public hearing to be held before the City Council, if LANDOWNER so elects. At the conclusion of the Annual Review, CITY shall make written findings and determinations on the basis of substantial evidence, as to whether or not LANDOWNER or its successors and any Assignees have complied in good faith with the terms and conditions of this Agreement.

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

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

~~6.2~~ **Participation in the Financing Plan.** As more particularly described in the Financing Plan, LANDOWNER shall participate in the establishment of a method for financing of required Infrastructure and public facilities through a combination of land transfers, dedications and contributions, fees, assessment districts, community facilities districts and other sources, so that the land within the Financing Plan Area pays for its share of the cost of such Infrastructure and facilities. The plan also recognizes that there is a regional cost associated with certain portions of Infrastructure and facilities, and that that share will ultimately have to be paid from other sources, even though developers within the area, including LANDOWNER, acknowledge that they may have to participate in funding regional costs on a fair share basis. LANDOWNER shall participate in the Financing Plan, as made applicable to the development of the Property, and shall faithfully and timely comply with each and every provision thereof, including but not limited to assessments, special taxes, development fees and exactions set forth therein. Without limiting the foregoing, applications for conditional use permits, subdivision maps or other land use entitlements and building permits may be made subject to LANDOWNER's participation in and compliance with the Financing Plan. Failure to so participate shall be an event of default to which the default provisions of this Agreement and the Procedural Ordinance shall apply. For purposes of this Agreement "participate" and "participation" shall mean payment of all monies required by virtue of the Financing Plan, and performance of all obligations imposed thereby.

6.3 **LANDOWNER's Waivers.** LANDOWNER hereby agrees to the provisions of the Protest Waiver, which is a comprehensive waiver of protest rights with respect to CITY's establishment

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and implementation of Public Financing Mechanisms and Development Fees, and in levying assessments and taxes pursuant thereto, and CITY's actions in implementing any provision of the Financing Plan, Project Entitlements, Special Conditions, and Funding Agreement. As set forth in the Protest Waiver, LANDOWNER reserves the right to protest the actual amount of the fee, assessment or tax levy, or other CITY charge imposed on or allocated to the Property pursuant to the Financing Plan, Project Entitlements, Special Conditions, Funding Agreement, or this Agreement. The Protest Waiver shall be binding on LANDOWNER by LANDOWNER's execution of this Agreement if LANDOWNER fails to separately execute the Protest Waiver provided as Exhibit H.

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

6.5 **Park and Open Space Development.** At the time of filing the final map(s) and based upon the standards in Section 3.5, LANDOWNER shall develop the parks and open spaces located within that final map, as specified in the Tentative Map conditions in accordance with the Turnkey Park Requirement under the terms of a Turnkey Park Agreement. LANDOWNER shall receive full credit for the cost of developing those parks and open spaces as specified by CITY against the amount of the Park Development Impact Fees that would otherwise be assessed were it not for LANDOWNER's improvement of such park and open spaces at the time of filing that final map.

6.6 **Levies Imposed by Public Agencies.** LANDOWNER shall be responsible for: (i) all fees, charges, assessments, special taxes or levies of any sort imposed by any state or Public Agency in the future as a charge for financing of Public Facilities and Public Services for the Community Plan or Specific Plan area and for Mitigation Measures imposed for the purpose of mitigation of environmental impacts associated with the provision of the Public Facilities or Public Services; (ii) all special benefit assessments, special taxes or levies of any sort associated with construction of or maintenance of Public Facilities, where the Property is located within a

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district formed for that purpose by any state or Public Agency; and (iii) ad valorem real estate taxes and utility fees and taxes. Failure to pay such fees, charges, assessments, taxes or levies when due shall be a default, subject to cure, under this Agreement. However, nothing in this Agreement shall be construed to limit LANDOWNER's right to protest, in accordance with applicable provisions of law, the formation of any assessment district, the amount of any assessment levied by or on behalf of such district on the Property or any portion thereof, or the nature and amount of any tax, fee, assessment or charge imposed, except as provided in Section 6.3.

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

6.8 **Transfer of Land.** As set forth in the Specific Plan, Development Plan, Project Entitlements, Mitigation Measures, and Special Conditions, LANDOWNER has agreed to transfer lands, including defined interests that are less than fee interests therein, by Dedication or Reservation that are needed for Public Facilities to CITY, City Agency or Public Agency as specified or appropriate. LANDOWNER shall transfer the land required by Dedication to CITY, City Agency or Public Agency utilizing the Irrevocable Offer of Dedication agreement form provided as Exhibit L or by placing a Dedication or an Offer of Dedication, as directed by the CITY, on a final subdivision or parcel map in accordance with Government Code Sections 66439 and 66447. LANDOWNER shall transfer the land required by Reservation to CITY or to a Public Agency utilizing the Reservation form provided as Exhibit M and in accordance with Government Code Section 66480. LANDOWNER shall transfer the land required to be transferred by Dedication or by Reservation at such time as is either: (i) required pursuant to a condition or term of any entitlement for use or Development of the Property; or (ii) requested

by CITY, City Agency or Public Agency, subject to agreement of the Parties, where LANDOWNER has not applied for an entitlement for use or Development of the Property, but the land is needed for purposes of construction and improvement of Public Facilities. CITY shall accept such transfers of land by Dedication or Reservation, as provided therein.

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

6.8.2 **Parks Operating Agreement**. The Parties may enter into operating agreements that provide LANDOWNER with reasonable control over the hours of public use of and the nature of uses in, and if legally permissible the collection of revenue from the use of, parks Developed within the Property and anticipate that such operating agreements may apply to the Central Shops Historic District, and Lots 2e, 31, 32, and 35.

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

6.8.4 **Public Parking Facilities.** LANDOWNER shall not encumber the Improved Surface Lots that are designated for Development as either a structured parking lot or for retail, residential, office or mixed use in the Specific Plan, or Development Plan following the approval

of the City's use thereof as provided in the Special Conditions by placing any deed, mortgage, lien, reciprocal access easement or other similar encumbrance that could prevent or delay the designated Development of that parcel in accordance with the Specific Plan, or Development Plan, or Project Entitlements without CITY's prior written approval, which will not be unreasonably withheld.

6.9 [Intentionally Deleted]

6.10 **Dispute Resolution.** Where a dispute exists between LANDOWNER, Assignee, 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 on the Property in compliance with the Project Entitlements as set out in Section 5.2, such dispute shall be resolved by arbitration, utilizing the commercial arbitration procedures of 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 or its 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.

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

6.12 **Indemnification.** LANDOWNER agrees to defend and indemnify CITY, City Agency, Public Agency and their respective elective and appointive members of boards, commissions, officers, agents and employees against any liability for damage or claims for damage for

personal injury, including death, or property damage, arising out of or relating in any way to actions or activities to develop the Property, whether undertaken by LANDOWNER or LANDOWNER's affiliates, contractors, subcontractors, agents or employees. Said indemnification pursuant to this Section 6.12 shall not extend to claims that are based on an indemnified Party's gross negligence or willful misconduct. The provisions 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 except as otherwise provided therein, relating to the Development of the Property.

6.13 **Reimbursement for Agreement Costs.** LANDOWNER agrees to reimburse the CITY for reasonable and actual expenses incurred by CITY that relate directly to CITY's review, consideration and execution of this Agreement. Such expenses include, without limitation, recording fees, ordinance publishing fees, any special meeting and notice costs, and staff time, including preparation or staff reports relating to approval of this Agreement and the Adopting Ordinance, and preparation and review of this Agreement and any changes requested by LANDOWNER by the City Attorney's Office. The cost for the preparation, processing and review of this Agreement by the City Attorney's Office is $140 per hour. Such expenses shall be paid by LANDOWNER within thirty (30) days of receipt of a detailed written statement of such expenses.

6.14 **Transportation Management Association.** Notwithstanding anything herein to the contrary, LANDOWNER shall form a transportation management association that encompasses all of the Property and imposes an annual fee assessment to fund the association's operations and services. Formation of the association and the initiation of proceedings to establish a community facilities assessment district or similar benefit assessment district to fund the association operations and services shall occur prior to approval of the first final map or issuance of the first building permit, and the protest waiver set out in Exhibit H shall apply to the creation of that district. The transportation management association shall be charged with the obligation to implement transportation system management measures to achieve a reduction in vehicular trips by employees and residents within the Project. The transportation management association articles of incorporation, bylaws, fee assessment, annual budget and transportation system management measures shall be subject to CITY approval. The transportation system management measures funded by the association may include paying for

a portion of the net operating costs for the light rail system and other transit services provided by the Sacramento Regional Transit District that serve the Property.

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7.0 **LITIGATION, DEFAULT, AND TERMINATION.**

7.1 **Litigation by Others.**

7.1.1 **Challenge to Agreement or Entitlements.** The Parties agree to cooperate in good faith in the defense of any litigation (which includes all claims, actions, or proceedings or any kind) 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 litigation by a third party challenging the proceedings taken for its approval (including the CEQA requirements), (ii) any litigation by a third party challenging the validity of any of the Project Entitlements (including CEQA challenges), (iii) any litigation by a third party to enforce the application of a voter approved initiative to Development of the Property for the Project, or (iv) any litigation 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.

7.1.2 **Defense, Indemnity, and Release.** In all such litigation, the following shall apply:

7.1.2.1 CITY will promptly notify LANDOWNER of any litigation filed and served on CITY arising out of, concerning, or in any way connected to this Agreement or the Project, or any portion of either. CITY may, in its sole discretion, either defend such litigation or tender its defense to LANDOWNER.

7.1.2.2 If the 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 If CITY determines to tender the defense of the litigation to LANDOWNER, CITY shall promptly notify LANDOWNER of its determination. LANDOWNER shall, upon such notice from CITY, at LANDOWNER's expense, defend, indemnify, and hold harmless CITY, its officers, employees, and agents, and each and every one of them, from and against the litigation, including the issuance of or the refusal to issue any permits prior to or during the pendency of the action. LANDOWNER's obligation to indemnify and hold harmless shall include all damages, costs of suit, fees (including attorney's fees awarded under Code of Civil

Procedure section 1021.5 or otherwise), and expenses of every type and description, including the cost of preparing the administrative record, fees, and/or costs reasonably incurred by CITY for its staff attorneys or outside attorneys, and any fees and expenses incurred in enforcing this provision, where such damages, costs of suit, fees, and expenses are claimed by or awarded to any party against CITY or otherwise incurred by the CITY. CITY shall have the right to approve the legal counsel providing the CITY's defense under this Section 7.1.2, which approval shall not be unreasonably withheld. If a conflict of interest arises between CITY and LANDOWNER in the joint defense of the action, then, in CITY's sole discretion, LANDOWNER shall provide CITY separate legal counsel acceptable to CITY at LANDOWNER's reasonable expense, or CITY shall retain its own counsel at CITY's expense.. LANDOWNER shall have the right to settle such litigation without CITY's consent thereto, provided LANDOWNER accepts the 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.

7.1.2.4 With respect to approvals and entitlements governed by the Subdivision Map Act, California Government Code section 66410 et seq., the obligations under this Agreement shall be construed to be consistent with and shall apply to the extent permitted under California Government Code section 66474.9. In these cases, if CITY should fail to promptly notify LANDOWNER of the litigation or cooperate fully in the defense, LANDOWNER shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees to the extent California Government Code section 66474.9 applies. LANDOWNER shall not be required to pay or perform any settlement of such claim, action, or proceeding unless the settlement is approved in writing by LANDOWNER.

7.1.2.5 [Intentionally Omitted]

7.1.2.6 LANDOWNER unconditionally and forever releases and discharges CITY, its officers, employees, and agents, and each and every one of them, from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that in any way arise from, or are connected with, the

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issuance of or the refusal to issue any building or other permit for the Project while any litigation concerning the Application, the Project, or any portion of either, is pending. This release and discharge covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind, past, present, and future, whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or unmatured. LANDOWNER hereby waives all rights it has or may have in the future under section 1542 of the California Civil Code, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him must have materially affected his settlement with the debtor.

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. However, if the litigation relates entirely, solely and exclusively to a challenge to the Financing Plan in general, separate and apart from this Agreement or any Project Entitlement or Subsequent Approval relating to the Property, and if LANDOWNER is named or becomes a party in such litigation, LANDOWNER and CITY shall bear the cost of the successful party's attorney fees and/or costs in the manner specified in the court's judgment.

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

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either party shall have the right to terminate this Agreement for its convenience by giving the other party notice as provided in Section 9.2.

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

7.1.4 **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 or its 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; (vi) acts of God, including floods, earthquakes, fires, casualties, or other natural calamities; (v) enactment of supervening state or federal laws or regulations; (vi) shortages of materials and supplies or delivery interruptions; (vii) compliance with DTSC orders and requirements, and related procedural processes, relating to the environmental remediation and management of the Property, but not if the delay or inability to perform is caused by LANDOWNER's failure to perform its obligations under DTSC's orders and requirements and related procedural processes; or (viii) litigation instituted by third parties challenging the validity of this Agreement or Subsequent Approvals. A Party's financial inability to perform shall not be a ground for claiming an enforced delay. The Party claiming force majeure or enforced delay shall notify the other Party of its intent to claim a permitted delay and the specific ground for such delay as soon as is reasonable based on the circumstances. Upon request of either Party, a written extension of time for such cause shall be granted for the period of the force majeure or enforced delay and the Term of this Agreement shall be extended by amendment in accordance with Section 2.4.

7.3 **Waiver.** Except as otherwise expressly provided herein to the contrary, by entering into this Agreement LANDOWNER waives its right to challenge the fairness or appropriateness of, as

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applied to the Property and/or the Project, of (i) the Development Plan, Project Entitlements, Special Conditions; (ii) Public Financing Mechanisms and Development Fees; (iii) the Dedications and Reservations for Public Facilities and Public Services; (iv) the Mixed Income Housing Strategy; (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, material failure to: (i) comply with any provision of the Financing Plan, (ii) transfer land for Public Facilities as required by Dedication or Reservation, (iii) undertake construction of Public Facilities, and/or (iv) implement or comply with the terms and conditions set out in the Mitigation Measures, Mitigation Monitoring Plan, Special Conditions, Mixed Income Housing Strategy and/or the conditions of approval set out in the Project Entitlements. In addition, "default" shall mean a material failure of performance or a substantial and unreasonable delay in performance by CITY or LANDOWNER of any of term, condition, obligation or covenant set out in the: (i) Proposition 1C Agreement, and (ii) Owner Participation Agreement.

7.4.1 **Parties' Liability.** Notwithstanding any other provision of law or any provision of this Agreement to the contrary, in no event shall LANDOWNER, CITY, City Agency, Public Agency or their respective elective and appointive members of boards, commissions, and officers, agents and employees be liable in damages for any breach, default or violation of this Agreement, it being specifically understood and agreed that the Parties' sole legal remedy for a breach, default or violation of this Agreement shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement; provided, however, that this Section 7.4.1 shall not limit the prevailing party's ability to recover attorney fees and costs of litigation as provided in Section 7.5.

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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.

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 include 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 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.

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.**

7.6.4.1 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 (iii) CITY shall not be in default or otherwise liable to LANDOWNER or a non-defaulting Assignee because of CITY's action to declare a default. In no event shall a default of an Assignee of a portion of the Property prevent LANDOWNER or non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement. In no event shall a default of LANDOWNER prevent

non-defaulting Assignees from receiving Building Permits and Subsequent Approvals for the remainder of the Property pursuant to the terms of the Assignment and Assumption Agreement.

7.6.4.2 Where a portion of the Property has been transferred in accordance with the Assignment provisions of this Agreement and written notice of default has been given by CITY to LANDOWNER, (i) no non-defaulting Assignee shall be liable for the default of LANDOWNER, (ii) the rights of non-defaulting Assignees under this Agreement shall not be affected by the default of LANDOWNER and (ii) CITY shall not be in default or otherwise liable to non-defaulting Assignees because of CITY's action to declare a default. 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.

7.6.4.3 Notwithstanding Section 7.5, if the CITY certifies to the non-defaulting Parties and Assignees that the default of a defaulting Party or Assignee would prevent or impede the CITY's performance of its obligations to the non-defaulting Parties and Assignees under this Agreement, then the parties shall bear their own attorneys' fees, costs, expenses, and disbursements in connection with any arbitration, quasi-judicial, administrative, or judicial proceeding (including appeals), brought by any Party or Assignee to enforce or interpret any covenant or rights or remedies of a Party or Assignee under this Agreement, including any action for declaratory or equitable relief.

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 ninety (90) days following receipt of notice of default. If requested by either Party, the Parties shall meet and confer in an attempt to resolve the matter raised by the notice of default. During any such cure period, the Party charged shall not be considered in default for purposes of cancellation or termination of this Agreement and neither Party may institute legal proceedings related to the alleged default.

7.6.6 **Notice to Assignee of LANDOWNER Default.** If an Assignee gives CITY notice as provided in Section 9.2 requesting a copy of any notice of default given by CITY to LANDOWNER under this Agreement and specifying the address to which the notice should be delivered or sent, then CITY shall give Assignee, concurrently with giving notice to LANDOWNER, any notice of default given to LANDOWNER, and if CITY determines that LANDOWNER is in default, then CITY shall give Assignee, concurrently with giving notice to LANDOWNER, any notice of determination of default given to LANDOWNER, provided that CITY's failure to give notice as provided in this section does not affect any notice or cure periods provided in this Agreement or invalidate any actions that CITY takes in accordance with the notice.

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 ten (10) days prior to the hearing. LANDOWNER shall be given an opportunity to be heard at the public hearing. The burden of proof whether LANDOWNER is in default shall be on CITY, the burden of proof whether the CITY is in default shall be on the LANDOWNER, the burden on whether the default has been properly cured shall be on the Party alleged to be in default.

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 substantial risk to the public health or safety exists, this Agreement

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shall be cancelled for breach as of the date of the City Council's determination. LANDOWNER may thereafter institute legal proceedings to obtain appropriate judicial relief including, without limitation, mandamus, specific performance, or injunctive relief. Expiration of the Term of this Agreement shall be tolled during the period of legal proceedings, should there be a judicial determination invalidating or reversing the CITY's cancellation of this Agreement.

7.8 **Termination for Convenience.**

7.8.1 **Termination Upon Completion of Development.** This Agreement may, at the request of LANDOWNER, terminate as to each parcel of land contained within the Property when that parcel of land (i) has been fully developed, (ii) all occupancy permits for the buildings constructed thereon have been issued by CITY or OSHPD, (iii) CITY has accepted the PUBLIC Facilities constructed by LANDOWNER thereon or required to serve that parcel, (iv) CITY, City Agency and/or Public Agency has accepted the dedications thereon, and (v) all of LANDOWNER'S obligations in connection therewith as set out in this Agreement are satisfied, as reasonably determined by CITY. CITY shall, upon written request made by LANDOWNER to CITY's 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. The fee shall be determined in accordance with CITY's established fees and charges then in effect.

7.8.2 **Multi-family Projects.** This Agreement shall automatically terminate and be of no further force and effect as to any multi-family building, and the lot or parcel upon which said 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 or LANDOWNER, as applicable, if it has not executed the written agreement with CITY.

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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.

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

7.9 **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 General Plan, Community Plan, Specific Plan, Development Plan, Project Entitlements, Mitigation Measures, Special Conditions, Mixed Income Housing Strategy, Financing Plan, Public Financing Mechanisms, Development Fee, Land Use and Development Regulations, Design Guidelines and Subsequent Approvals, including, without limitation, tentative maps, conditional use 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

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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 for the Project.

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

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

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

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

8.4 **Other CITY Notices.** If CITY receives notice from a Lender(s) 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 any such 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 the LANDOWNER:
Downtown Railyard Venture, LLC
3140 Peacekeeper Way
McClellan, California 95652
Attention: President

with copies to:

Downtown Railyard Venture, LLC
3140 Peacekeeper Way
McClellan, California 95652
Attention: General Counsel

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.

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9.3 **Integrated Documents.** This Agreement, the Exhibits, and the documents incorporated by reference in this Agreement or in the Exhibits are to be considered as one document.

