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CITY OF FRESNO
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DEVELOPMENT AGREEMENT

by and between

THE CITY OF FRESNO
a municipal corporation

and

JOHN ALLEN COMPANY, LLC,
a California limited liability company

DEVELOPMENT AGREEMENT

This Development Agreement (the “**Agreement**”) is made this 7th day of July, 2011, by and between the CITY OF FRESNO, a municipal corporation, organized and existing pursuant to the laws of the State of California and the Charter of the City of Fresno (the “**City**”) and JOHN ALLEN COMPANY, LLC, a California limited liability company (the “**Developer**”). City and Developer are hereinafter sometimes collectively referred to as the “**Parties**” and each may be referred to as a “**Party**”.

RECITALS

A. Pursuant to Section 65864 through 65869.5 of the California Government Code (the “**Development Agreement Laws**”), the City is authorized to enter into binding development agreements with Persons (as hereinafter defined) having legal or equitable interest in real property for the development of such real property. As a charter city, while the City is not limited to the Development Agreement Laws to enter into development agreements, the City has elected to enter this Agreement under the Development Agreement Laws.

B. The following applications have been filed with the City in connection with the planning of a 238 acre area in the City that is bounded generally by Herndon Avenue on the north, Bryan Avenue and Bullard Avenue on the east, Carnegie Avenue on the south and State Route 99 (SR-99) on the west (the “**El Paseo Project Area**”) for the development of an integrated mixed-use master planned project that would include retail, office, hospitality and entertainment uses (the “**El Paseo Project**”):

B(1) An application filed by the Developer and an application filed by the City (collectively, the “**Plan Amendment Applications**”) for amendments to the 2025 Fresno General Plan and the Bullard Community Plan. The Plan Amendment Applications were for the entire 238 acre El Paseo Project Area and proposed to effectuate the following changes (as more particularly set forth in the Plan Amendment Applications): (a) collectively change the respective land use designations within the El Paseo Project Area from “Light/Industrial” and “Medium Density Residential” to “Regional Commercial”, “Light/Industrial”, “Commercial/Office” and “Neighborhood Commercial”; (b) reclassify Herndon Avenue from an expressway to a super arterial for the portion of Herndon Avenue between Bryan Avenue and Parkway Drive; and (c) amend the Bullard Community Plan to delete Section 4.2.4.2 in the Policies/Implementation Measures section (collectively, the “**Plan Amendments**”).

B(2) An application filed by Developer and an application filed by the City (collectively, the “**Zone Change Applications**”) for zone changes for areas other than the Phase 5 Portion (as hereinafter defined) within the El Paseo Project Area (as more particularly described in the Zone Change Applications) from AE-5/UGM (Agricultural Exclusive/Urban Growth Management) and M-1/UGM (Light/Industrial/Urban Growth Management) to C-1/UGM (Neighborhood Commercial/Urban Growth Management), C-3/UGM (Regional Shopping Center District/Urban Growth Management), C-M/UGM (Commercial and Light Manufacturing/Urban Growth Management) (collectively, the “**Zoning Amendments**”).

The Plan Amendment Applications and the Zone Change Applications are hereinafter sometimes collectively referred to as the “**Master Plan Applications**”. The El Paseo Project Area is depicted on Exhibit “A” to this Agreement. The term “**Phase 5 Portion**” means the portion of the El Paseo Project Area that is labeled as “Phase 5” on Exhibit “A”.

C. The El Paseo Project is proposed to be implemented in five (5) principal phases that may be comprised of subphases thereof over a period of nine (9) years by multiple owners and developers. The first phase of the El Paseo Project, which will be implemented in sub phases, will be a development of not more than 906,788 square feet, consisting of retail and restaurant uses (the “**Marketplace Project**”), to be located on a portion of the El Paseo Project Area depicted on Exhibit “B” to this Agreement, containing approximately 74.38 acres of land (collectively, the “**Marketplace Project Area**”). The proposed Plan Amendments were to change the land use designation of the Marketplace Project Area from light industrial planned land use to “Regional Commercial” planned land use and the proposed Zoning Amendments were to change the zone of the Marketplace Project Area from AE-5/UGM and R1/UGM to C-3/UGM (Regional Shopping Center/Urban Growth Management).

D. The following applications have been filed by Developer in connection with the planning of the Marketplace Project Area and the development of the Marketplace Project:

D(1) An application for this Development Agreement (the “**DA Application**”).

D(2) An application for a master conditional use permit for the Marketplace Project, pursuant to Section 12-405 of the Fresno Municipal Code (the “**CUP Application**”) to allow for: (a) drive-through operations; (b) seasonal parking lot sales; (the “**Marketplace CUP**”); and (c) final site plan approval for the Marketplace Project.

D(3) An application for a vesting parcel map for the Marketplace Project Area (the “**Parcel Map Application**”) pursuant to Section 12-1205(a) of the Fresno Municipal Code (the “**Marketplace Parcel Map**”), which includes: without limitation: (a) the subdivision of the Marketplace Project Area into twenty-one (21) separate legal parcels (the “**Permitted Parcels**”); and (b) the vacation of certain designated streets within the Marketplace Project Area.