9.4 **Severability.** If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties as provided in Section 2.4. If any provision of this Agreement is held invalid, void or unenforceable and the remainder of the Agreement cannot be enforced without failure of material consideration to any Party, either Party shall have the right, in its sole discretion, to terminate this Agreement for its convenience upon providing written notice of such termination to the other Party and specifying the effective date thereof. In the event either Party so elects to terminate this Agreement, such election shall not affect in any manner the terms and conditions of any entitlement granted by CITY with respect to the Property, any portion thereof, prior to the termination date, except as provided in Section 7.10.

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 3.4 and 4.0.

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

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Adopting Ordinance. If the Adopting Ordinance is the subject of a referendum, LANDOWNER shall have the right to terminate this Agreement for its convenience by providing written notice to CITY as provide in Section 9.2 no later than thirty (30) days after the referendum petition is certified as valid by the County elections officer, or such later time as allowed in writing by the City Manager. The Parties' obligation to perform under this Agreement shall be suspended pending the outcome of any such the referendum election. The Term of this Agreement will be extended by the amount of time between the date the petition for referendum is certified as valid by the County elections officer and the date on which the results of the special election are certified as valid by the County elections officer.

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, the Parties' successors and Assignees, and Lenders. No Person who is not a Lender, or a qualified successor of a Party or an Assignee pursuant to Sections 2.7 and 8.1.3 of this Agreement, or who has not become a party by duly adopted amendment to this Agreement, may claim the benefit of any provision of this Agreement.

9.12 **Effect of Agreement Upon Title to Property.** In accordance with the provisions of Government Code Section 65868.5, from and after the time of recordation of this Agreement,

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the Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of the State of California. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.

9.13 **Survivorship.** The LANDOWNER's obligations arising under this Agreement pertaining to indemnity and attorneys fees as set out in Sections 2.8.5, 2.9, 6.10, 6.12, 7.1.2.3, 7.1.3.1 and 7.5 and LANDOWNER's rights regarding approved entitlements as set out in Section 7.9 shall survive the expiration, termination or cancellation of this Agreement.

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

9.15 **Amended, Restated and Superseded**. This Agreement amends, restates, and supersedes, in its entirety, that certain Development Agreement for Sacramento Railyards Project, Project No. P-05-09078, between the City of Sacramento and S. Thomas Enterprises of Sacramento, LLC, approved on December 11, 2007, and recorded in the Official Records of Sacramento County at Book 20080222, at Page 651.

9.16 **Power of Eminent Domain.** It is understood that LANDOWNER may be required by CITY to utilize is good faith efforts to acquire certain parcels and land and rights-of-way which are not currently owned by LANDOWNER and necessary to construct the Public Facilities as required by CITY to serve the Project. Should it become necessary due to LANDOWNER's failure to acquire such lands and rights-of-way, the CITY shall negotiate the purchase of the needed land and rights of way to allow LANDOWNER or CITY to construct the Public Facilities that are required to be constructed by LANDOWNER or CITY to serve the Project under this Agreement. If necessary, in accordance with the procedures established by State law, CITY may use its power of eminent domain to condemn such lands and rights-of-way. LANDOWNER shall pay for CITY's costs associated with CITY's acquisition and condemnation proceedings unless such costs are paid through a Public Financing Mechanism or Development Fee. If CITY is unable or prevented from acquiring or condemning the necessary land and rights-of-way to enable

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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.

9.19 **Final Form of Exhibits**. It is the intention of the Parties, and the Parties expressly agree, that the Exhibits to this Agreement may be modified by CITY, in cooperation with LANDOWNER after City Council approval of the Adopting Ordinance and execution of this Agreement by the Parties, and prior to recordation, in order to conform the contents of the Exhibits to the final City Council approval of the Project.

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FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 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:

_____
City Attorney

LANDOWNER:

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware Limited Liability Company

By:_____

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

_____
_____

Date: _____ **********

(ATTACH NOTARY ACKNOWLEDGMENTS)
EXECUTION PAGE FOR LENDER

IA Sacramento, LLC, a Delaware limited liability company (herein "LENDER") owns an equitable interest in the Property described in Exhibit A of this Agreement as the beneficiary of that certain Deed of Trust, Security Agreement and Fixture Filing dated _____ 2015, and recorded on _____ 2015, in Book _____, Page ____, Official Records, Sacramento County, California, and that certain Assignment of Leases and Rents dated _____ 2015, and recorded on _____ 2015, in Book _____, Page ___, Official Records, Sacramento County, California.

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

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

IA Sacramento, LLC
_____
Oak Brook, Illinois 60523
Attn:_____

with a copy to:

_____
_____

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

_____
Attn:_____

LENDER:

By:_____

Name:_____

Title:_____

Dated:_____

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

(ATTACH APPROPRIATE ACKNOWLEDGMENT)

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT LIST

Exhibit A – Property
Exhibit B – Development Plan
Exhibit C – Project Entitlements
Exhibit D – Project Environmental Certification
Exhibit E – Financing Plan
Exhibit F – Fee and Infrastructure Adjustment Procedure
Exhibit G – Funding Agreement Business Terms
Exhibit H – Protest Waiver
Exhibit I – Mixed Income Housing Strategy
Exhibit J – Assignment and Assumption Agreement Form
Exhibit K – Irrevocable Offer to Dedicate Form – Recreation Easement
Exhibit L – Irrevocable Offer to Dedicate Form – All Purpose
Exhibit M – Reservation of Real Property Agreement Form
Exhibit N – Parks and Open Space Requirements
Exhibit O – Public Safety Radio Communication Requirements for Building
Exhibit P – Special Conditions
Exhibit Q – MLS Stadium Parking Plan

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT A
DESCRIPTION OF LANDOWNER'S PROPERTY

THE PROPERTY CONSISTS OF PARCELS OF LAND DESIGNATED AS ASSESSOR PARCEL NUMBERS: 002-0010-049, 002-0010-052, 002-0010-056, AND 002-0010-063. THE PROPERTY IS LOCATED WITHIN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO AS MORE PARTICULARLY DESCRIBED IN EXHIBIT A-1, WHICH IS ATTACHED AND INCORPORATED INTO THIS AGREEMENT.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT A-1
PROPERTY
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SACRAMENTO, CITY OF SACRAMENTO, DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND BEING A PORTION OF PARCEL A AS SAID PARCEL IS SHOWN AND SO DESIGNATED ON PARCEL MAP FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10 OF SAID OFFICIAL RECORDS BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WESTERLY LINE OF 6TH STREET (80 FEET WIDE) AND THE NORTHERLY LINE OF H STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 6TH STREET NORTH 18° 26' 23" EAST, 15.24 FEET;

THENCE LEAVING SAID WESTERLY LINE NORTH 44° 14' 53" EAST, 183.76 FEET TO THE POINT OF INTERSECTION OF THE EASTERLY LINE OF SAID 6TH STREET AND THE NORTHERLY LINE OF THE ALLEY (20 FEET WIDE) IN THE BLOCK BOUNDED BY G, H, 6TH AND 7TH STREETS;

THENCE ALONG THE NORTHERLY LINE OF SAID ALLEY SOUTH 71° 37' 21" EAST, 319.58 FEET TO ITS INTERSECTION WITH THE WESTERLY LINE OF 7TH STREET (80 FEET WIDE);

THENCE ALONG SAID WESTERLY LINE OF 7TH STREET NORTH 18° 19' 02" EAST, 1164.13 FEET TO A POINT THEREON LOCATED 100 FEET SOUTHERLY FROM THE NORTHERLY LINE OF THE ALLEY BETWEEN D, E, 6TH AND 7TH STREETS, SAID POINT BEING THE POINT OF BEGINNING OF THE STREET VACATION BY SACRAMENTO CITY ORDINANCE NO. 214, FOURTH SERIES;

THENCE NORTH 40° 07' 56" EAST, 34.84 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE LAND CONVEYED TO THE CITY OF SACRAMENTO BY DEED RECORDED IN BOOK 8512-31 AT PAGE 1928 OFFICIAL RECORDS OF SAID COUNTY;

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE 72.50 FEET THROUGH A CENTRAL ANGLE OF 11° 58' 18" SAID NORTHWESTERLY LINE BEING THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 347.00 FEET TO WHICH A RADIAL LINE BEARS NORTH 63° 01' 57" WEST;

THENCE LEAVING SAID NORTHWESTERLY LINE SOUTH 79° 25' 14" WEST, 190.28 FEET;

THENCE SOUTH 49° 52' 44" WEST, 326.94 FEET;

THENCE 444.33 FEET ALONG THE ARC OF A 843.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 30° 11' 59";

THENCE SOUTH 80° 04' 43" WEST, 17.41 FEET;

THENCE SOUTH 33° 41' 42" WEST, 107.73 FEET;

THENCE SOUTH 80° 04' 43" WEST, 268.35 FEET;

THENCE SOUTH 18° 24' 47" WEST, 490.56 FEET;

THENCE SOUTH 26° 44' 53" EAST, 62.45 FEET;

THENCE SOUTH 71° 37' 38" EAST, 57.14 FEET TO THE INTERSECTION OF THE NORTHERLY LINE OF "H" STREET (80 FEET WIDE) WITH THE WESTERLY LINE OF 5TH STREET (80 FEET WIDE);

THENCE ALONG THE NORTHERLY LINE OF "H" STREET SOUTH 71° 33' 22" EAST, 405.74 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE MOST SOUTHERLY LINE OF PARCEL A, AS FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10. SAID BEARING IS SHOWN ON SAID MAP AS NORTH 71° 30' 19" WEST.

THIS PARCEL IS ALSO DESCRIBED AS PARCEL 1 IN THE CERTIFICATE OF COMPLIANCE RECORDED JANUARY 31, 2007 IN BOOK 20070131, PAGE 2410, OFFICIAL RECORDS.

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXCEPTING THEREFROM ALL THAT PROTION THEREOF AS DESCRIBED IN THAT CERTAIN CORRECTION DEED DATED FEBRUARY 19, 2015, EXECUTED BY IA SACRAMENTO HOLDINGS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY IN FAVOR OF THE STATE OF CALIFORNIA, RECORDED APRIL 22, 2015, IN BOOK 20150422, PAGE 1067, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS DESCRIBED IN THAT CERTAIN GRANT DEED DATED APRIL 20, 2012, EXECUTED BY IA SACRAMENTO HOLDINGS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY IN FAVOR OF THE CITY OF SACRAMENTO, RECORDED APRIL 26, 2012, IN BOOK 20120426, PAGE 1168, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS DESCRIBED IN THAT CERTAIN GRANT DEED DATED SEPTEMBER 18, 2015, EXECUTED BY DOWNTOWN RAILYARD VENTURE, LLC, A DELAWARE LIMITED LIABILITY COMPANY IN FAVOR OF SACRAMENTO MUNICIPAL UTILITY DISTRICT, A MUNICIPAL UTILITY DISTRICT, RECORDED OCTOBER 1, 2015, IN BOOK 20151001, PAGE 936, OFFICIAL RECORDS.

APN: 002-0010-063

PARCEL 2:

ALL THAT REAL CERTAIN REAL PROPERTY IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND BEING A PORTION OF THAT CERTAIN 203.161 ACREA TRACT OF LAND AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN BOOK 51 OF SURVEYS, AT PAGE 10, OFFICIAL RECORDS OF SACRAMENTO COUNTY, AND BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER PARCEL B OF CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 28, 2006, IN BOOK 20061228, PAGE 1681 OFFICIAL RECORDS OF SAID COUNTY, SAID NORTHEASTERLY CORNER BEING ON THE WESTERLY LINE OF 12TH STREET;

THENCE ALONG SAID WESTERLY LINE OF 12TH STREET NORTH 18° 26' 40" EAST A DISTANCE OF 344.37 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO STEEL MILL SUPPLY COMPANY INC. BY DEED RECORDED IN BOOK 955 AT PAGE 427 OFFICIAL RECORDS OF SAID COUNTY;

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CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

THENCE ALONG THE BOUNDARY OF THE LAND SO CONVEYED, NORTH 71° 38' 25" WEST, 610.46 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, NORTH 38° 53' 55" WEST, 18.80 FEET TO THE CENTERLINE OF A STREET AND THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO CENTRAL PACIFIC RAILWAY CO. BY DEED RECORDED IN BOOK 955 AT PAGE 428 OFFICIAL RECORDS OF SAID COUNTY;

THENCE CONTINUING NORTH 38° 53' 55" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND SO CONVEYED 166.40 FEET TO THE MOST NORTHERLY CORNER THEREOF, SAID CORNER IS LOCATED ON THE CENTERLINE OF 10TH STREET;

THENCE NORTH 18° 22' 57" EAST, 37.18 FEET ALONG SAID CENTERLINE OF 10TH STREET TO A POINT BEING THE SOUTHEAST CORNER OF PARCEL NO. 2 OF THOSE CERTAIN PARCELS OF LAND CONVEYED TO THE RANSOM COMPANY BY DEEDS RECORDED IN BOOK 991 AT PAGE 486 AND 487 OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, ALONG THE ARC OF A NON TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 372.24 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS NORTH 51° 22' 21" WEST, 54.17 FEET;
THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 47° 12' 00" WEST, TANGENT TO SAID CURVE 20.41 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 371.79 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS NORTH 43° 54' 37" WEST, 42.67 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 40° 37' 14" WEST, TANGENT TO SAID CURVE, 14.72 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 39° 01' 43" WEST, 10.00 FEET;

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THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 37° 25' 11" WEST, 14.72 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 371.79 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS NORTH 34° 07' 48" WEST, 42.67 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 30° 50' 25" WEST, TANGENT TO SAID CURVE, 55.84 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 296.57 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS NORTH 34° 55' 23" WEST, 42.23 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 39° 00' 21" WEST, TANGENT TO SAID CURVE, 61.00 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 296.57 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS NORTH 46° 47' 12" WEST, 80.30 FEET;

THENCE CONTINUING ALONG THE SOUTHWESTERLY BOUNDARY OF THE PARCELS OF LAND SO CONVEYED, NORTH 47° 21' 51" WEST, 75.74 FEET TO THE INTERSECTION OF THE WESTERLY LINE OF 9TH STREET AND THE SOUTHERLY LINE OF NORTH B STREET (80 FEET WIDE);

THENCE NORTH 56° 43' 10" WEST, 155.24 FEET TO A POINT ON THE CENTERLINE OF SAID NORTH B STREET;

THENCE NORTH 71° 39' 03" WEST, 1060.32 FEET ALONG SAID CENTERLINE OF NORTH B STREET;

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THENCE LEAVING SAID CENTERLINE NORTH 18° 15'57" EAST, 40.00 FEET TO THE NORTHERLY LINE OF SAID NORTH B STREET;

THENCE NORTH 71° 39' 03" WEST, 470.45 FEET ALONG SAID NORTHERLY LINE OF NORTH B STREET, AND THE NORTHERLY LINE OF THAT CERTAIN GRANT OF EASEMENT TO THE CITY OF SACRAMENTO RECORDED IN BOOK 655 OF DEEDS AT PAGE 476, TO THE NORTHWESTERLY LINE OF SAID EASEMENT;

THENCE SOUTH 21° 10' 36" WEST, ALONG SAID NORTHWESTERLY LINE, 96.89 FEET TO THE NORTHERLY LINE OF THE LAND CONVEYED TO THE CENTRAL PACIFIC RAILROAD COMPANY BY DEED RECORDED IN BOOK 143 OF DEEDS AT PAGE 79;

THENCE SOUTH 83° 22' 17" WEST, ALONG THE NORTHERLY LINE OF THE LAND SO CONVEYED, 808.60 FEET TO THE MOST EASTERLY CORNER OF THAT CERTAIN TRIANGULAR STRIP OF LAND CONVEYED TO THE CENTRAL PACIFIC RAILWAY COMPANY AS PARCEL NO. 2 BY DEED RECORDED IN BOOK 655 OF DEEDS AT PAGE 489;

THENCE ALONG THE BOUNDARY OF SAID PARCEL NO. 2, SOUTH 89° 35' 01" WEST, 488.40 FEET;

THENCE SOUTH 00° 24' 59" EAST, 347.74 FEET CONTINUING ALONG THE BOUNDARY OF SAID PARCEL NO. 2 AND THE BOUNDARY OF THE LAND CONVEYED TO THE CITY OF SACRAMENTO BY DEED RECORDED IN BOOK 655 OF DEEDS AT PAGE 478;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 72° 22' 30" WEST, 192.56 FEET TO THE SOUTHWEST CORNER THEREOF, SAID POINT ALSO BEING SITUATE ON THE NORTHERLY LINE OF THE LAND CONVEYED TO THE CENTRAL PACIFIC RAILWAY COMPANY BY DEED RECORDED IN BOOK 372 AT PAGE 71;

THENCE ALONG SAID BOUNDARY, SOUTH 83° 14' 45" WEST, 849.81 FEET TO THE EASTERLY LINE OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 6907 23 AT PAGE 62 OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 02° 54' 31" WEST, 106.95 FEET;

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THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 04° 20' 18" EAST, 258.98 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTHWESTERLY ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS SOUTH 21° 09' 08" WEST, 172.14 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 83° 57' 15" WEST, 225.06 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTHERLY ALONG THE ARC OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 980.00 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS SOUTH 17° 04' 57" EAST, 41.08 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 18° 17' 00" EAST, TANGENT TO SAID CURVE, 127.28 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTHERLY ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 520.00 FEET, THE CHORD SUBTENDED BY SAID ARC BEARS SOUTH 08° 28' 21"EAST 177.21 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, NORTH 88° 39' 43" WEST, RADIAL TO SAID CURVE 34.33 FEET TO AN ANGLE POINT IN THE BOUNDARY OF THE LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 8003-26 AT PAGE 478 OFFICIAL RECORDS OF SAID COUNTY;

THENCE ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 01 DEGREE 25' 08" WEST, 204.49FEET;

THENCE ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 01 DEGREE 20' 08" WEST 567.62 FEET;

THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 22° 17' 45" WEST, 242.66 FEET;

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THENCE CONTINUING ALONG THE BOUNDARY OF THE LAND SO CONVEYED, SOUTH 13° 05' 18" WEST, 58.10 FEET TO A LINE PARALLEL WITH AND DISTANT 25 FEET NORTHERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF SOUTHERN PACIFIC TRANSPORTATION COMPANY'S WESTWARD MAIN TRACK (SACRAMENTO TO OAKLAND) ALSO BEING A POINT ON THE NORTHERLY BOUNDARY LINE OF SAID CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 28, 2006;

THENCE ALONG SAID NORTHERLY BOUNDARY LINE OF SAID CERTIFICATE OF COMPLIANCE SOUTH 71° 34' 07" EAST, 71.56 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE 439.27 FEET ALONG THE ARC OF A 750.00 FOOT RADIUS TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 33° 33' 28";

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE NORTH 74° 52' 25" EAST, 583.72 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE 136.27 FEET ALONG THE ARC OF A 1500.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 05° 12' 18";

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE NORTH 80° 04' 43" EAST, 1035.82 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE 337.93 FEET ALONG THE ARC OF AN 825.00 FOOT RADIUS TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 23° 28' 09";

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE NORTH 56° 36' 34" EAST, 416.15 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE 192.85 FEET ALONG THE ARC OF A 500.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 22° 05' 55";

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THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE NORTH 78° 42' 29" EAST, 1371.35 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE 711.37 FEET ALONG THE ARC OF A 1370.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29° 45' 03";

THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY LINE SOUTH 71° 32' 29" EAST, 93.07 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

PARCEL D OF CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 28, 2006 IN BOOK 20061228, PAGE 1682 OFFICIAL RECORDS OF SACRAMENTO COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF THAT CERTAIN TRIANGULAR STRIP OF LAND CONVEYED TO THE CENTRAL PACIFIC RAILWAY COMPANY AS PARCEL NO. 2 BY DEED RECORDED IN BOOK 655 OF DEEDS AT PAGE 489;

THENCE ALONG THE BOUNDARY OF SAID PARCEL NO. 2, SOUTH 89° 35' 01" WEST, 488.40 FEET;

THENCE CONTINUING ALONG SAID BOUNDARY SOUTH 00° 24' 59" EAST, 347.74 FEET;

THENCE LEAVING SAID BOUNDARY SOUTH 15° 38' 36" WEST, 165.98 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 09° 58' 14" EAST, 581.56 FEET;

THENCE NORTH 79° 55' 50" EAST, 288.50 FEET;

THENCE NORTH 82° 07' 51" EAST, 150.00 FEET;
THENCE NORTH 80° 01' 46" EAST, 286.61 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 1263.14 FEET TO WHICH A RADIAL BEARS SOUTH 84° 10' 24" WEST;

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THENCE NORTHERLY 498.86 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 37' 42" TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 375.26 FEET TO WHICH A RADIAL BEARS NORTH 02° 21' 08" EAST;

THENCE SOUTHWESTERLY 162.38 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 47' 34" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 526.33 FEET TO WHICH A RADIAL BEARS SOUTH 22° 26' 26" EAST;

THENCE WESTERLY 153.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16° 45' 48";

THENCE SOUTH 84° 19' 22" WEST, 232.96 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 637.00 FEET;

THENCE WESTERLY 275. 31 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 45' 46" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 565.52 FEET TO WHICH A RADIAL BEARS NORTH 19° 05' 08" EAST;

THENCE NORTHWESTERLY 54.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05° 32' 05" TO THE TRUE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE MOST SOUTHERLY LINE OF PARCEL A, AS FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10. SAID BEARING IS SHOWN ON SAID MAP AS NORTH 71° 30' 19" WEST.