D(4) An application (the “**Sign Application**”) for approval of pylon, monument, directional/wayfinding and blade signage for the Marketplace Project that is consistent with the Design Standards (as hereinafter defined) for the Marketplace Project Area (the “**Master Sign Approval**”). Except as otherwise provided in the Sign Application, the Sign Application does not address signage for tenants of the Marketplace Project.

D(5) Applications for variances (collectively, the “**Variance Applications**”) to allow for: (a) the reduction in required setbacks (i) at the southeast corner of Bryan Avenue and Herndon Avenue and (ii) along the portion of the Marketplace Project Area that front Bryan Avenue; (b) the placement of utility boxes, monument signs and other signs for the Marketplace Project in the setback areas listed in clause (a) at the locations shown in the Design Guidelines (as hereinafter defined); and (c) an exception from the shade coverage requirements in the Fresno Municipal Code for the portion of the Marketplace Project Area that is the subject of the easements in favor of Pacific Gas & Electric that were recorded on March 23, 1956 in Book 3744, Pages 549 through 553 of the Official Records (as hereinafter defined) (collectively, the “**Variance Approvals**”).

The DA Application, the CUP Application, the Parcel Map Application, the Sign Application and the Variance Application are hereinafter sometimes collectively referred to as the **“Marketplace Applications”**. The Marketplace CUP, the Marketplace Parcel Map, the Master Sign Approval and the Variance Approvals are hereinafter sometimes collectively referred to as the **“Marketplace Approvals”**.

E. All required fees and costs have been paid for the filing, and the City’s processing of, the Master Plan Applications and the Marketplace Applications except for the payment of the City Preparation Costs (as hereinafter defined) which will be paid within thirty (30) days of the Effective Date (as hereinafter defined) of this Agreement.

F. Subsequent to the filing of the Master Plan Applications and the Marketplace Applications, an Environmental Impact Report, dated May 6, 2010, and re-circulated as to a portion thereof on August 19, 2010 (the **“EIR”**) has been prepared by The Planning Center pursuant to the requirements of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) and the Guidelines thereunder (14 California Code of Regulations Section 15000, et seq.) (collectively, **“CEQA”**). The State Clearinghouse Number for the EIR is SCH-2008011003. The EIR constitutes: (i) a program-level environmental impact report as to the Master Plan Applications and the approvals sought thereunder; and (ii) a project-level environmental impact report as to the Marketplace Applications and the approvals sought thereunder.

G. Developer filed the DA Application for approval of this Agreement in order to: (1) vest the land use and zoning policies established in the Existing City Requirements (as hereinafter defined) as of the Adoption Date (as hereinafter defined) of this Agreement for the duration of the Term (as hereinafter defined) with respect to the Marketplace Project Area and the Marketplace Project; and (2) memorialize certain other agreements made between the City and Developer with respect to the Marketplace Project Area and the Marketplace Project. The City and Developer acknowledge that the development and construction of the Marketplace Project is a large-scale undertaking involving major investments by Developer, with development occurring over a period of years. Certainty that the Marketplace Project can be developed and used in accordance with the Existing City Requirements as of the Adoption Date of this Agreement, will benefit the City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the 2025 Fresno General Plan (as amended by the Plan Amendments), the Bullard Community Plan (as amended by the Plan Amendments) and the Existing City Requirements.

H. The City has determined that this Agreement furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the 2025 Fresno General Plan. For the reasons recited herein, the City and Developer have determined that the Marketplace Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Marketplace Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Marketplace Project Area. Continued use and development of the Marketplace Project Area is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Laws were enacted: (1) Provide for the development of unused land; (2) Provide increased tax revenues for the City; (3) Provide for jobs and economic development in the City; (4) Provide infrastructure improvements that can be utilized by regional users and future users; and (5) Meet the goals of the 2025 Fresno General Plan to put activity centers in areas that will

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reduce vehicle trips and serve all segments of the City. It is based upon these benefits to the City, as confirmed by an Economic Benefit Analysis and a Market Study prepared by the Developer and reviewed and approved by the City, that the City is agreeable to proceeding with the proposed Plan Amendments, Zoning Amendments and the Marketplace Approvals to facilitate the Marketplace Project.

I. The City has further determined that it is appropriate to enter into this Agreement to: (1) provide certainty to encourage investment in the comprehensive development and planning of the Marketplace Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning for the El Paseo Project Area and neighboring areas; and (3) fulfill and implement adopted City plans, goals, policies and objectives.

J. This Agreement will survive beyond the term or terms of the present City Council.

K. On November 10, 2010, at a duly noticed public meeting and after due review and consideration of (i) the report of City staff on the Master Plan Applications and the Marketplace Applications, (ii) all other evidence heard and submitted at the public hearing, and (iii) all other appropriate documentation and circumstances, the Planning Commission of the City adopted resolutions recommending that the City Council: (1) certify the EIR to be in compliance with CEQA; (2) approve the Plan Amendments and the Zoning Amendments, subject to the express conditions of approval set forth therein (collectively, the **"Conditions of Approval"**); and (3) approve this Development Agreement.