THIS PARCEL IS ALSO DESCRIBED AS PARCEL 2 IN THE CERTIFICATE OF COMPLIANCE RECORDED JANUARY 31, 2007 IN BOOK 20070131, PAGE 2410, OFFICIAL RECORDS

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS DESCRIBED IN THAT CERTAIN GRANT DEED DATED APRIL 20, 2012 EXECUTED BY IA SACRAMENTO HOLDINGS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY IN FAVOR OF THE CITY OF SACRAMENTO, RECORDED APRIL 26, 2012, IN BOOK 20120426,
PAGE 1168, OFFICIAL RECORDS.

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS DESCRIBED IN THAT CERTAIN GRANT DEED DATED FEBRUARY 28, 2011 EXECUTED BY IA SACRAMENTO HOLDIJNGS, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY IN FAVOR OF THE CITY OF SACRAMENTO, RECORDED FEBRUARY 28, 2011, IN BOOK 20110228, PAGE 955, OFFICIAL RECORDS.

APN: 002-0010-056 AND 002-0010-052

PARCEL 3:

ALL THAT CERTAIN REAL PROPERTY IN THE CITY OF SACRAMENTO, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA AND BEING A PORTION OF THAT CERTAIN 203.161 ACRE TRACT OF LAND SHOWN AND DELINEATED ON RECORD OF SURVEY FILED IN BOOK 51 OF SURVEYS AT PAGE 10 OF THE OFFICIAL RECORDS OF SACRAMENTO COUNTY AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF THAT CERTAIN TRIANGULAR STRIP OF LAND CONVEYED TO THE CENTRAL PACIFIC RAILWAY COMPANY AS PARCEL NO. 2 BY DEED RECORDED IN BOOK 655 OF DEEDS AT PAGE 489;

THENCE ALONG THE BOUNDARY OF SAID PARCEL NO. 2, SOUTH 89° 35' 01" WEST, 488.40 FEET;

THENCE CONTINUING ALONG SAID BOUNDARY SOUTH 00° 24' 59" EAST, 347.74 FEET;

THENCE LEAVING SAID BOUNDARY SOUTH 15° 38' 36" WEST, 165.98 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 09° 58' 14" EAST, 581.56 FEET;

THENCE NORTH 79° 55' 50" EAST, 288.50 FEET;

THENCE NORTH 82° 07' 51" EAST, 150.00 FEET;

THENCE NORTH 80° 01' 46" EAST, 286.61 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 1263.14 FEET TO WHICH A RADIAL BEARS SOUTH 84° 10' 24" WEST;

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

THENCE NORTHERLY 498.86 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 37' 42" TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 375.26 FEET TO WHICH A RADIAL BEARS NORTH 02° 21' 08" EAST;

THENCE SOUTHWESTERLY 162.38 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 47' 34" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 526.33 FEET TO WHICH A RADIAL BEARS SOUTH 22° 26' 26" EAST;

THENCE EASTERLY 153.99 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16° 45' 48";

THENCE SOUTH 84° 19' 22" WEST, 232.96 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 637.00 FEET;

THENCE WESTERLY 275.31 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 45' 46" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 565.52 FEET TO WHICH A RADIAL BEARS NORTH 19° 05' 08" EAST;

THENCE NORTHWESTERLY 54.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05° 32' 05" TO THE TRUE POINT OF BEGINNING.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE MOST SOUTHERLY LINE OF PARCEL A, AS FILED IN BOOK 120 OF PARCEL MAPS, AT PAGE 10, SAID BEARING IS SHOWN ON SAID MAP AS NORTH 71° 30' 19" WEST.

THIS PARCEL IS ALSO DESCRIBED AS PARCEL D IN THE CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 28, 2006 IN BOOK 20061228, PAGE 1682, OFFICIAL RECORDS.

APN: 002-0010-049

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT B
DEVELOPMENT PLAN

THE PROJECT EXHIBITS COMPRISING THE DEVELOPMENT PLAN INCLUDE THE EXHIBITS SHOWING THE GENERAL PLAN LAND USE DESIGNATION, ZONING, AND TENTATIVE MAP, WHICH EXHIBITS ARE ATTACHED AND INCORPORATED HEREIN, AND LABELED AS EXHIBITS B-1 – B-3.

NOTE: SUBSTANTIVE CHANGES TO THE ATTACHED EXHIBITS OR THEIR TERMS AND CONDITIONS REQUIRE AN AMENDMENT TO THIS AGREEMENT TO BECOME VESTED UNDER SECTION 2.4.3 OF THE AGREEMENT.

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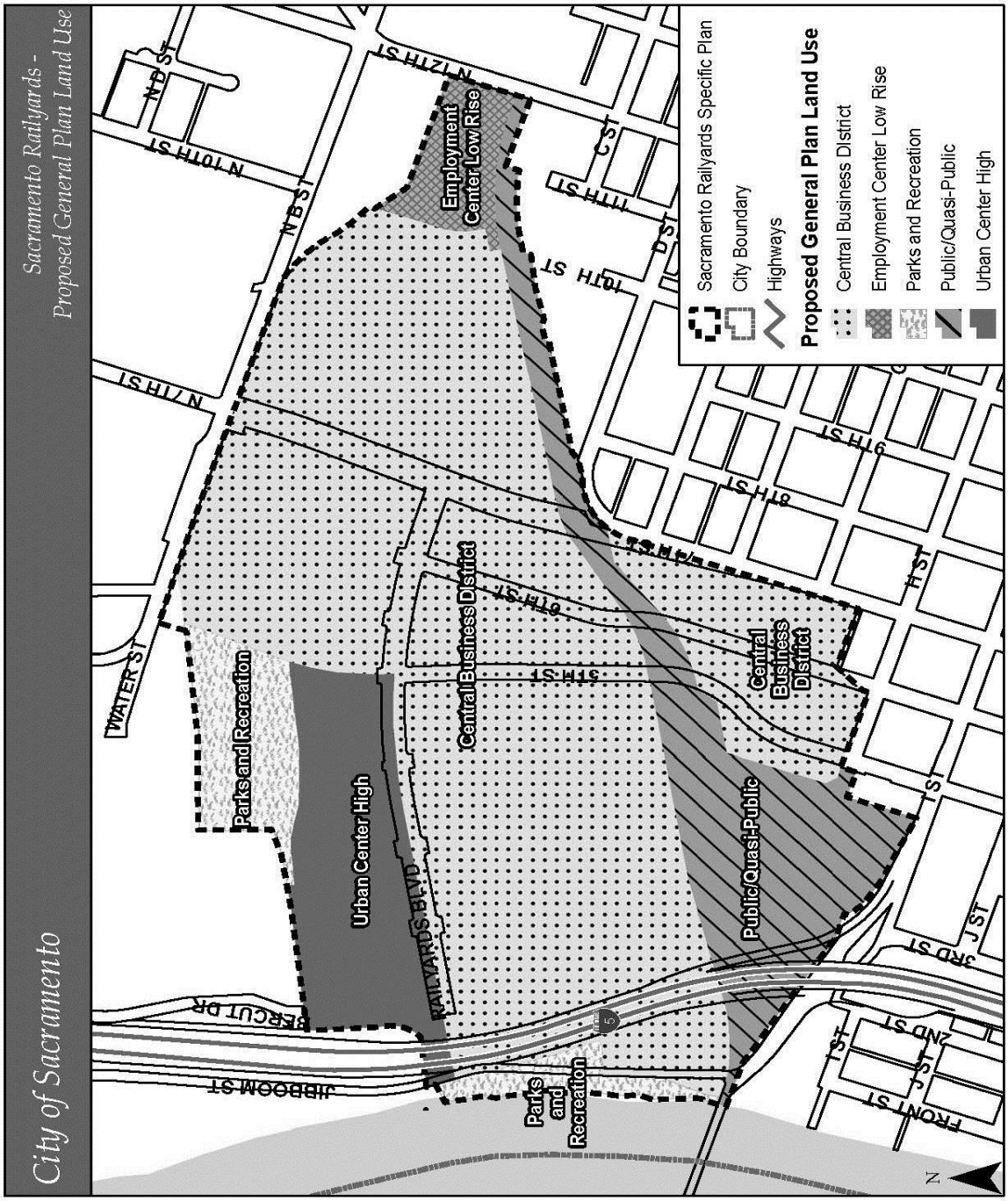
ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT B-1
GENERAL PLAN



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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT B-2
ZONING

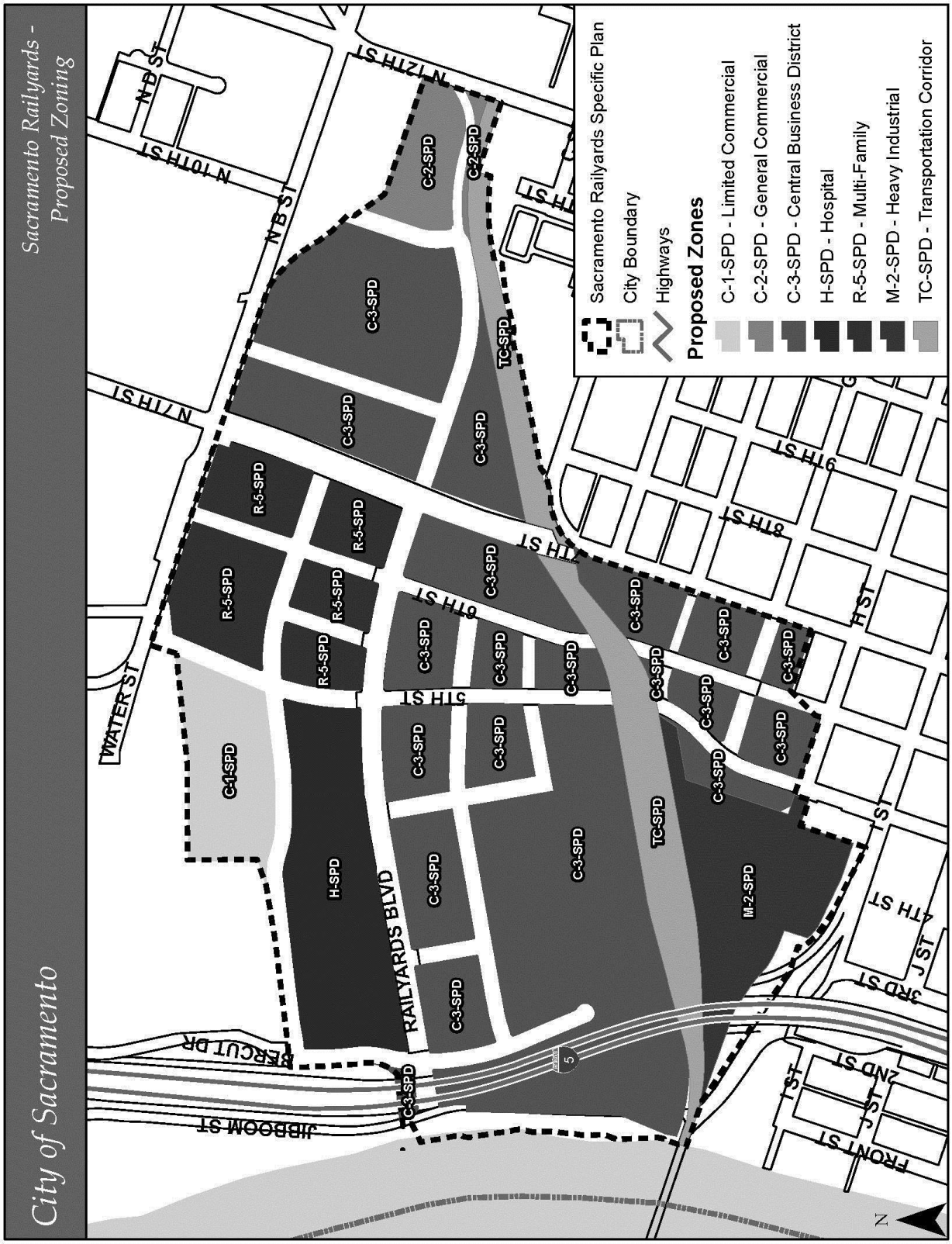

EXHIBIT B-3
TENTATIVE MAP

SEE ATTACHED

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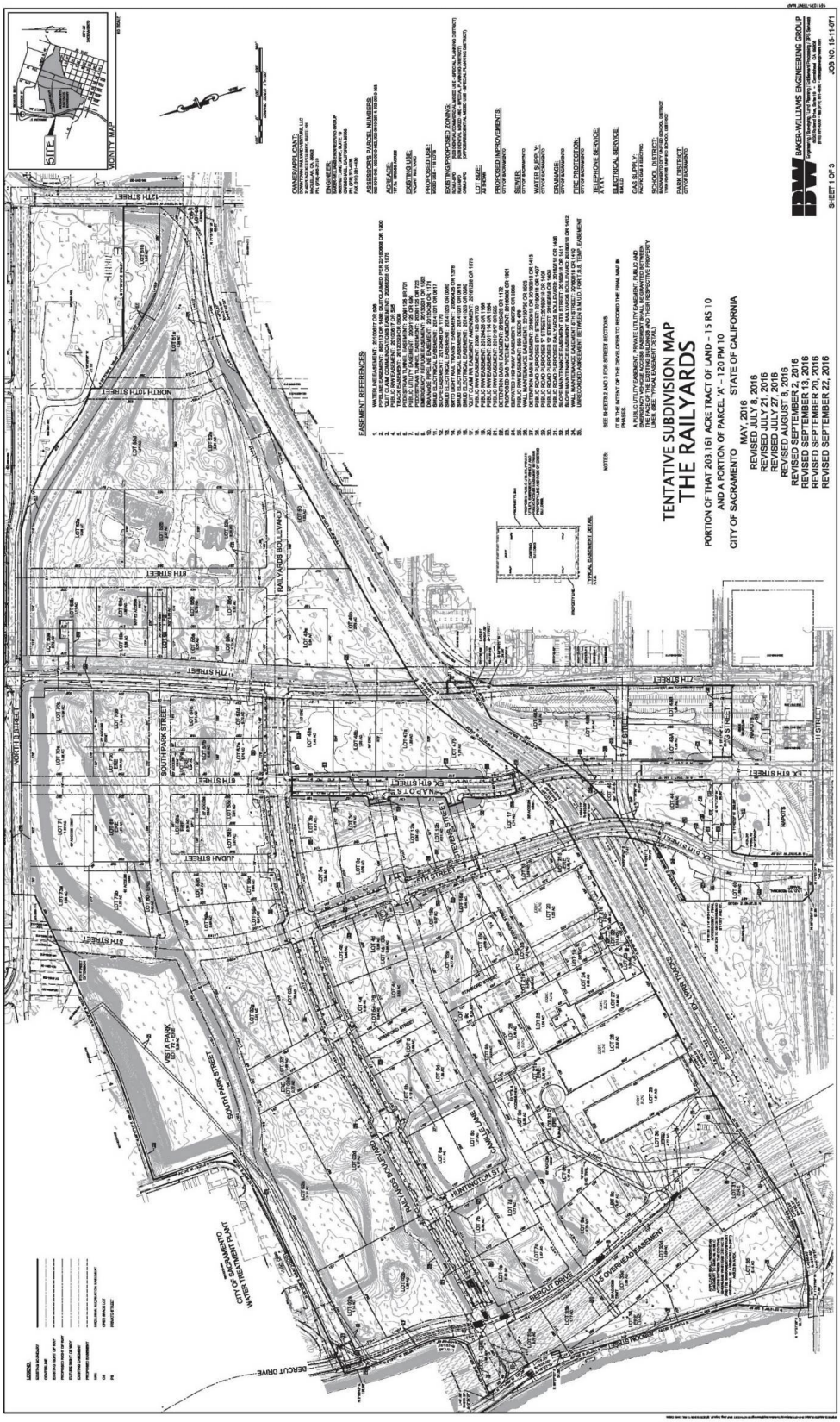
CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____



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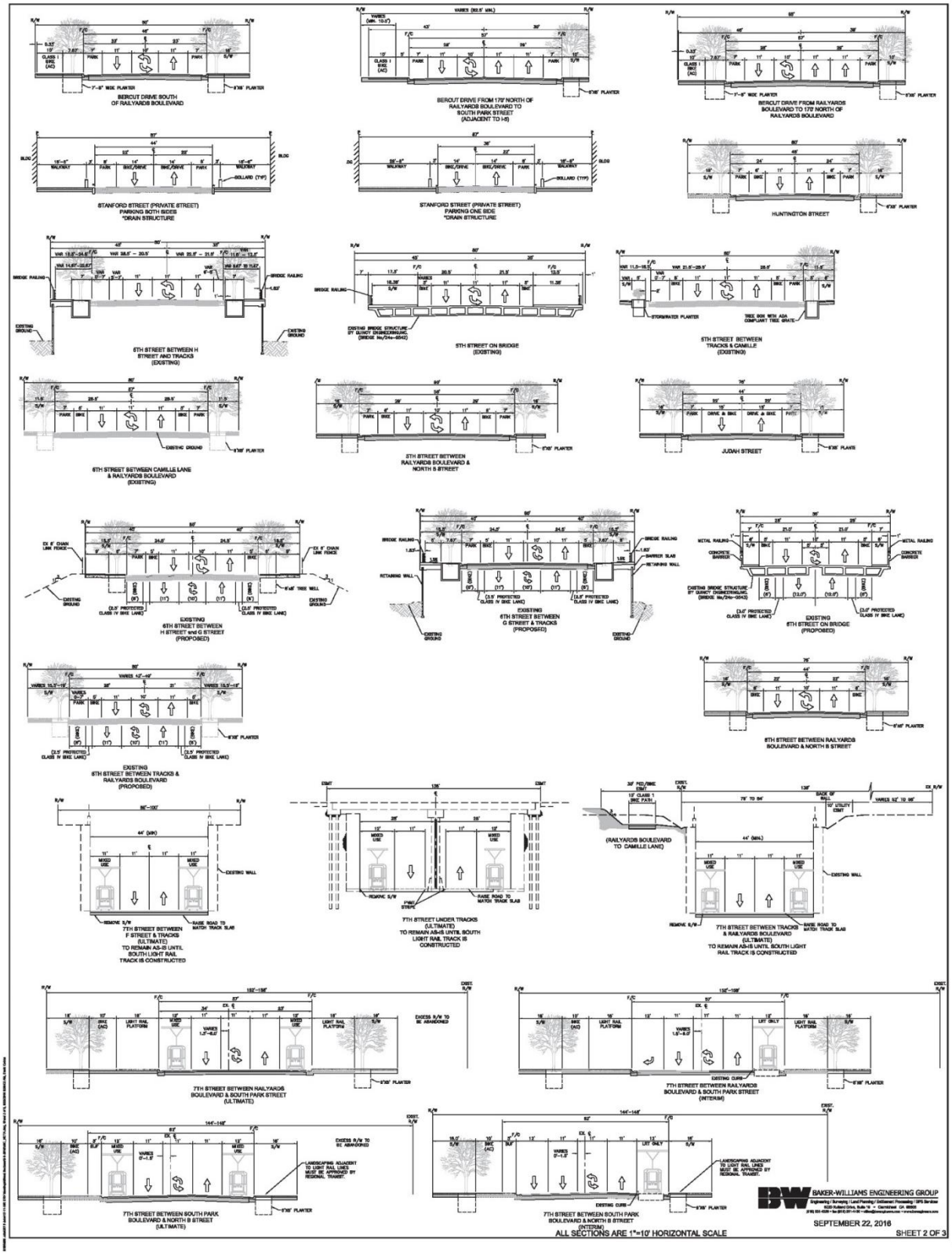
CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____



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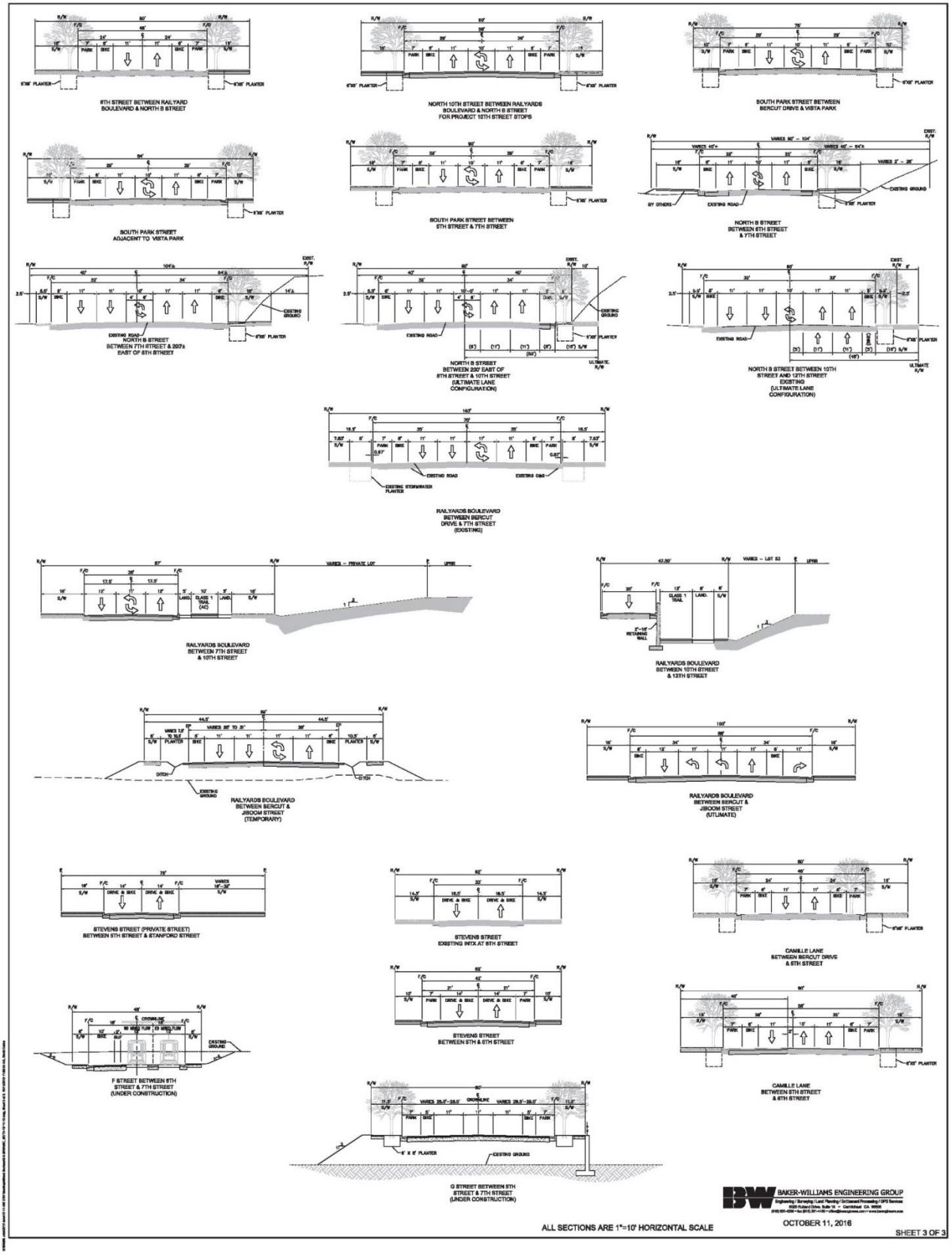
CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____



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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT C
PROJECT ENTITLEMENTS

THE FOLLOWING PROJECT ENTITLEMENTS, INCLUDING 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 SECTION 2.4.3 OF THE AGREEMENT. CHANGES (INCLUDING ADDITIONS) TO THE MITIGATION MEASURES AFTER THE EFFECTIVE DATE OF THIS AGREEMENT WILL BE INCORPORATED INTO THIS AGREEMENT WITHOUT THE NEED FOR AN AMENDMENT TO THIS AGREEMENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT.

Commission or City Council	**Date of Hearing**	**Description of Approved Entitlements**	**Ordinance or Resolution**
City Council	11-10-2016	Certification of the Subsequent Environmental Impact Report and adoption of the Mitigation Monitoring Plan	
City Council	11-10-2016	Sacramento Railyards Finance Plan	
City Council	11-10-2016	2035 General Plan Land Use Diagram Amendment	

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CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

	Date of Hearing	Description of Approved Entitlements	Ordinance or Resolution
City Council	11-10-2016	Sacramento Railyards Specific Plan	
City Council	11-10-2016	Sacramento Railyards Design Guidelines	
City Council	11-10-2016	2016 City Bicycle Master Plan	
City Council	11-10-2016	Sacramento Railyards Special Planning District	
City Council	11-10-2016	Rezone	
City Council	11-10-2016	Tentative Subdivision Map	
City Council	11-10-2016	Conditional Use Permit for a Sports Complex	
City Council	11-10-2016	Conditional Use Permits for stand-alone surface parking lots	
City Council	11-10-2016	Variance to allow an extension to the hours of construction	

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CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

		established by the noise ordinance for the construction of the sports complex	
City Council	11-10-2016	Variance to allow noise from the operation of the sports complex and surrounding plaza area to exceed levels allowed by the City of Sacramento noise ordinance	
City Council	11-10-2016	Sacramento Railyards Mixed Income Housing Strategy	
City Council	11-10-2016	Site Plan and Design Review for a Sports Complex	
City Council	11-10-2016	Site Plan and Design Review for stand-alone surface parking lots with deviations to paving, tree shading, and landscaping requirements	
City Council	11-10-2016	Site Plan and Design Review for the Railyards Tentative Map	
City Council	11-10-2016	Site Plan and Design Review for the Stormwater Outfall facility	
City Council	11-10-2016	Listing the Sacramento Railyards Water Tower as a landmark on the Sacramento	

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		Register of Historic & Cultural Resources	
City Council	11-10-2016	Listing the Central Shops Historic District as a historic district on the Sacramento Register of Historic & Cultural Resources	

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT D

PROJECT ENVIRONMENTAL CERTIFICATION

FINAL ENVIRONMENTAL IMPACT REPORT AND MITIGATION MEASURES

RESOLUTION NO. _____ CERTIFYING THE FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT, ADOPTING FINDINGS OF FACT, MITIGATION MEASURES, AND STATEMENT OF OVERRIDING CONSIDERATION, AND APPROVING THE MITIGATION MONITORING PROGRAM WAS APPROVED BY THE CITY COUNCIL ON NOVEMBER 10, 2016, AND IS INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

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

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT E

FINANCING PLAN

The Railyards Specific Plan Public Facilities Finance Plan (hereinafter "Plan") dated as of _____ and approved by the City Council on November 10, 2016, by Resolution No. _____ was the basis for establishment of a Public Financing Mechanism and/or Development Fee program to fund Public FACILITIES and/OR Public Services that the LANDOWNER is obligated to comply with as a condition of approval of the Project Entitlements. This Plan is incorporated in this Agreement by this reference as if set forth in full.

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

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ORDINANCE NO._____

CITY AGREEMENT NO. 2008-0150-1 DATE ADOPTED:_____

EXHIBIT F

PROCEDURE FOR ADJUSTING THE PUBLIC FACILITIES FEE AND REVISING THE INVENTORY OF REMAINING INFRASTRUCTURE TO BE FINANCED BY THAT FEE

When amending the River District Financing Plan, the City shall set the amount of the Public Facilities Fee by using the estimated cost of the facilities to be financed, determined in accordance with the following procedure:

1. **Definitions.**

(a) "Aggregate Costs" means the cost to construct remaining PAF Eligible Facilities.

(b) "CalTrans Index" means the Quarterly California Highway Construction Cost Index (Price Index for Selected Highway Construction Items) published by the California Department of Transportation, Division Of Engineering Services – Office Engineer.

(c) "ENR Index" means the Engineering News Record Construction Cost Index for San Francisco.

(d) "Financing Plan" means the Railyards Financing Plan, as amended.

(e) "Funding Requirement" means the amount of the PAF that must be generated from remaining development so that the City will have adequate funding (A) to construct the PAF Facilities remaining to be completed and (B) to administer the PAF program. It is calculated as follows: *first*, calculate the aggregate cost to complete the remaining PAF Facilities and to pay the administrative component of the PAF as required by the Financing Plan; *second*, from the result, subtract the PAF revenues then available to complete the remaining PAF Facilities; and *third*, add the amount of outstanding PAF credits.

Funding Requirement = (current year's cost estimate) – (revenue on hand) + (outstanding credits)

(f) "PAF" means the Plan Area Fee established by Sacramento City Code for the Railyards Financing Plan.

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(g) ” PAF Eligible Facility” means a public improvement or segment of a public improvement that is identified in the first Railyards Financing Plan.

(h) “PAF Funding Obligation” means the maximum funding obligation of the PAF for a given year.

(i) “PAF Share” means the portion of a PAF Eligible Facility’s cost that is funded, in whole or part, by the PAF.

2. **Annual PAF Adjustment for PAF Eligible Facilities.**

(a) Each July 1, the City will adjust the PAF in accordance with the difference between (1) the Funding Requirement for the current year; and (2) the funding that would be available, after deducting revenue on hand and adding outstanding PAF credits, if the then-existing PAF were applied to remaining development.

(b) Example of Annual PAF Adjustment for PAF Eligible Facilities:

As of April 1, 2016	Cost Changes of:		
	3.257%	-6.000%	6.000%
Initial Comparison			
Remaining Costs from April 1, 2015 Estimate	200,000,000	200,000,000	200,000,000
Aggregate Costs and Administration	206,514,000	188,000,000	212,000,000
	3.257%	-6.000%	6.000%
Funding Requirement Calculation			
Aggregate Costs and Administration	206,514,000	188,000,000	212,000,000
Less Cash on Hand April 1, 2016	-30,000,000	-30,000,000	-30,000,000
Plus Credits Outstanding April 1, 2016	25,000,000	25,000,000	25,000,000
2010 Funding Requirement	201,514,000	183,000,000	207,000,000
Existing Fee Calculation			
Revenue From Remaining Development Using 2015 Fees (1)	200,000,000	200,000,000	200,000,000
Less Cash on Hand April 1, 2016	-30,000,000	-30,000,000	-30,000,000
Plus Credits Outstanding April 1, 2016	25,000,000	25,000,000	25,000,000

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Resources Based on 2015 Fees	195,000,000	195,000,000	195,000,000

Fee Change Effective July 1, 2010

Resources Based on 2015 Fees	195,000,000	195,000,000	195,000,000
2016 Funding Requirement	201,514,000	183,000,000	207,000,000
Aggregate Fee Change $	6,514,000	-12,000,000	12,000,000
Aggregate Fee Change %	3.341%	-6.154%	6.154%

1) Funds available using unadjusted fees to finance aggregate costs and administration (not credits). Calculation requires unadjusted fee revenue from remaining development plus cash less credits.

3. **Adjustments to Aggregate Costs: Remaining Freeway Improvements, Roadways, Bridges, Signals, Bikeways and Sewer and Drainage facilities.**

(a) *Adjustment by Index.*

(1) Subject to Subsection 3(b) below, for all PAF Eligible Facilities except the police and fire capital expenditures, Community Center and Library, the cost adjustment to remaining PAF Eligible Facilities is the greater of the following (but in no event less than zero percent in net aggregate):

(A) the ENR Index; or

(B) the CalTrans Index 3-year moving average.

(2) Index measurement.

(A) ENR Index: Year-over-year change as of each March.

(B) CalTrans Index: 12-quarter average through quarter 1 of the current year over 12-quarter average through quarter 1 of the prior year.

(3) Precision. All calculations will be carried out to three decimal places.

(b) *Adjustment by Benchmarking.*

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(1) Before April 1 of each calendar year, a third-party professional engineering consultant who is under contract to the City will estimate the cost to construct all PAF Eligible Facilities subject to this subsection 3(b). The cost estimate will anticipate cost changes to the July 1 of the calendar year in which the estimate is made and will include a minimum 15% construction contingency. The cost estimate plus an additional contingency (not to exceed an amount equal to 15% of the cost estimate) is the "Draft Benchmark Estimate" of Aggregate Costs for the year.

(2) Downtown Railyard Ventures, LLC. shall have the right, assignable only with the written consent of the City at the City's sole discretion, to hire an independent third-party engineer to validate the cost estimates reflected in the "Draft Benchmark Estimate". The City and Landowner agree to work in good faith to resolve differences, if any, in the engineer's estimates. The agreed upon cost estimate shall be the "Benchmark Estimate".

(3) If the percentage change between the Aggregate Costs for the then-current year and the Aggregate Costs for the same set of PAF Eligible Facilities for the immediately preceding year differ by an amount equal to, or more than, plus or minus 5% in aggregate from the percentage change determined by index in accordance with Subsection 3(a) above, then the City will use the then-current year's Benchmark Estimate of Aggregate Costs to determine the Funding Requirement.

(c) **Comprehensive Review and Nexus Study.** The City will perform a comprehensive review and nexus study for the PAF at least every three years unless the City determines that prevailing market conditions do not justify doing so (e.g., if development is lacking or the remaining development is limited).

(d) **Sample cost adjustments for freeway improvements, roadways, bridges, signals, bikeways and sewer and drainage facilities:**

Sample #1	***Sample #2***
Benchmarking *increase* of 4%	Benchmarking *increase* of 4%
ENR Index *increase* of 2%	ENR Index *increase* of 1%
CalTrans Index *increase* of 3.1%	CalTrans Index *decrease* of 1%
Change in Aggregate Costs: plus 3.1%	**Change in Aggregate Costs: plus 1%**

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Sample #3

Benchmarking *decrease* of 4%
ENR Index *decrease* of 0.5%
CalTrans Index *decrease* of 1%
Change in Aggregate Costs: minus 1%

Sample #4

Benchmarking *decrease* of 5%
ENR *increase* of 0.5%
Cal Trans Index *decrease* of 1%
Change in Aggregate Costs: minus 5%

Sample #5

Benchmarking *increase* of 6%
ENR Index *increase* of 3.5%
CalTrans Index *decrease* of 1%
Change in Aggregate Costs: plus 6%

4. Adjustments to Aggregate Costs: Police and Fire Capital Costs, Community Center and Library.

For the police and fire capital costs, Community Center and Library, the portion of the cost for each that is funded by the PAF will not exceed that established in the first Railyards Financing Plan, except as follows: the City will adjust the remaining cost of police and fire capital expenditures, Community Center, and Library by using the change in the CPI All Urban San Francisco Index from March to March, effective each July 1.

5. PAF Funding Obligation; Change in list of Facilities being funded with PAF.

(a) The Financing Plan shows not just the estimated cost of each PAF Eligible Facility but also the PAF Share for the PAF Eligible Facility. Each year, after adjusting costs in accordance with sections 1 through 4 above, the City shall determine the aggregate PAF share for all PAF Eligible Facilities, and that aggregate amount will be the PAF Funding Obligation for that year.

(b) Each year, the City may revise the PAF Share for each PAF Eligible Facility and shall give Landowner 30-days' prior written notice of any revision that will result in a Removed PAF Facility (defined below), as follows:

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ADOPTED:_____

(1) If a PAF Eligible Facility is removed from the Railyards Financing Plan because it will no longer be funded by the PAF (a "Removed PAF Facility"), then the City may allocate the Removed PAF Facility's PAF Share (determined in accordance with subsection 3(b)(1) above) to another PAF Eligible Facility on the list. Public improvements not identified in the Railyards Financing Plan may not be funded with the PAF.

(2) The City may not require, as a condition for approving the Landowner's request for land-use entitlements on all or part of the Property, that the Landowner or any other signatory to a Railyards Development Agreement construct all or part of a Removed PAF Facility. This limitation does not apply if the Landowner requests and receives a change in the then-existing zoning on all or part of the Property and the City determines that the change creates a need for construction of a Removed PAF Facility.

(3) If the City has previously required the Landowner to build a PAF Eligible Facility as a condition of approval for a land-use entitlement granted to the Landowner, then the City may not subsequently remove the PAF Eligible Facility from the list of remaining PAF Eligible Facilities and thereby deny the Landowner the opportunity to obtain reimbursement from the PAF program.

6. Scope of PAF Eligible Facilities.

The scope of each PAF Eligible Facility is as described in the Financing Plan, as amended, and may not be revised except as required to comply with federal or state law. With respect to public roadways and streets, the scope is to be based on the City's street-design standards for lands within the Railyards area.

7. Adequate Funding for PAF Eligible Facilities.

The City may not cite, as a reason for increasing the amount of the PAF Funding Obligation, the loss of potential funding from sources identified in the first Railyards Financing Plan as Non-PAF Funding Sources, such as federal funding, state funding, regional funding, grants, gifts,

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contributions, fees, reimbursements, the City's general fund, the City's Major Street Construction Tax, or private funds.

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ADOPTED:_____

EXHIBIT G

SACRAMENTO RAILYARDS
CITY OF SACRAMENTO
Funding Agreement Business Terms

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

TAX INCREMENT FUNDING

City commits to model, evaluate, and consider the "Tax increment request" detailed on Exhibit G-1, a letter dated July 15, 2016, from DRV to the City and incorporated herein. City further commits to model the request to include the tax increment effects for the County of Sacramento.

THIRD STREET SEWER

CITY commits to evaluate a percentage of the Combined Sewer Development Fees collected within the River District Specific Plan Area and the area of the Central Business District that is served by the 3rd Street Sewer Main.

City commits to providing Combined Sewer Development Fee credits for funds advanced by the developer for the construction of the 3rd Street Sewer Main.

I-5 MITIGATION PROGRAM

CITY commits to evaluate the programmatic redirection of the I-5 Sub-regional fee to include funding for the 7th Street/Railyards Blvd. light rail station, the 10th Street Extension from Railyards Blvd. to North B Street, and the connection of Railyards Blvd. to Highway 160.

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ADOPTED:_____

OTHER SOURCES

CITY commits to continue to evaluate options for a public private partnership investment in Backbone Infrastructure and Public Facilities. The Funding Agreement may consider use of certain City funding sources such as Major Street Construction Tax, parking or lease-revenue financing, the Growth and Innovation Fund, formation of an Enhanced Infrastructure Financing District (EIFD) or other discretionary revenues that may assist with short and longer term cash flow and funding needs.

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ADOPTED:_____

Exhibit G-1

DRV

DOWNTOWN RAILYARD VENTURE, LLC

July 15, 2016

Mark Griffin
City of Sacramento
915 I Street, 3rd Floor
Sacramento, CA 95814

RE: Tax increment request

Dear Mark,

Recently, the California Department of Finance (DOF) determined that the Sacramento Railyards Initial Phase Project Owner Participation Agreement tax increment obligation (OPA) is an enforceable obligation. Based on this finding, Downtown Railyard Venture (DRV) is able to seek reimbursement for a number of projects within the Railyards for costs incurred. The OPA was in an original amount of $50 million. It carries an escalation rate of 6% annually, which brings the current value of that OPA to approximately $80 million.

Based on planned projects, tax increment generated in the Railyards is expected to grow very rapidly in the next few years. However generation of that revenue is predicated upon installation of infrastructure that ultimately will exceed $100 million. In order to make the development of the Railyards a reality we are requesting assistance from the City regarding the timing of tax increment revenue to help fund this infrastructure burden.

As discussed in earlier meetings with City staff, a potential mechanism available is to enter into a termination agreement for the existing OPA. While this will significantly decrease the amount of tax increment revenue (TIF) available to the Railyards, it should enable proceeds to be accelerated. This will significantly assist in development of the required upfront infrastructure to service the Railyards and provide a crucial source of funding that will enable the project to move forward.

In consideration for termination of the OPA, DRV is requesting the following:

- Payment of surplus TIF proceeds consolidated from City redevelopment districts, after bond payments, until total proceeds of $40 million are received. We request that these proceeds are prioritized above other discretionary disbursements until fully disbursed.
- Establishment of an Enhanced Infrastructure Finance District (EIFD) that will draw on future Railyards specific TIF in excess of current redevelopment obligations and Termination Agreement obligations. Proceeds from the EIFD will be used as a supplemental revenue source to mitigate a special tax levied pursuant to a Mello-Roos Community Facilities District (CFD). The use of this mechanism will allow the Railyards to maintain relatively competitive with other downtown properties which do not have CFD obligations. The sizing of the EIFD is to be derived

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DRV

DOWNTOWN RAILYARD VENTURE, LLC

with City staff based on a portion of the City's share of property tax proceeds generated at the Railyards.

- City to assist with financing / bonding the resultant revenue stream. This structure creates a revenue source that, while subordinate to existing TIF obligations, is reliable enough to finance via a bond or private offering. The TIF revenue pledged via the termination agreement should be bondable in the near term. The EIFD proceeds would allow for a Mello Roos financing after the first phase of infrastructure is in place and improvements have been initiated.

Note that over the next five years taxable value will be created by the Central Shops development, the future MLS stadium, significant multi-family residential development and any taxable medical facilities related to the Kaiser project. This proposed structure creatively leverages those future taxable values to accelerate funds and enhance bond proceeds to provide the required infrastructure for the Railyards.

Of course this proposal is subject to review of existing TIF availability and confirmation of the feasibility of this structure with respect to DOF requirements. The use of a termination agreement seems to be feasible, but ultimately DOF has to approve the transaction.

We would like to have EPS work on modeling the resultant proceeds based on the absorption projections and fiscal analysis work they have already done. We look forward to discussing this with the City.

Thanks,

Frank Myers
Senior Vice President, Finance

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT H

PROTEST WAIVER

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

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

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

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establishment of Development Fee for the Financing Plan area; 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, together with any right to object, shall be waived unless LANDOWNER's protest of objection is made at or before the time of the public hearing wherein the proposed Public Financing Mechanism or Development Fee, together with the fee, charge, special tax or assessment, is established by the City Council.

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

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

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

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

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

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

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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 I

MIXED INCOME HOUSING STRATEGY

THE MIXED INCOME HOUSING STRATEGY FOR THE PROJECT APPROVED BY THE CITY COUNCIL ON NOVEMBER 10, 2016, BY RESOLUTION NO. _____ IS ATTACHED AS EXHIBIT I-1 AND INCORPORATED IN THIS AGREEMENT BY THIS REFERENCE.

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

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EXHIBIT I-1

MIXED INCOME HOUSING STRATEGY
Downtown Railyards Venture, LLC

INTRODUCTION

Downtown Railyard Venture, LLC ("Developer"), is the owner of certain real property in the City of Sacramento known as the Sacramento Railyards ("Railyards"), an approximately 220-acre site immediately north of downtown Sacramento. Railyards is generally bounded by the Sacramento River to the west, North B Street to the north, the Alkali Flat neighborhood to the east, and the existing downtown area to the south (I Street).

The Developer proposes to develop a mixed-use, master planned community consisting of commercial and residential land uses. The project concept plan and land use breakdown contained in the ____(TBD)_____ Specific Plan for Railyards totals 6,000 to 10,000 residential units; 3.271 to 4.371 million square feet of non-residential uses; 771,405 square feet of flexible mixed-use space; 485,390 square feet of historic and cultural space; a 1.228 million square foot medical campus; 1,100-room hotel; and ___ (TBD)___ acres of open space. (These totals to do not include TC and M-2 land areas.) Railyards represents a true mixed-use community on the basis of significant employment-generating land uses integrated with housing.

The vision for the Railyards project is an inclusive, sustainable and vibrant community. Key design principles are intended to provide for a walkable and bike-friendly urban core in close proximity to services, amenities and employment, capitalizing on the project's transit proximity and physical proximity to downtown. These design principles improve overall affordability by reducing costs of transit and lowering energy costs. Estimated residential densities, ranging from a projected low of 60 units to a permitted maximum zoning density of 450 units per acre, will assist in generating a diverse housing stock, ranging from affordable units to executive housing with a significant pool of workforce housing. Affordability will be improved by the estimated rental housing balance (estimated at between 70%-85% of total units built) and cost savings from the design elements inherent in the Railyards Specific Plan.

Railyards is subject to the requirements of the Mixed Income Housing Ordinance, City of Sacramento City Code Chapter 17.712, adopted September 1, 2015. The Mixed Income Housing Ordinance requires that proposed residential projects in excess of 100 gross acres obtain City Council approval of a "mixed income housing strategy" that demonstrates how the project provides housing for a variety of incomes and household types consistent with Housing Element policy.

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This Mixed Income Housing Strategy for Railyards acknowledges the benefits of diversity as well as project attributes that will contribute to provision of a variety of housing.

Integrating a variety of housing will benefit the sustainability and success of Railyards over its multi-year build-out, as well as the greater community. Specifically:

- Diversity of housing (with respect to product and price point) increases absorption in large planned developments such as Railyards by attracting multiple resident segments.

- Diversity of housing provides the flexibility to respond to fluctuating market conditions.

- Diversity of housing, including that targeted to residents with incomes at or below 60% AMI, expands the financing options beyond conventional financing (LIHTC, bonds, HOME, CDBG etc.).

- Diversity accommodates the housing needs of different generations and households: empty nesters, singles, professional couples, families and executives.

- Providing housing for a mix of incomes will allow families to stay in their community, even as children grow up and form their own households and as parents age and want to downsize.

- Varying mix and rent levels will support residents who may eventually graduate into larger units (i.e., laddering demand).

- Diversity of housing expands the tax base, supports local commerce, and encourages community safety and engagement.

Both by virtue of location and its truly mixed-use development plan, Railyards comprises many elements that have proven critical to successful mixed income housing elsewhere in the state and country. Railyards has been designed to capitalize on its "location efficient" and mixed-use advantages:

- **Infill urban location** (a key factor in attracting Millennials, Gen X, move-downs and other market segments that represent its core market).

- **transit proximity** (bus, light rail, Amtrak), which drives down commute costs, raising disposable income and residential buying power.

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- **walkability** (external and internal). Railyards is proximate to Downtown employment and shopping, entertainment and cultural attractions, and will have internal walkability and connectivity with future employers and attractions within Railyards itself (notably Kaiser Hospital, County Courthouse, Innovation Center businesses, Historic District, MLS Stadium).

- **on-site amenities**, notably extensive shared common spaces (Great Lawn, Urban Lounge shade plaza/outdoor dining, community gardens, playground, and stadium promenade), Historic District, future Major League Soccer stadium, and shopping (which is expected to include a grocery store).

- **worker-job nexus,** which benefits employers as well as employees. Housing proximity reduces the need for employers to raise wage levels to offset commuting, and can reduce the costs of recruitment and training.

I. Mixed Income Housing Strategy Overview

The strategy to provide an appropriate mixed income housing ratio for Railyards is multi-pronged by necessity. "Central City" development costs and relative price point for ownership and rental prototypes are the highest among the eight residential "prototypes" developed by Keyser Marston's nexus analysis, which underlies the Mixed Income Housing Ordinance.

This will require that all available tactics be utilized to meet the objectives laid out in the City Housing Element.

Railyards' Mixed Income Housing Strategy is premised on a multi-faceted approach that is broken down into the following five components:

1. Provision of affordable units (40% to 60% AMI): Affordable housing refers to housing affordable to households with 40% - 60% of median income applicable to Sacramento County, adjusted for household size as published and annually updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. Affordable housing is provided in support of several City of Sacramento Housing Element Goals and Policies:

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- Goal H-1.2: Housing Diversity. Provide a variety of quality housing types to encourage neighborhood stability. This goal is specifically advanced via adherence to the following policies:
    - Policy H-1.2.1: Variety of Housing. The City shall encourage the development and revitalization of neighborhoods that include a variety of housing tenure, size and types, such as second units, carriage homes, lofts, live-work spaces, cottages, and manufactured / modular housing.
    - Policy H-1.2.2: Compatibility with Single Family Neighborhoods. The City shall encourage a variety of housing types and sizes to diversify, yet maintain compatibility with, single family neighborhoods.
    - Policy H-1.2.4: Mix of Uses. The City shall actively support and encourage mixed use retail, employment, and residential development around existing and future transit stations, centers and corridors.
- Goal H-1.3: Balanced Communities. Promote racial, economic, and demographic integration in new and existing neighborhoods. This goal is specifically advanced via adherence to the following policies:
    - Policy H-1.3.1: Social Equity. The City shall encourage economic and racial integration, fair housing opportunity and the elimination of discrimination.
    - Policy H-1.3.2: Economic Integration. The City shall consider the economic integration of neighborhoods when financing new multifamily affordable housing projects.
    - Policy H-1.3.4: A Range of Housing Opportunities. The City shall encourage a range of housing opportunities for all segments of the community.
    - Policy H-1.3.5: Housing Type Distribution. The City shall promote an equitable distribution of housing types for all income groups throughout the city and promote mixed income neighborhoods rather than creating concentrations of below market rate housing in certain areas.
- Goal H-2.2: Development. Assist in creating housing to meet current and future needs. The project shall utilize financial tools made available by the city pursuant to the following policies:

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- Policy H-2.2.2: Financial Tools to diversity Residential Infill Development. To the extent resources are available, the City shall use financial tools to diversity market developments with affordable units, especially in infill areas.
- Policy H-2.2.3: Offsetting Development Costs for Affordable Housing. The city shall defer fees to Certificate of Occupancy to help offset development costs for affordable housing and will offer other financial incentives including, but not limited to, water development fee waivers and sewer credits.
- Policy H-2.2.4: Funding for Affordable Housing. The City shall pursue and maximize the use of all appropriate state, federal, local and private funding for the development, preservation, and rehabilitation of housing affordable for extremely low, very low, low, and moderate income households, while maintaining economic competitiveness in the region.
- Policy H-2.2.5: Review and Reduce Fees for Affordable Housing. The City shall work with affordable housing developers as well as other agencies and districts to review and reduce applicable processing and development impact fees for very low and low income housing units.

2. Workforce Housing facilitated by the Railyards Specific Plan design elements such as access to transit and a walkable environment in proximity to employment. The development of moderate income housing is supportive of the following City of Sacramento Housing Element Goals and Policies:
    - Goal H-1.2: Housing Diversity. Provide a variety of quality housing types to encourage neighborhood stability. This goal is specifically advanced via adherence to the following policies:
        - Policy H-1.2.1: Variety of Housing. The City shall encourage the development and revitalization of neighborhoods that include a variety of housing tenure, size and types, such as second units, carriage homes, lofts, live-work spaces, cottages, and manufactured / modular housing.
        - Policy H-1.2.2: Compatibility with Single Family Neighborhoods. The City shall encourage a variety of housing types and sizes to diversity, yet maintain compatibility with, single family neighborhoods.

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- Policy H-1.2.4: Mix of Uses. The City shall actively support and encourage mixed use retail, employment, and residential development around existing and future transit stations, centers and corridors.

- Goal H-1.3: Balanced Communities. Promote racial, economic, and demographic integration in new and existing neighborhoods. This goal is specifically advanced via adherence to the following policies:

  - Policy H-1.3.1: Social Equity. The City shall encourage economic and racial integration, fair housing opportunity, and the elimination of discrimination.

  - Policy H-1.3.2: Economic Integration. The City shall consider the economic integration of neighborhoods when financing new multifamily affordable housing projects.

  - Policy H-1.3.4: A Range of Housing Opportunities. The City shall encourage a range of housing opportunities for all segments of the community.

  - Policy H-1.3.5: Housing Type Distribution. The City shall promote an equitable distribution of housing types for all income groups throughout the city and promote mixed income neighborhoods rather than creating concentrations of below market rate housing in certain areas.

3. Product type variation by tenure (ownership as well as rental housing). This strategy is supportive of the following City of Sacramento Housing Element Goals and Policies:

   - Goal H-1.2: Housing Diversity. Provide a variety of quality housing types to encourage neighborhood stability. This goal is specifically advanced via adherence to the following policies:

     - Policy H-1.2.1: Variety of Housing. The City shall encourage the development and revitalization of neighborhoods that include a variety of housing tenure, size and types, such as second units, carriage homes, lofts, live-work spaces, cottages, and manufactured / modular housing.

     - Policy H-1.2.2: Compatibility with Single Family Neighborhoods. The City shall encourage a variety of housing types and sizes to diversity, yet maintain compatibility with, single family neighborhoods.

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- Policy H-1.2.4: Mix of Uses. The City shall actively support and encourage mixed use retail, employment, and residential development around existing and future transit stations, centers and corridors.

- Goal H-1.3: Balanced Communities. Promote racial, economic, and demographic integration in new and existing neighborhoods. This goal is specifically advanced via adherence to the following policies:

  - Policy H-1.3.4: A Range of Housing Opportunities. The City shall encourage a range of housing opportunities for all segments of the community.

  - Policy H-1.3.5: Housing Type Distribution. The City shall promote an equitable distribution of housing types for all income groups throughout the city and promote mixed income neighborhoods rather than creating concentrations of below market rate housing in certain areas.

- Goal H-6: Homeownership. Provide ownership opportunities and preserve housing for Sacramento's modest income workers. This goal is specifically advanced via adherence to the following policies:

  - Policy H-6.1: Promoting Homeownership in Distressed Areas. The City shall promote homeownership opportunities in areas with a significantly high proportion of rental housing, and areas distressed by foreclosures.

  - Policy H-6.3: Affordable Housing types. The City shall promote modest income homeownership opportunities through alternative construction methods and ownership models, employer assisted housing and amendments to the Mixed Income Housing Ordinance.

4. Product innovations, as supported by the nature of this mixed-use, transit-oriented development [TOD] to provide sustainable and cost efficient development. A discussion of creative methods to help achieve affordability are outlined in the Product Innovations Section below. Product innovation is supportive of the following City of Sacramento Housing Element Goals and Policies:

   - Goal H-1.1: Sustainable Communities. Develop and rehabilitate housing and neighborhoods to be environmentally sustainable. This goal is advanced via adherence to the following policy:

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- Policy H-1.1.1: Sustainable Housing Practices. The City shall promote sustainable housing practices that incorporate a "whole system" approach to siting, designing and constructing housing that is integrated into the building site, consume less energy, water and other resources, and are healthier, safer, more comfortable, and durable.

5. Projected Buildout. Provides a description of the types of housing expected to be incorporated in the project along with the projected resultant build out. The 6,000 to 10,000 residential units in Railyards will be located in two land use zones (C3-SPD and R5-SPD), dispersed throughout the master plan, as shown in the following map. These flexible, versatile land use designations will accommodate a range of residential product varied by internal location, with the potential for integrated retail. Until final mapping is complete exact locations of specific housing projects cannot be identified but potential locations for affordable projects are depicted on the map below. The identified locations, with "blue spots" showing forecasted Developer-developed mixed income/affordable units projects, and "purple spots" showing potential Dedicate Parcel(s) (see section II below) for third party builder construction, are estimated based upon anticipated growth patterns within the Railyards facilitated through the zoning. These project locations are subject to change, based on infrastructure requirements, land use approvals, development costs, development of mixed income housing projects rather than dedicated affordable projects, and other unforeseen factors. Production of new housing is a key theme and priority of the City Housing Element and the Railyards plan aligns with several of the goals in that plan, as outlined above. The Railyards housing strategy addresses components of each of these goals and will contribute significantly to the success of the Sacramento City Housing Element.

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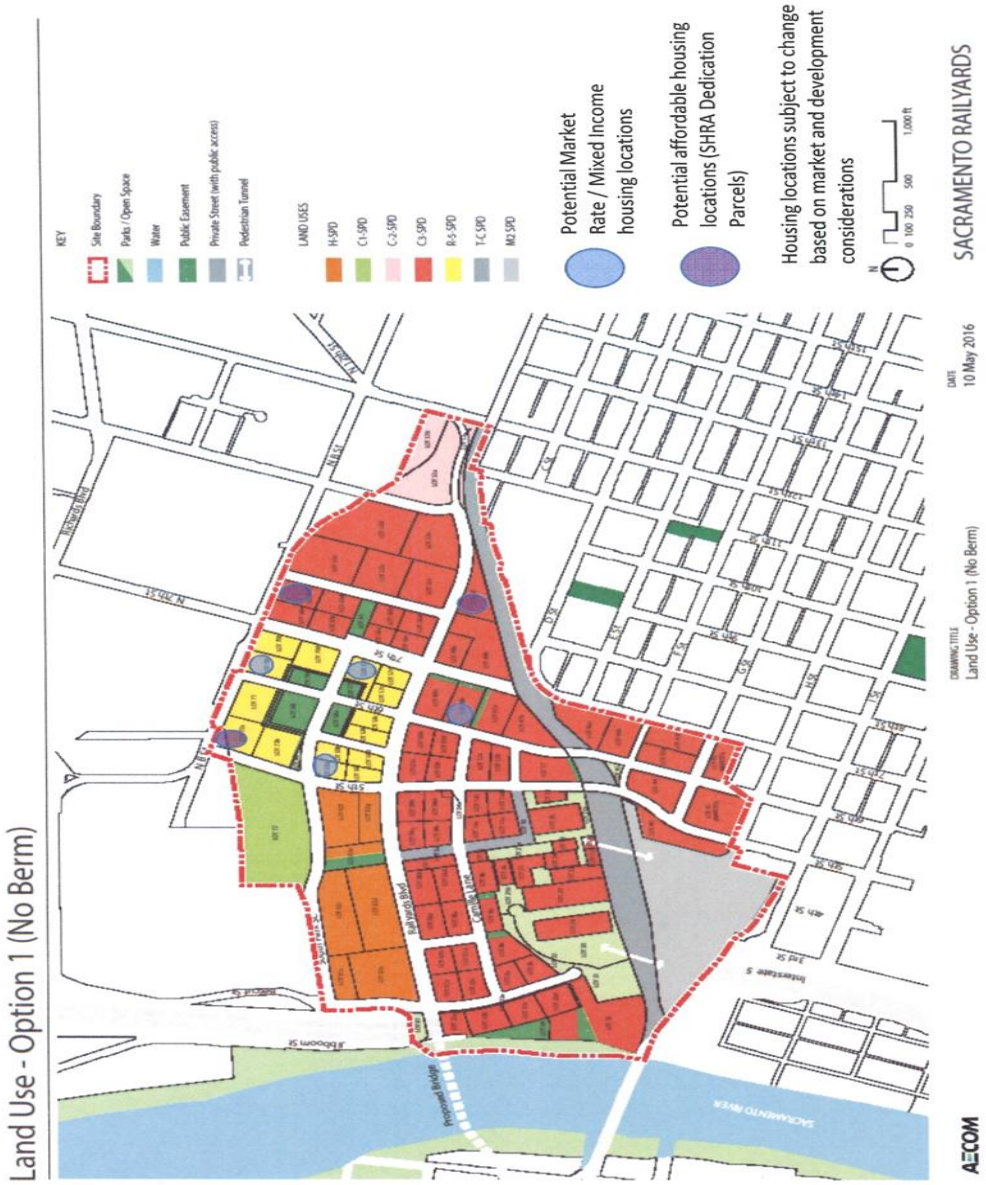

Affordable Units

A very low income household means a household whose income does not exceed fifty percent (50%) of area median income (AMI) applicable to Sacramento County, adjusted for household size as published

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and annually updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. Very low income rent means a monthly rent not in excess of one-twelfth of thirty percent (30%) of fifty percent (50%) of the annual median income, including utility allowance.

A low income household means a household whose income does not exceed sixty percent (60%) of AMI applicable to Sacramento County, adjusted for household size as published and annually updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. Low income rent means a monthly rent not in excess of one-twelfth of thirty percent (30%) of sixty percent (60%) of the annual median income, including utility allowance.

While the City of Sacramento Mixed Income Housing Ordinance does not mandate a specified amount of affordable units within a project with the density of the Railyards, in addition to the development of Workforce Housing described in section III below, this Mixed Income Housing Strategy provides for 600 affordable units be constructed by Developer and/or by third party developers on dedicated parcels. All affordable units shall be affordable to households with incomes that range from 40% - 60% of AMI applicable to Sacramento County, adjusted for household size as published and annually updated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, or lower.

Upon Developer's completion of the initial 300 affordable units as part of the first 3,000 housing units constructed at the Railyards, the remaining affordable units shall be satisfied by either (i) Developer's development of an additional 300 units as part of the following 5,000 housing units constructed at the Railyards, or (ii) land dedication by Developer as approved by the City and Sacramento Housing and Redevelopment Agency (SHRA) to support development of not less than 300 units to be built by a third party developer(s) ("Dedicate Parcel(s)"), or (iii) a combination of the approaches in subsection (i) and (ii) above (see Table 1 below). The initial 300 Developer-developed affordable units are anticipated to be constructed by the end of 2021 subject to this Mixed Income Housing Strategy in satisfaction of Department of Housing and Community Development requirements, with the balance of the affordable units to be constructed (within mixed income neighborhoods) based upon market demand, resulting absorption and related development factors for similar projects. Each Dedicated Parcel shall be a minimum of one (1) net buildable acre and shall, post dedication, be restricted for affordable units only. The proposed location of each Dedicated Parcel and allocated affordable units shall be approved by the City, SHRA and Developer. Based on current City housing policy, a maximum of 150 affordable units per acre is permitted and higher densities for all residential units within the Railyard are encouraged (not less than 100 affordable units per acre shall be used for the above referenced allocation). Prior to the City and SHRA approving and accepting ownership of a Dedicated Parcel, Developer, at is cost, shall deliver to the

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City and SHRA a feasibility assessment, including environmental considerations, for each such parcel. Following dedication, the actual number of affordable units subsequently built by a third party developer(s) on a Dedicated Parcel(s) shall be subject to the discretion of the City and SHRA and is not subject to or controlled by this Mixed Income Housing Strategy. Each Dedicated Parcel is subject to compliance with this Mixed Income Housing Strategy and consistency with the guidelines prepared pursuant to Section 17.712.090 of the City Code. Subject to the foregoing, each dedication shall occur only after the recordation of a subdivision map(s) by Developer, which may occur over time on a phased basis to create each legal parcel (and the satisfaction of the allocated City-approved map conditions by Developer), in exchange for applicable fee credits.

Development of affordable units is reliant on financial assistance, utilizing resources available now and new sources, including low income tax credits and other mechanisms. With the loss of redevelopment funds in California, the development of additional affordable units will require alternative financing mechanisms and public assistance. City and SHRA shall prioritize opportunities for and shall reasonably cooperate with Developer in procuring available grants and assistance with obtaining other public financing (federal, state and municipal) for development of the affordable units and associated infrastructure. Development of affordable units is forecasted to be concurrent to the development of market rate units in the project and, except as provided herein, may be included in mixed income housing projects throughout the development. The satisfaction of certain criteria applicable to the development of affordable units and/or dedication of Dedicated Parcel(s) as conditions to specified development rights of Developer are provided in the Development Agreement entered into by the City and Developer. The development of affordable units is forecasted to occur as set forth on Table 1.

Table 1

Phase	**Housing Units Per Phase**	**Affordable Units Developed** (at 40% to 60% AMI) or land dedicted	**Commulative Housing Units Developed**
1	3,000	300 units	3,000
2	1,500	100 units and/or land dediction	4,500
3	1,500	100 units and/or land dediction	6,000
4	2,000	100 units and/or land dediction	8,000
5	2,000		10,000

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Representative unit mix and affordability breakdown are shown below in Table 2. Requirements related to tax credit financing or other financing sources may impose modifications to specific affordability and/or unit types. The current unit mix and affordability has 77% of affordable units at or below 50% AMI (Very Low Income).

Table 2

Representative Unit Mix and Affordability Breakdown Railyards Maximum Potential Affordable Units					
	Very Low Income	**Very Low Income**	**Low Income**		
Type	**40% AMI**	**50% AMI**	**60% AMI**	**Total**	**%**
1BR	18	229	75	322	54%
2BR	14	94	39	147	25%
3BR	8	96	27	131	22%
Total	40	419	140	600	
%	7%	70%	23%		100%
% at/below 50% AMI		77%			

Based on 2016 income limits for projects placed in service after March 28, 2016, affordable units in Railyards will serve households with maximum incomes between $19,440 (1 person at 40% AMI) and $48,360 (6 persons at 60% AMI).

As presently anticipated, unit mix is to include 1BR, 2BR and 3BR rental units, though studio units are also possible depending on the project requirements. This unit mix is subject to change. For example, recent market studies reflect a relative low demand for 3BR units. If necessary, a reduction of 3BR units would be offset by an increase of other unit types. Gross rents by unit type, again as of 2016 limits, range from $521 to $1,083 per month – deeply discounted in comparison to market rents that characterize the Central City submarket.

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Affordable units in Railyards:

- will be located in proximity to transit, particularly either planned or existing light rail and streetcar terminals;
- may be developed in conjunction with market rate units as a component of a larger project; and
- will provide a minimum of no less than 30 years affordability restriction (as required pursuant to Section 17.712.030D. of the Mixed Income Housing Ordinance) from the date of Certificate of Occupancy.

As per the City of Sacramento Housing Element Goal H-2.2, and various policies thereunder, the Developer will request that the City and housing agency provide financial assistance whenever possible to assist with development of affordable units. The construction of affordable units requires additional financial assistance in order to be feasible. Under the current Mixed Income Housing Ordinance, housing fees for residential development in Railyards will be $0.00 due to density. In the event of changes to fee structures, in order to mitigate the cost of development of affordable units, Developer may request, pursuant to Section 17.712.030 of the Mixed Income Housing Ordinance, fee waivers or that fees collected in the project are utilized to offset the cost for construction of affordable dwelling units, or other mechanisms that lead to the provision of affordable housing within the Project. In the event housing impact fees are levied pursuant to the Public Facilities Finance Plan for the Railyards, those proceeds shall be reinvested in Railyards for the purpose of assisting with construction of affordable or workforce housing as defined in this strategy, infrastructure that supports housing development or other purposes defined in the Finance Plan.

II. Workforce Housing

Construction costs in the Railyards' urban location make traditional units difficult to achieve at a price point that is affordable for households with incomes at 80% AMI to 120% of AMI. This is especially true for the smaller households (1 to 3 persons) that characterize the urban core submarket. For example, under the assumption that rents equate to no more than 30% of income, rents affordable to those with incomes at 80% AMI are far lower than the average price of existing apartment units in the Central City submarket (prior to any consideration of new construction).[1]

1 MPF Research, 1Q 2016, "Central Sacramento" submarket

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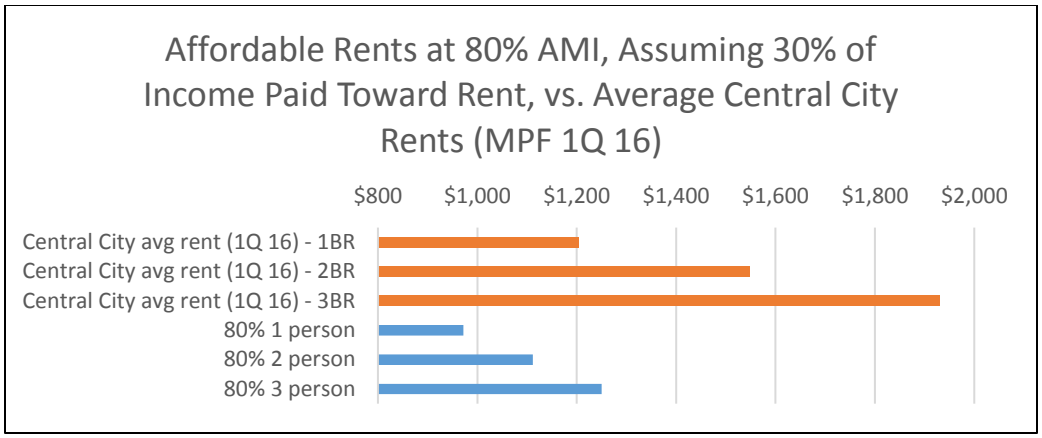
ADOPTED:_____



Due to the high cost of construction, in order to meet housing demand for households approaching the region's median household income, additional considerations are necessary. This housing segment benefits the middle class and this middle income stratum of the market has been the least served. Construction of housing that is attainable for households at or near the median income is consistent with a variety of goals and policies spelled out in the City of Sacramento Housing Element, and will require assistance from the City in keeping with Goal H-2.3 and the various policies thereunder.

In order to accommodate this need, the Railyards Specific Plan and design guidelines for Railyards will provide for the following benefits to reduce the cost per residential unit:

- Higher density development: This amortizes the fixed costs for land and project entitlement, while providing better economies of scale for marketing, and amenities.
- Smaller and more efficient unit design: This reduces the actual development cost on a per unit basis, providing an affordable alternative to suburban development.
- Access to transit: Proximity to transit allows for a reduced cost of living as vehicle miles traveled are reduced or eliminated. Transportation is the second largest expense for U.S. households, behind only housing outlay. U.S. Department of Transportation data shows that the average American household spends 19% of income on transportation, rising to 25% in "auto dependent" suburbs. In "location efficient environments" [those with public transit and walkability], the average spent on transportation falls to 9%. This increases disposable income to 59%, expanding housing choices. [2]

2 http://www.fhwa.dot.gov/livability/fact_sheets/transandhousing.cfm

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- Access to amenities: Proximity to parks and other recreational opportunities improves the desirability of living in the urban area while reducing the cost of developing a project with redundant features of this type.
- Developer may request that housing projects utilize shared or public parking garages to meet development requirements rather than rely fully on self-parking strategies.

In order to encourage housing production, the City will develop materials to help developers in the Railyards have a predictable development experience. Specifically, the City will develop a Railyards Specific Plan and an associated EIR Conformity Checklist that would provide a list of items that each subsequent proposed project would use to demonstrate conformity with not only the Railyards Specific Plan, but also with measures required by the EIR. This checklist is anticipated to be also used by City Planning staff as a way to document whether subsequent proposed projects within the Railyards meet all of the policy requirements of the Railyards Specific Plan as well as the environmental measures required by the EIR.

III. Product Type Variation by Tenure (Ownership and Rental)

Ownership housing at the densities reflective of this urban in-fill location – i.e., attached mid- and high-rise condos – represents a small share of the Sacramento housing market. (Attached housing of all types/densities accounted for just 11% of total sales in the City of Sacramento over the past 20 years, based on public records compiled by Zonda.)

In addition to the comparatively shallow market for high-density attached product, sales prices have yet to regain pre-recession peaks. Rents, in comparison, underwent much less downturn (increasing an average of 4.7% annually over the past five years), and rental increases are anticipated to remain in the 4%+ ranges over the next five-year cycle.

Modest income homeownership is a theme and priority program for the City Housing Element. Railyards has the locational qualities to support ownership housing, particularly once key amenities have been built. While this may include executive for-sale product on the waterfront it may also include mid-rise product compatible with various locations in the C3-SPD and R5-SPD zones, which will house all planned residential product in Railyards.

Ownership product is expected to account for approximately 15% - 30% of total residential units in Railyards, with timing dependent on market recovery as well as development of place-making elements on site.

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The consumer groups expected to account for the majority of future residential sales activity at Railyards are as follows:

- Professional singles and couples employed in the Downtown area with the attraction of a potentially walkable commute to work and convenient access to an expanding base of services and amenities planned for Downtown Sacramento – new sports arena and entertainment complex, new shops and restaurants, new art galleries and museums, etc.

- Professional singles and couples that commute to out-of-area employment centers – San Francisco (via motorcoach service or Amtrak to BART), Oakland, San Jose, Auburn, etc.— attracted by walking distance to the existing Amtrak station and the multi-modal transportation center planned along the southern edge of Railyards.

- Empty-nesters downsizing from large, maintenance-intensive homes and yards. One or both members of the household are likely employed in the Downtown area and/or attracted to the expanding base of Downtown amenities and services.

- Retirees downsizing from large, maintenance-intensive homes and yards. While these individuals are no longer tied to a workplace location, the expanding base of services and amenities being established in the Downtown area will be a draw. The prospect of expected travel opportunities will also have these buyers targeting housing projects offering the ability to "lock and leave."

IV. Product Innovation

Over the life of the Railyards development the housing market will undergo various changes, unforeseen today, based on changes in technology, demographics and personal lifestyle choices. Areas where product innovation is expected to have a near term impact are as follows:

- **Micro units and other product lines to broaden affordability**

  Railyards contains many of the elements that correlate to successful development of micro units. Typically sized under 350 square feet, but with a fully functional and ADA-compliant kitchen and bathroom, micro units utilize highly efficient unit design and distinctive common amenities to compensate for the compact living area. Micro units are typically priced at rents 20% to 30% less than conventional studios, significantly expanding affordability. Higher price per square foot (typically +25%) offsets more expensive construction costs per square foot and slightly higher

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operating costs associated with micro units. Micro units are expected to be located within ¼ mile of a transit station.

Figure 1 Sample Micro Unit Floorplans

The top appeal for micro unit is reduced price relative to other rental options. Highly desirable locations ("authentic, urban/urbanizing, walkable, and trendy")[3] and privacy (living alone rather than with roommates) are also strong attractants. Nearly a quarter of renters in conventional apartments would be "interested or very interested" in renting a micro unit, based on a 2014 ULI survey.

The target market for micro units – predominantly young professionals, typically under 30 years old – is an exceptionally close fit to the demographic profile of urban core Sacramento residents. In addition, the future Kaiser Hospital and Innovation Center both pose the potential to generate

3 ULI, The Macro View on Micro Units, 2014

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demand from nurses, interns and residents and young "creatives." Micro units may also attract some couples and roommates; some older, single, move-downs; and pied-a-terre users.

Micro units and other product lines with the potential to deepen affordability and/or expand the prospective resident base for Railyards will be explored during the project's estimated 20-year build-out.

- **Design Efficiencies**

Intentional, creative solutions to reduce parking in this walkable, TOD setting represents a significant potential mechanism to help broaden affordability.

The podium or wrap parking structures that typify mid- and high-density development impose a high project cost. The Nelson\Nygaard parking study conducted for the City of Sacramento in 2012 estimated the cost of constructing one parking stall at up to $25,000, in 2012 dollars. [4] The City of Sacramento revised Parking Code adopted in December 30, 2012 recognized this market reality, eliminating required parking in the Central Business and Arts & Entertainment District (0 spaces) and reducing the parking minimum to 0.5 space per unit in the Urban District, in order to promote new housing development.

Mechanisms to reduce parking stalls without impacting marketability include the following:

- Promotion of "active transportation" will be achieved in Railyards by incorporation of pedestrian-friendly walkways (with safe crossings and good lighting), bike lanes, and building layouts.
- Services such as a bicycle-sharing program are expected to be utilized.
- Promotion of car sharing (e.g., auto rental services that substitute for private car ownership, such as Zipcar, Turo, Car2go).

Unbundling parking from the rent shifts the cost to households with cars, rather than amortizing the cost of parking spaces over all residents. Savings for car-free households make housing significantly more affordable for residents who can use public transportation (or walk/bicycle).

---

4 The 2015 Carl Walker Parking Structure Cost Outlook calculates the national median cost per stall for parking structures that are not fully subterranean at $18,599 -- excluding the cost of land and soft costs (typically +15% to 25%). (http://www.carlwalker.com/wp-content/uploads/2015/07/Carl-Walker-2015-Cost-Article.pdf

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A combination of these approaches may enable some future residents to shed cars, thereby reducing market-required parking for some household types and passing through cost savings to residents.

- **Sustainability**

Sustainability and green development is listed as a theme and priority program of the City Housing Element, listed as Goal H-1.1 in the City Housing Element. It is also a core principle to the Railyards' vision. The urban location in proximity to transit provides the opportunity to create a green community with reduced impacts on the environment compared to other comparable-sized communities. Sustainability is a critical concept to improving the mixed income housing ratio due to the reduction in energy consumption and costs related to transportation for residents within the community. The Railyards development will include the following features:

- Close proximity to transit, which will reduce commute times and costs.
- Highly walkable environment, which will further reduce transit costs, improve the efficiency and livability of the environment.
- Amenities in close proximity, including parks, trails, schools, medical services, libraries, shopping and entertainment.

The features above result in a significant reduction in greenhouse gas emissions compared to comparable sized developments. Affordability is improved by reductions in transportation costs and improvements in energy efficiency. Additional financial benefits achieved include reduced health care costs, higher property values and greater productivity.

V. Projected Buildout

The infill location, with proximity to transit, employment and amenities reduces costs of living in the Railyards. Based on DOT data referenced above, this allows up to a 10% increase in disposable income. The following projections assume that the percentage of income spent on rent will range from 30% - 40%. Based on the strategies identified above the projected residential development of Railyards is expected to include the following:

- **Affordable Housing –**As outlined above, 600 affordable units will be developed concurrently with market rate units as described above.

- **Micro Units and Studio Units –** Per the Context Study, the unit mix in the downtown market is heavily weighted toward smaller floor plans. One reason for the prevalence of smaller units is

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that constructing smaller units, with more density, allows for better economies of scale. As discussed above, Micro Units are a continuation of this trend. While this product type is untested in Sacramento, it is expected that there will be some demand for this type of housing in the market. This will particularly hold true around mass transit and within amenitized walkable communities. Studios currently account for 9% of the representative market comparables in the Context Study. The projection for the Railyards is that the combination of Micro Units and Studios will account for a larger percentage of housing units than in the existing market, ranging from 10% - 15% of the total housing units. Market rents for studios currently average approximately $1,450 per unit, with expectations that Micro Units will range up to 20% below that cost. Assuming rent payments constituting 30% - 40% of income, the household income levels necessary to afford this rent range from $34,800 - $58,000.

- **One bedroom units –** Per the Context Study, one bedroom units are the largest single unit type in the downtown market. These units account for 58% of the representative market comparables in the study. The demand for one bedroom units is driven by the same factors as studio units discussed above. While costs per square foot are higher for the smaller units, the nominal cost of the rent is more affordable to individuals and couples. One bedroom units are expected to represent the major component of rental housing in the Railyards, ranging from 50% - 65% of the total units. Market rents for one bedroom units in comparable projects currently average approximately $1,700 per unit. The household income levels necessary to afford this rent range from $51,000 - $68,000 annually.

- **Two bedroom and larger units –** Two bedroom units are expected to represent a substantial component of the units in the Railyards. Per the Context Study, two bedroom units represent 33% of the representative market comparables. Accommodating a family or shared household (roommates), multi-bedroom units increase affordability by potentially sharing the costs of the unit among a larger number of people. The expectation for the Railyards is that two bedroom and larger units will represent 20% - 40% of the total units. Rents for two bedroom units in the Context Study average approximately $2,250 per unit. The household income needed to afford this rent ranges from $67,500- $90,000 annually.

- **For Sale Housing -** In addition to the various rental unit types listed above, Railyards will also accommodate for sale housing. Due to the required density within the Railyards, For Sale housing is expected to be attached, condominium style units. Per the Context Study, sales prices of For Sale projects in and around the downtown market range from $340K - $540K for homes ranging

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from 964 – 2,305 square feet, or $267-$299 per square foot. This is currently less than projected costs for high density development in the Railyards, and a significant increase in valuation will be required to activate For Sale Housing product. For Sale Housing is projected to range from 15% - 30% of the units in the Railyards.

VI. Density Summary Matrix

The following tables provide a recap of the range of possibilities that result from this strategy. Income ranges are based on the rent ranges reflected in the Context Study rather than average rent rates reflected above. Estimated ranges of income are based on a range of 30%-40% of household income, taking into account the transportation savings discussed above, as estimated by the Department of Transportation, which allows up to a 10% increase in disposable income. The number of affordable units are adjusted under each scenario to reflect a range proportionate to the total number of units developed.

Projected Build out									
6,000 Residential Unit Scenario									
	Estimated Household Size	Percent of Total		Range of Units		Current Price Range ($)		Estimated Range of Income ($)	
Affordable Housing	1 - 6		8.33%		500	486	1,083	19,440 (VLI)	48,360 (LI)
Micro and Studio Units	1 - 2	5.00%	- 15.0%	300	900	1,157	1,467	34,704	58,680
One Bedroom Units	1 - 3	45.00%	- 65.0%	2,700	3,900	1,380	2,400	41,400	96,000
Two Bedroom + Units	1 - 4	25.00%	- 40.0%	1,500	2,400	2,045	4,300	61,350	172,000
For Sale Housing	1 - 6	15.00%	- 30.0%	900	1,800	340,000	540,000	55,000	172,000

Projected Build out
10,000 Residential Unit Scenario

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	Estimated Household Size	Percent of Total		Range of Units		Current Price Range ($)		Estimated Range of Income ($)	
Affordable Housing	1 - 6		- 6.00%		600	486	1,083	19,440 (VLI)	48,360 (LI)
Micro and Studio Units	1 - 2	5.00%	- 15.0%	500	1,500	1,157	1,467	34,704	58,680
One Bedroom Units	1 - 3	45.00%	- 65.0%	4,500	6,500	1,380	2,400	41,400	96,000
Two Bedroom + Units	1 - 4	25.00%	- 40.0%	2,500	4,000	2,045	4,300	61,350	172,000
For Sale Housing	1 - 6	15.00%	- 30.0%	1,500	3,000	340,000	540,000	55,000	172,000

Other than for income restricted units, it is assumed that upper ranges of income will be potentially much higher than the median due to the influx of employment to the downtown market, driven by the development of the Railyards and other surrounding projects.

A reference to current median household income levels based on household size is shown below for comparison purposes.

Maximum Income Limits (2016) as provided by SHRA						
Affordability	Household Size (number of persons)					
	1	2	3	4	5	6
40.0% of AMI	$21,320	$24,360	$27,400	$30,440	$32,880	$35,320
50.0% of AMI	$26,650	$30,450	$34,250	$38,050	$41,100	$44,150
60.0% of AMI	$31,980	$36,540	$41,100	$45,660	$49,320	$52,980
100.0% of AMI	$53,250	$60,900	$68,500	$76,100	$82,200	$88,300

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ADOPTED:_____

EXHIBIT J

ASSIGNMENT AND ASSUMPTION AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

ASSIGNMENT AND ASSUMPTION AGREEMENT

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

RECITALS

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

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

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

AGREEMENT

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

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

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

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

"2.7 **Assignment.**

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

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conferred herein without entering into an Assignment and Assumption Agreement with CITY.

2.7.2. **Release of LANDOWNER.** 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 under this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project ("Full Assignment"). If the purchaser, transferee, or Assignee delivers to CITY a fully executed Assignment and Assumption Agreement to assume less than all of the obligations of LANDOWNER under this Agreement with respect to the Property, or such portion thereof sold, transferred or assigned, for Development of the Project ("Partial Assignment"), LANDOWNER shall remain obligated to perform all terms and conditions of this Agreement unless CITY executes the Partial Assignment. CITY shall release LANDOWNER from the duties, liabilities and obligations under this Development Agreement with respect to the interest(s) sold, assigned or transferred as set forth in the Full Assignment or Partial Assignment only if LANDOWNER is not in default under this Agreement as of the effective date of the Full Assignment or Partial Assignment.

2.7.3 **Assignees.** The Assignee shall be obligated and bound by the terms and conditions of this Agreement if Assignee, LANDOWNER, and CITY execute a Full Assignment or Partial Assignment, 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 portion of the Property sold, assigned, or transferred to Assignee is referred to herein is the "Assignee's Parcel"). The Assignee shall observe and fully perform the duties and obligations of LANDOWNER under this Agreement that relate to the Assignee's Parcel as set forth in the Full Assignment or Partial Assignment. CITY shall release Assignee from LANDOWNER's duties, liabilities and obligations under this Agreement with respect to the interest(s) that are not sold, assigned or transferred to Assignee as set forth in the Full Release or Partial Release. A Full Assignment 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 J and incorporated herein by this reference, or such other form as is proposed by LANDOWNER, and approved by the City Attorney prior to the effective date

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of the assignment. A Partial Assignment is subject to approval by the City Attorney and must be 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 Assigned Parcel(s) and the remaining Property must be complied with by both LANDOWNER and ASSIGNEE, as applicable.

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

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

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nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all of obligations and requirements, and be bound by all of the provisions of such documents and materials, in addition to the express terms and conditions of the Development Agreement.

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

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

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

Notice to the CITY:

Notice to the LANDOWNER:

Notice to the ASSIGNEE:

Notice to Lender:

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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.

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

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

By:_____
LANDOWNER

By:_____
ASSIGNEE

By:_____
CITY

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ADOPTED:_____

EXHIBIT K
IRREVOCABLE OFFER TO DEDICATE FORM
PARK AND RECREATIONAL PURPOSES

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO
NO FEE DOCUMENT
Govt. Code 6103 and 27838

WHEN RECORDED MAIL TO:

CITY OF SACRAMENTO
Attn: Real Estate Services Section
915 I Street, 2nd Floor
Sacramento, California 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE

_____	_____	_____	_____
RES File	Escrow #	APN	Agreement #

IRREVOCABLE OFFER TO DEDICATE EXCLUSIVE PERPETUAL EASEMENT FOR PARK AND RECREATIONAL PURPOSES

Pursuant to Government Code Sections 7050 and 66477 and the Sacramento City Code, _____ ("GRANTOR"), a _____, hereby irrevocably offers (this "Offer") to dedicate to the City of Sacramento ("GRANTEE"), a municipal corporation, an exclusive perpetual easement (the "Easement") over, across, and under the real property described in the attached legal description marked as Exhibit "A," (the "Property") and diagramed in the attached map marked as Exhibit "B," which exhibits are incorporated by reference. It is expressly understood and agreed that this Easement is in gross and is dedicated by GRANTOR for any present or future use of the Property by GRANTEE as a park for recreational purposes. The rights of GRANTEE under the Easement include, without limitation, the right to:

1. Excavate, construct, reconstruct, repair, use, operate and maintain the Property as a public park (the "Project"), including the right to install utilities, irrigation, planting, paving, structures, buildings and related improvements in accordance with City standards and the master plan for the Property, as the standards and master plan may be revised or amended from time to time.

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2. Locate or relocate and clear and remove any or all obstructions, improvements, trees and vegetation on the Property that impede or interfere with GRANTEE's rights as set out in this Offer, subject to GRANTOR's reserved right to place utilities on the Property as described below.

3. Restrict use of the Property by GRANTOR or others that may interfere with any of the rights of GRANTEE as set out in this Offer, or any use necessary or incidental to GRANTEE's rights under this Offer.

4. Ingress to and egress from the Property over, upon and across abutting property owned or controlled by GRANTOR and its successors and assigns as reasonably necessary for GRANTEE to access the Property for the purpose of exercising and performing all of the rights and privileges granted in this Offer, subject to the obligation of GRANTEE to only use the route or routes across GRANTOR's property that will cause the least practicable damage and inconvenience to GRANTOR.

5. Operate commercial activities incidental to the use of the Property for recreational purposes, including the right to grant a concession, lease, license or permit to third parties to undertake recreational or commercial activities within the Property.

6. Sell, transfer or assign, in whole or in part, GRANTEE's interest in the Property without any recourse of, or obligation to, GRANTOR.

GRANTOR reserves for itself and its successors and assigns, the right to install, construct, reconstruct, repair, use, operate and maintain utilities on the Property that are required to provide utility services to GRANTOR's property that abuts the Property, provided that the utilities do not interfere with the rights of GRANTEE under this Offer. GRANTOR shall relocate any utility improvements, at GRANTOR's sole cost and expense, that in GRANTEE's reasonable judgment interfere or impede with GRANTEE's construction and operation of the Project. GRANTOR shall immediately repair to GRANTEE's satisfaction and at no cost to GRANTEE any damages to any improvements within the Property caused by GRANTOR's exercise of its reserved rights.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

GRANTOR, for itself and its successors and assigns, hereby waives any claims for any and all damages which may accrue to the remaining property of GRANTOR by reason of its severance from that portion granted herein and the construction and maintenance of the improvements on the Property as described herein. GRANTOR acknowledges, for itself and its successors and assigns, that GRANTOR has been advised by GRANTEE to seek the advice of counsel on the issue of waiver of severance damages, and has either done so or has chosen not to do so despite being given such advice.

GRANTOR, for itself and its successors and assigns, is fully aware and represents, warrants and agrees to all of the following:

1. GRANTOR certifies that it owns full legal fee title to the Property and has the power and authority to convey all property rights described in this Offer at the time of execution of this Offer, and the undersigned is duly authorized to execute this Offer on behalf of the GRANTOR.

2. As of the time that this Offer is recorded and afterward, the Property is and will remain free and clear of any lien, encumbrance or other title impediment of any sort or nature, except for those to which GRANTEE has expressly consented to in writing.

3. Upon GRANTEE's written request and at no cost to GRANTEE, GRANTOR shall provide to GRANTEE a preliminary report of title for the Property and shall procure a CLTA or ALTA standard or extended coverage owner's policy of title insurance, at GRANTEE's election, insuring that clear title to the Property is vested in GRANTEE, at the time of GRANTEE's acceptance of this offer.

4. Obtain the consent of all beneficiaries under all deeds of trust recorded against the Property prior to GRANTOR's execution of this Offer and obtain the beneficiaries' agreement that any sale made under the provisions of the deeds of trust shall be made subject to this Offer.

5. This Offer is made by the undersigned on behalf of GRANTOR and its successors and assigns, and shall be fully binding on GRANTOR and its successors and assigns.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

6. This Offer is irrevocable upon its recordation in the office of the County Recorder, County of Sacramento. This Offer may be accepted at any time by the designated representative of GRANTEE by recording of a certificate of acceptance. The Easement may be terminated by GRANTEE at any time after acceptance in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.

7. GRANTEE assumes no liability whatsoever with respect to the Property, or occurrences on the Property, unless and until it has formally accepted this Offer. Until GRANTEE accepts this Offer, GRANTOR shall indemnify, defend and hold GRANTEE and its officers, employees and agents harmless from any and all liability whatsoever arising out of or in any way related to events or occurrences upon the Property or the condition of the Property. If GRANTEE formally accepts this Offer, GRANTOR shall relieve GRANTEE from any responsibility for the monitoring, reporting, costs, or other obligations relating to the Department of Toxic Substances Control-approved land use covenant, covenants, conditions, and restrictions (CC&Rs), deed restrictions, or order that apply to the Property; if GRANTOR is not responsible for these obligations, it shall identify the party this is responsible for these obligations. The parties further agree and understand that: (i) GRANTEE shall not be deemed to have waived any rights against GRANTOR because of any insurance coverage, (ii) the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with its terms, (iii) no specific term or word contained herein shall be construed as a limitation on the scope of the indemnification and defense obligations of GRANTOR, and (iv) the provisions of this paragraph shall survive the acceptance of this Offer.

8. In the event that there are improvements upon the Property, located or placed there before or after this Offer is recorded, that impede or interfere with GRANTEE's rights, GRANTOR shall remove the improvements, at no cost to GRANTEE, in accordance with the schedule specified by GRANTEE.

9. GRANTOR shall cause GRANTEE to be named as an additional insured under all pollution legal liability insurance policies that cover the Property.

10. To the best of GRANTOR's knowledge:

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

(i) There is no license, permit, option, right of first refusal or other agreement, written or oral, that affects any part of the Property. Conveyance of the property rights described in this Offer will not constitute a breach or default under any agreement to which GRANTOR is bound or to which the Property is subject.

(ii) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion of the Property, or pending or threatened against GRANTOR that could affect GRANTOR's title to the Property, or any part of the Property, or subject an owner of the Easement, or any portion of the Easement, to liability.

(iii) There are no uncured notices that have been served upon GRANTOR from any governmental agency notifying GRANTOR of any violations of law, ordinance, rule or regulation that would affect any part of the Property.

Each of the above representations, warranties and agreements is material and is relied upon by GRANTEE and shall be deemed to have been made as of the date that this Offer is recorded and shall survive the recording until this Offer is accepted. If after the recording of this Offer, GRANTOR discovers any information or facts that would materially change any of these representations and warranties, GRANTOR shall immediately give notice to GRANTEE of the facts and information. If any of these warranties and representations cease to be true before the acceptance of this Offer, GRANTOR shall be obligated to remedy the problem in accordance with the schedule specified by GRANTEE.

GRANTEE makes no representation that this Offer will be accepted and the Project constructed. GRANTEE is not obligated to, and will not incur any liability for failure to, accept the Offer, take title to the Easement, or construct the Project, regardless of the reason why GRANTEE fails to do so.

This Offer may be executed in counterparts and shall together constitute one and the same instrument.

[Remainder of page left intentionally blank]

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

IN WITNESS WHEREOF, the parties hereto have caused this Irrevocable Offer to Dedicate Exclusive and Perpetual Easement for Park and Recreational Purposes to be duly executed as of the last day and year set out below.

GRANTOR:

By: _____
Title:
Print Name:

Dated:_____

GRANTEE:
CITY OF SACRAMENTO,
a municipal corporation

By:_____
City Manager

Date:_____

APPROVED AS TO FORM:

BY: _____
City Attorney

ATTEST:

By:_____
City Clerk

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT L
IRREVOCABLE OFFER TO DEDICATE FORM
ALL PURPOSE

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO
NO FEE DOCUMENT
Govt. Code 6103 and 27838

WHEN RECORDED MAIL TO:

CITY OF SACRAMENTO
Attn: Real Estate Services Section
915 I Street, 2nd Floor
Sacramento, California 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE

_____	_____	_____	_____
RES File	Escrow #	APN	Agreement #

IRREVOCABLE OFFER TO DEDICATE
(IN FEE OR EASEMENT)

Pursuant to Government Code Sections 7050 and 66477 and the Sacramento City Code, _____ ("GRANTOR"), a _____, hereby irrevocably offers (this "Offer") to dedicate to the City of Sacramento ("GRANTEE"), a municipal corporation, in (fee or easement) the real property described in the attached legal description marked as Exhibit "A," (the "Property") and diagramed in the attached map marked as Exhibit "B," which exhibits are incorporated by reference.

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.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

GRANTOR, for itself and its successors and assigns, is fully aware and represents, warrants and agrees to all of the following:

1. GRANTOR certifies that it owns full legal fee title to the Property and has the power and authority to convey all property rights described in this Offer at the time of execution of this Offer, and the undersigned is duly authorized to execute this Offer on behalf of the GRANTOR.

2. As of the time that this Offer is recorded and afterward, the Property is and will remain free and clear of any lien, encumbrance or other title impediment of any sort or nature, except for those to which GRANTEE has expressly consented to in writing.

3. Upon GRANTEE's written request and at no cost to GRANTEE, GRANTOR shall provide to GRANTEE a preliminary report of title for the Property and shall procure a CLTA or ALTA standard or extended coverage owner's policy of title insurance, at GRANTEE's election, insuring that clear title to the Property is vested in GRANTEE, at the time of GRANTEE's acceptance of this offer.

4. Obtain the consent of all beneficiaries under all deeds of trust recorded against the Property prior to GRANTOR's execution of this Offer and obtain the beneficiaries' agreement that any sale made under the provisions of the deeds of trust shall be made subject to this Offer.

5. This Offer is made by the undersigned on behalf of GRANTOR and its successors and assigns, and shall be fully binding on GRANTOR and its successors and assigns.

6. This Offer is irrevocable upon its recordation in the office of the County Recorder, County of Sacramento. This Offer may be accepted at any time by the designated representative of GRANTEE by recording of a certificate of acceptance. The Easement may be terminated by GRANTEE at any time after acceptance in the manner specified in the Streets and Highways Code, commencing at Section 8300, for summary vacation of streets or highways.

7. GRANTEE assumes no liability whatsoever with respect to the Property, or occurrences on the Property, unless and until it has formally accepted this Offer. Until GRANTEE

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

accepts this Offer, GRANTOR shall indemnify, defend and hold GRANTEE and its officers, employees and agents harmless from any and all liability whatsoever arising out of or in any way related to events or occurrences upon the Property or the condition of the Property. If GRANTEE formally accepts this Offer, GRANTOR shall relieve GRANTEE from any responsibility for the monitoring, reporting, costs, or other obligations relating to the Department of Toxic Substances Control-approved land use covenant, covenants, conditions, and restrictions (CC&Rs), deed restrictions, or order that apply to the Property; if GRANTOR is not responsible for these obligations, it shall identify the party this is responsible for these obligations. The parties further agree and understand that: (i) GRANTEE shall not be deemed to have waived any rights against GRANTOR because of any insurance coverage, (ii) the scope of the aforesaid indemnity and hold harmless agreement is to be construed broadly and liberally to provide the maximum coverage in accordance with its terms, (iii) no specific term or word contained herein shall be construed as a limitation on the scope of the indemnification and defense obligations of GRANTOR, and (iv) the provisions of this paragraph shall survive the acceptance of this Offer.

8. In the event that there are improvements upon the Property, located or placed there before or after this Offer is recorded, that impede or interfere with GRANTEE's rights, GRANTOR shall remove the improvements, at no cost to GRANTEE, in accordance with the schedule specified by GRANTEE.

9. GRANTOR shall cause GRANTEE to be named as an additional insured under all pollution legal liability insurance policies that cover the Property.

10. To the best of GRANTOR's knowledge:

    (i) There is no license, permit, option, right of first refusal or other agreement, written or oral, that affects any part of the Property. Conveyance of the property rights described in this Offer will not constitute a breach or default under any agreement to which GRANTOR is bound or to which the Property is subject.

    (ii) There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Property, or any portion of the Property, or pending or threatened against GRANTOR that could affect GRANTOR's title to

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CITY AGREEMENT NO._____ DATE

ADOPTED:_____

the Property, or any part of the Property, or subject an owner of the Easement, or any portion of the Easement, to liability.

(iii) There are no uncured notices that have been served upon GRANTOR from any governmental agency notifying GRANTOR of any violations of law, ordinance, rule or regulation that would affect any part of the Property.

Each of the above representations, warranties and agreements is material and is relied upon by GRANTEE and shall be deemed to have been made as of the date that this Offer is recorded and shall survive the recording until this Offer is accepted. If after the recording of this Offer, GRANTOR discovers any information or facts that would materially change any of these representations and warranties, GRANTOR shall immediately give notice to GRANTEE of the facts and information. If any of these warranties and representations cease to be true before the acceptance of this Offer, GRANTOR shall be obligated to remedy the problem in accordance with the schedule specified by GRANTEE.

GRANTEE makes no representation that this Offer will be accepted. GRANTEE is not obligated to, and will not incur any liability for failure to, accept the Offer, take title to the Property, regardless of the reason why GRANTEE fails to do so.

This Offer may be executed in counterparts and shall together constitute one and the same instrument.

[Remainder of page left intentionally blank]

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

IN WITNESS WHEREOF, the parties hereto have caused this Irrevocable Offer to Dedicate to be duly executed as of the last day and year set out below.

GRANTOR:

By: _____
Title:
Print Name:

Dated:_____

GRANTEE:
CITY OF SACRAMENTO,
a municipal corporation

By:_____
City Manager

Date:_____

APPROVED AS TO FORM:

BY: _____
City Attorney

ATTEST:

By:_____
City Clerk

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT M

RESERVATION OF REAL PROPERTY AGREEMENT FORM

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

RECORDING REQUESTED BY
AND FOR THE BENEFIT OF

CITY OF SACRAMENTO
NO FEE DOCUMENT
Govt. Code 6103 and 27838

WHEN RECORDED MAIL TO:

CITY OF SACRAMENTO
Attn: Real Estate Services Section
915 I Street, 2nd Floor
Sacramento, California 95814

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.

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

AGREEMENT

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

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.

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

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 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

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ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

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

At the time the Property title is to be transferred to PUBLIC AGENCY, LANDOWNER shall provide PUBLIC AGENCY with written verification from California Department of Toxic Substances Control (DTSC) that all Hazardous Substances on the Property has been remediated in accordance with the DTSC requirements.

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.

10. Insurance

LANDOWNER shall use good faith efforts to cause PUBLIC AGENCY to be named as an additional insured under all pollution legal liability insurance policies, if any, that cover the Property.

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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ORDINANCE NO._____

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ADOPTED:_____

Notice to the PUBLIC AGENCY:

Notice to the LANDOWNER:

Notice to Lender:

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

12. Successors and Assigns

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

[Remainder of page left intentionally blank]

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

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

LANDOWNER:

By: _____

PUBLIC AGENCY:

By: _____

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE

ADOPTED:_____

EXHIBIT N

PARKS AND OPEN SPACE REQUIREMENTS

SEE ATTACHED

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

Lot	Linear Mi.	Park	Notes	AC	Quimby AC	Issues to Resolve	Notes
1		Under I-5 Experience		0.56	0.56		Under I-5; may provide Sac River connection; tbd
2e		Kaiser Promenade	[1]	0.77	0.77		Needs to remain open/public; Cannot include vehicle drive aisles
4e		Water Tower		0.08	0.00		Open Space lot containing water tower
5a		Stanford		0.64	0.00		Private street
10		Stanford/Stevens		1.5	tbd		Roadway and parking not Quimby eligible; decision on remainder of area to be made by DPR Director or designee with SPDR.
21a		Market Plaza		0.65	0.65		Adjacent to Stanford Street (private street)
21b		Central Shops Plaza		2.38	2.38		Roadway and parking not Quimby eligible; decision on remainder of area to be made by DPR Director or designee with SPDR.
21c		Central Shops Plaza		0.66	0.66		Roadway and parking not Quimby eligible; decision on remainder of area to be made by DPR Director or designee with SPDR.
30		Museum Plaza		4.77	4.77	If State is to own/manage; need agreement before conveyance to assure DRV receives credit for dedication.	State may want to develop; this table assumes all outdoor space has unrestricted public access; area that is Quimby-eligible may change upon review of development

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

						Some uses may not be Quimby eligible (i.e., staff parking)	plans.
31		Under I-5 Experience		2.14	2.14		Under I-5; adjoins Lot 30 and must provide Sac River connection thru hotel site
32		Museum Plaza		0.88	0.88		Part of Museum Plaza; see Notes for Lot 30
34		Riverfront Park		1.11	1.11		
35		Sac River Connection	[1]	5.14	2.50		Exact layout of ERE tbd with design of improvements on Lot; must maintain connection to river from Central Shops
47a		Class 1 Bike/Ped Way		0.22	0		30' wide bike trail easement; connector to 7th Street
48a		Class 1 Bike/Ped Way		0.13	0		30' wide bike trail easement along 7th Street
48b		Class 1 Bike/Ped Way		0.12	0		30' wide bike trail easement along 7th Street
53		South of MLS		0.5	0		Open space lot; not parkland
57a		4-Way Parklets		0.24	0.24		SE corner of intersection of South Park/6th Streets
58a		4-Way Parklets		0.58	0.58		SW corner of intersection of South Park/6th Streets
60		Vista Connector to 4-Way		0.42	0.42		Links Vista Park with 4-Way Parklets
65		MLS Promenade		0.69	0.41		If ERE is allowed for 60' median, need to confirm that it is open to public at all times and does not include drive aisles
68		4-Way Parklets		1.51	1.51		NW corner of intersection of South Park/6th Streets
70c		4-Way Parklets		0.55	0.55		NE corner of intersection of South

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

							Park/6th Streets
72		Vista Park		9.28	9.28		Capped remediation site; Master Plan design must be approved by DTSC
		SMUD Parklets (2)		0.14	0		To be designed/constructed by SMUD; must be conveyed to City (fee or easement) to be included in Railyards CFD boundaries
		Subtotal		**35.66**	**29.41**		
Private Recreation Facilities					7.35	Current max. of 25% credit possible, but difficult to obtain. All private rec. facilities must be available to all residents for maximum credit.	Requires City Council Agreement; facilities must be maintained in good order in pertuity. City Council action required to modify. If eliminated, City to be compensated for value of improvement (identified in Agreement).
		TOTAL			**36.7625**		

Notes

All parkland to be dedicated as Exclusive Recreation Easement

[1] Area identified is part of larger lot

FOR CITY CLERK USE ONLY

ORDINANCE NO._____

CITY AGREEMENT NO._____ DATE ADOPTED:_____

EXHIBIT O

PUBLIC SAFETY RADIO COMMUNICATION REQUIREMENTS FOR BUILDINGS

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

(A) **General.** Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to, any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage for the Sacramento Regional Radio Communications System (SRRCS), including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following: (1) a minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest Sacramento Regional Radio Communications System site; (2) a minimum signal strength of -95 dBm received at the closest Sacramento Regional Radio Communications System site when transmitted from 90% of the area of each floor of the building; (3) the frequency range that much be supported shall be the current band of frequencies used by either the City or County sub-systems; and (4) a 100% reliability factor. When measuring the performance of a bi-directional amplifier, signal strength measurements are based on one input signal adequate to obtain a maximum continuous operating output level.

(B) **Amplifications Systems Allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned to so that they will be 35 db below the SRRCS frequencies.

(C) **Testing Procedures.**

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

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

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

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

3. Five-Year Tests. In addition to the annual test, the building owner shall perform a radio coverage test a minimum of once every five years to ensure that radio system continues to meet the requirements of the original acceptance test. The procedure set forth above shall apply to these tests.

4. Qualifications of Testing Personnel. All tests shall be conducted, documented and signed by a person in possession of a current FCC license, or a current technician certification (minimum Associate level) issued by the Electronics Technicians Association. All original test records shall be retained on the inspected premises by the building owner and copies of the records shall be submitted to the Sacramento Fire Department via the "Self Help Inspection Process".

5. Field Testing: Police and Fire personnel, after providing reasonable notice to the owner or his representative, shall have the right to enter onto the property to conduct field-testing to be certain that the required level of radio coverage is present.

(D) **Permits:** A permit fee of $100.00 shall be submitted to the Sacramento Fire Department along with copies of all test records. This fee may be increased annually.

(E) **Implementation:** Although not a condition of occupancy, the building shall be in compliance of this ordinance within 90 days of occupancy.

(F) **Penalties:** Pursuant to 8.040.080 of the SCC, a violation of this ordinance is a misdemeanor criminal offense and a civil penalty up to $25,000.00 per day (for each and every day that the violation exists) can be imposed.

(G) **Exemptions:** This section shall not apply to buildings less than 5,000 square feet or buildings zoned for Residential 1& 2 Family Units.

(H) **Required Path Availability of SRRCS Microwave System & Mitigation Issues:**

The SRRCS Microwave System is designed for a minimum of 99.999% availability which

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

If CITY determines that mitigation efforts are required, prior to the issuance of final permits or occupancy of the building, the building owner shall mitigate the new building or structure's blockage or obstruction of the SRRCS Microwave System paths so as to restore a minimum of 99.999% system availability by either (1) providing a new microwave relay site/equipment at another site; (2) relocating existing microwave relay/site equipment, (3) paying a fee to be determined by the CITY to cover any work required to restore the SRRCS Microwave System's availability, (4) or installing other technology as may be necessary to maintain the minimum 99.999% system availability. Prior to commencing any mitigation work, the building owner shall submit a detailed mitigation plan to the CITY for approval. If CITY reasonably determines that any proposed structure will reduce system availability to a level below 99.999%, then building owner shall comply with mitigation measures.

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EXHIBIT P

SPECIAL CONDITIONS

I. PURPOSE AND INTENT

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

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

II. LANDOWNERS' OBLIGATIONS

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

1. Appropriate sanitation districts, including but not limited to Sacramento County Regional Sanitation District, for provision of Public Facilities, payment of fees and charges, and payment (if applicable) associated therewith.

2. The State Department of Toxic Substance Control in regards to compliance with applicable land use covenants.

3. Applicable School District(s) in regard to school facilities for the students that will reside within the Project.

4. The Sacramento Regional Transit District in regard to the light rail transit system within the Property.

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III. CONDITIONS OF DEVELOPMENT; SPECIAL FINDINGS REQUIRED

A. In addition to other findings and conditions as may be deemed applicable, no Subsequent Approvals for Development of the Property shall be approved unless the approving body either: (1) makes the following findings; or (2) expressly waives such findings, in whole or in part, as not applicable to the Property and stating the reasons therefor with such waiver and the reasons therefor appear in the record or document of approval. These findings are:

1. The approval of the proposed project is consistent with the policies, goals, standards and objectives of the Specific Plan and LANDOWNER is in compliance with its obligations set forth in the Development Agreement.

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

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

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

5. Appropriate environmental review of the proposed project has been completed, and any suggested mitigation measures resulting therefrom have been included in the approval of the project to the extent feasible.

B. In the event that any of the special findings required herein cannot be made and are not waived, approval may nevertheless be given to the proposed project if all of the following conditions can be satisfied with respect to each such special finding not made:

1. Practicable and feasible requirements or mitigation measures can be imposed upon the project, the implementation of which would allow such special finding to be made;

2. The applicant has agreed to be bound (through written agreement satisfactory to the City Attorney) by and to implement such requirements or mitigation measures, and has posted such security for compliance therewith as may be required by the City Manager; and

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3. It is in the public interest and consistent with the policies, goals, standards and objectives of the General Plan, Community Plan and Specific Plan for the project to be approved with such requirements and mitigation measures.

IV. PARKING

A. If a multi-purpose outdoor stadium (the "Stadium") is Developed on the Property to serve as the home of a major league soccer team, then temporary off-site surface parking lots designed to serve the needs of the Stadium ("Temporary Stadium Lots") may be Developed on the Property on the following terms:

1. Except as provided in section IV.A.9., the Temporary Stadium Lots are limited to the locations shown in the "Stadium Parking Plan" attached in as Exhibit Q.

2. LANDOWNER must obtain a conditional use permit for each Temporary Stadium Lot in accordance with the CITY's Land Use and Development Regulations.

3. LANDOWNER agrees that the CITY may include as conditions on each condition use permit issued for a Temporary Stadium Lot: (a) a termination date, and (b) a provision that allows the CITY to modify or terminate the conditional use permit if the CITY determines, based on the review under section IV., 7., that the parking stalls are no longer needed to serve the Stadium. LANDOWNER waives the right to administratively appeal or judicially challenge a decision by the CITY to modify or terminate a conditional use permit in accordance with this section IV.A.3.

4. The total number of parking stalls in the Temporary Stadium Lots combined is 4,000 ("Baseline Temporary Parking Requirement"), except as the Baseline Temporary Parking Requirement may be adjusted in accordance with section IV.A.6.

5. The Temporary Stadium Lots may be used only for parking for events at the Stadium.

6. After the completion of each of the first four major league soccer seasons after the Stadium is Developed, Stadium parking usage inside and outside the Temporary Stadium Lots within the Property will be evaluated as part of the annual Stadium event transportation management plan review to determine whether the Baseline Temporary Parking

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Requirement should be adjusted to reflect actual parking usage for events at the Stadium. Based on this annual parking review, the CITY may adjust the Baseline Temporary Parking Requirement that is then in effect up or down, and the conditional use permit for any affected Temporary Stadiums Lot will be modified accordingly pursuant to the following schedule and method:

(a) After first season: No adjustment.

(b) After second season: Adjustment based on highest use during prior two seasons.

(c) After third season: Adjustment based on highest use during prior two seasons.

(d) After fourth season: Adjustment based on highest use during prior two seasons.

LANDOWNER has the right to review and comment on the Stadium parking usage evaluation, and the CITY shall consider all evidence submitted by LANDOWNER that is relevant to Stadium parking usage, before the CITY adjusts the Baseline Temporary Parking Requirement.

The CITY's review under this section is independent of the CITY's annual compliance review conducted under Government Code section 65865.1 and City Code section 18.16.160.

7. To encourage the relocation of parking for the Stadium from the Temporary Stadium Lots into permanent parking structures parking ("Parking Structures") (which may be free standing or integrated into office, commercial, or retail buildings) within the Property during the course of Development of the Project:

(a) In conjunction with the sale or transfer by LANDOWNER of any portion of the Property to a third party who intends to construct a Parking Structure (which may be free standing or integrated into office, commercial, or retail buildings) as part of its Development of the Property ("Improved Lot Owner"), LANDOWNER shall present the opportunity to the Improved Lot Owner of entering into a "Stadium Parking Agreement" with the owner or operator of the Stadium. A Stadium Parking Agreement is an agreement that sets forth the terms by which people may use parking stalls in the Parking Structure while attending

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events at the Stadium, including the number of parking stalls that will be available for use by people who attend events at the Stadium. The Parties acknowledge that Stadium Parking Agreements are subject to negotiation between the owner or operator of the Stadium and the Improved Lot Owner and that neither is obligated to enter into a Stadium Parking Agreement.

(b) If LANDOWNER intends to construct a Parking Structure as part of its Development of the Property, then LANDOWNER shall offer to enter into a Stadium Parking Agreement with the owner or operator of the Stadium. The owner or operator of the Stadium is not required to enter a Stadium Parking Agreement with LANDOWNER. For clarification, certain parking uses at structured parking are incompatible with the parking requirements for events at the Stadium (such as medical, residential or retail that requires after traditional business hours parking) and such parking may be fully or partially exempt from the above requirements.

8. For each parking stall that is relocated from a Temporary Stadium Lot to a Parking Structure within the Property, the Baseline Temporary Parking Requirement will be reduced on a pro-rata basis. The desire of the Parties is to eliminate all Temporary Stadium Lots, one by one, during the course of the Development of the Property for the Project, with the goal that all Stadium parking within the Property, except for limited parking onsite, will eventually be in Parking Structures.

9. During the first five major league soccer seasons after the Stadium is Developed, LANDOWNER may Develop a Temporary Stadium Lot in a location other than one shown in Exhibit Q if:

(a) LANDOWNER sells or transfers a portion of the Property that contains a Temporary Stadium Lot and the purchaser or transferee (i) constructs a Parking Structure on the lot that contained the Temporary Stadium Lot and (ii) does not enter into an a Stadium Parking Agreement to allow Stadium parking in the Parking Structure;

(b) A new Temporary Stadium Lot is required to meet the Baseline Temporary Parking Requirement that is then in effect;

(c) The new Temporary Stadium Lot is located in a C-3 SPD zone;

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(d) The new Temporary Stadium Lot replaces the Temporary Stadium Lot that was displaced under section IV.A.9.(a); and

(e) All the conditions in IV.A.2. – 8 (except IV.A.4.) apply to the new Temporary Stadium Lot.

10. In no event may a lot within the Property be used as a Temporary Stadium Lot after December 31, 2030.

B. LANDOWNER has identified certain lots within the Property that it desires to Develop as long-term surface parking lots to serve some of the parking needs of the Project during the Initial Term and any applicable Extension Period ("Improved Surface Lots"). Improved Surface Lots may be Developed on the Property on the following terms:

1. Except as provided in section IV.B.5., the Improved Surface Lots are limited to the locations to be agreed upon by the Parties, which will be shown in a "Project Parking Plan" to be attached as Exhibit R.

2. LANDOWNER must obtain a conditional use permit for each Improved Surface Lot in accordance with the CITY's Land Use and Development Regulations.

3. LANDOWNER agrees that the CITY may include a termination date as a condition on each condition use permit issued for an Improved Surface Lot. LANDOWNER waives the right to administratively appeal or judicially challenge the decision of the CITY to terminate a conditional use permit in accordance with this section IV.B.3.

4. The Improved Surface Lots may be used only for parking (i) for uses located inside the Central Shops Historic District, or (ii) for uses as part of initial phases of a phased commercial complex on a parcel in which the subsequent development of the phased commercial complex will include a Parking Structure that replaces the Improved Surface Lot.

5. Until the fifth anniversary of the Effective Date, LANDOWNER may Develop an Improved Surface Lot in a location other than one shown in Exhibit R if:

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(a) If Development of a lot on which an Improved Surface Lot is located: (i) eliminates all parking stalls that were available in the Improved Surface Lot and (ii) does not include any structured parking;

(b) The new Improved Surface Lot is located in a C-3 SPD zone; and

(c) All the conditions in IV.B.2. – 4 apply to the new Improved Surface Lot.

C. Lots 46 and 47 may be used for parking vehicles having a manufacturer's gross vehicle weight rating of 10,000 pounds or more ("Commercial Vehicles") in connection with events at the Golden 1 Center on the following terms:

1. The ingress, egress, and parking areas on the lots must be improved with "all-weather" gravel or shale similar to that conditioned for Temporary Stadium Lots.

2. The Department of Public Works may reasonably condition future parking operations of Commercial Vehicles on the lots (including the necessary improvements) as needed to protect the health or safety of the public in general or to residents or employees who are occupying or will occupy the Property.

3. Lots 46 and 47 may not be used for parking Commercial Vehicles after (i) the fourth anniversary of the Effective Date or (ii) the date when lots 46 and 47 are first required as Temporary Stadium Lots to meet the Baseline Temporary Parking Requirement, whichever occurs first.

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EXHIBIT Q

MLS PARKING PLAN

SEE ATTACHED

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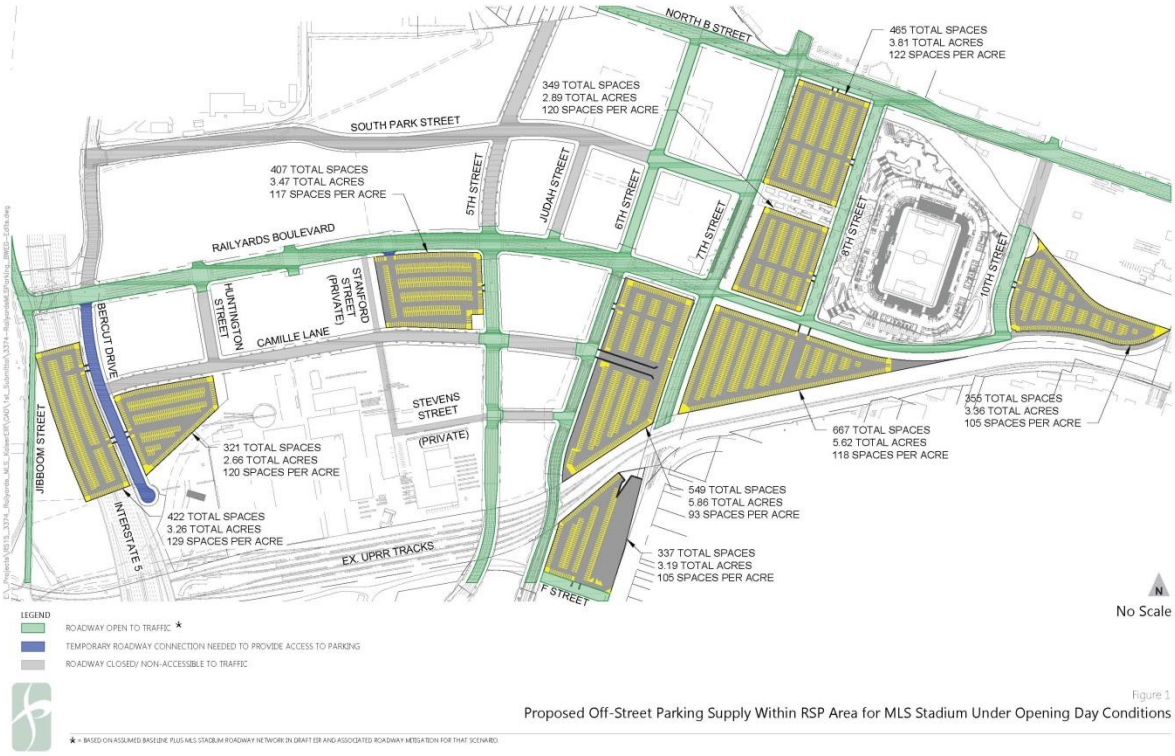

Figure 1

Proposed Off-Street Parking Supply Within RSP Area for MLS Stadium Under Opening Day Conditions

★ = BASED ON ASSUMED BASELINE PLUS MLS STADIUM ROADWAY NETWORK IN DRAFT EIR AND ASSOCIATED ROADWAY MITIGATION FOR THAT SCENARIO.

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