L. On December 16, 2010, at a duly noticed public meeting and after due review and consideration of (i) the report of City staff on the Master Plan Applications and the Marketplace Applications, (ii) the recommendations of the Planning Commission, (iii) all other evidence heard and submitted at the duly noticed public hearing conducted and closed on December 2, 2010, and (iv) all other appropriate documentation and circumstances, the City Council adopted resolutions to: (a) certify that the EIR is in compliance with CEQA and adopt the attendant findings required by CEQA; (b) approve the Plan Amendment for the Marketplace Project Area; (c) approve the Zone Amendment for the Marketplace Project Area; (d) approve the Plan Amendments for the balance of the El Paseo Project Area, subject to the Veterans Blvd. Condition (as hereinafter defined); (e) approve the Zoning Amendments for the balance of the El Paseo Project Area (other than the Phase 5 Portion), subject to the Veterans Blvd. Condition; (f) introduce and adopt ordinances to effectuate such approvals of the Zoning Amendments, the Planning Amendments and the approval of this Agreement; and (g) direct the City Manager to finalize and execute this Agreement on behalf of the City (collectively, the **"City Council Resolutions and Ordinances"**). The term **"Veterans Blvd. Condition"** means a condition imposed by the City Council in connection with its approval of the Plan Amendments for the portions of El Paseo Project Area other than the Marketplace Project Area and the Zoning Amendments for the portions of El Paseo Project Areas (excluding the Phase 5 Portion for which no Zoning Amendments were applied for) other than the Marketplace Project Area, which conditioned future development entitlements for Phases 2A, 2B, 3, 4 and 5 of the El Paseo Project (as labeled on the map attached as Exhibit "A" to this Agreement) upon the Veterans Blvd./State Route 99 interchange being constructed and operational. The Veterans Blvd. Condition does not apply to or otherwise effect the Marketplace Project Area or the development of the Marketplace Project.

M. On July 7, 2011, the Director of Planning and Development approved the Marketplace Approvals, pursuant to 12-406-D-2 and 12-1206 of the Fresno Municipal Code, subject

to the express conditions of approval set forth therein and subject to the applicable appeal periods for each of the approvals.

NOW, THEREFORE, with reference to the above Recitals, and in consideration of the mutual covenants and agreements contained in this Agreement, the City and the Developer agree as follows:

A G R E E M E N T

1. Interests of Developer.

1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Main Parcels**” means the unimproved real property that comprises the balance of the Marketplace Project Area, other than Parcel A and Parcel B. The legal description of the Main Parcels is attached to this Agreement as Exhibit “C”. The Main Parcels consist of approximately 65.85 gross acres and are depicted on Exhibit “D” to this Agreement.

“**Parcel A**” means that certain unimproved real property, consisting of approximately 3.08 gross acres, which is part of the Marketplace Project Area, and is depicted on Exhibit “D” to this Agreement.

“**Parcel B**” means that certain unimproved real property, consisting of approximately 11 gross acres, which is part of the Marketplace Project Area, and is depicted on Exhibit “D” to this Agreement.

1.2 Parcel A. Prior to the Adoption Date, Developer has entered into a written agreement with the owner of Parcel A (the “**Parcel A Owner**”) for the acquisition of Parcel A but the close of escrow on such acquisition has not occurred as of the Adoption Date. This Agreement shall not be recorded in the Official Records with respect to Parcel A and the rights and obligations under this Agreement shall not apply to Parcel A or the Parcel A Owner unless and until either: (a) the close of escrow occurs on the acquisition of Parcel A by Developer or its successors and assigns; or (b) the owner of fee title to Parcel A agrees in writing to (i) consent to such recordation, and (ii) be bound by the terms and conditions hereof. Upon satisfaction of either the condition in clause (a) or clause (b), this Agreement shall be recorded in the Official Records and the City and Developer shall execute any documents reasonably required by the other to effectuate such recordation.

1.3 Parcel B. Prior to the Adoption Date, Developer obtained from the owner of Parcel B (the “**Parcel B Owner**”) an option to acquire Parcel B but the close of escrow on such acquisition has not occurred as of the Adoption Date. This Agreement shall not be recorded in the Official Records with respect to Parcel B and the rights and obligations under this Agreement shall not apply to Parcel B or the Parcel B Owner unless and until either: (a) the close of escrow occurs on the acquisition of Parcel B by Developer or its successors and assigns; or (b) the owner of fee title to Parcel B agrees in writing to (i) consent to such recordation, and (ii) be bound by the terms and conditions hereof. Upon satisfaction of either the condition in clause (a) or clause (b), this Agreement shall be recorded in the Official Records and the City and Developer shall execute any documents reasonably required by the other to effectuate such recordation.

1.4 Recordation of Agreement. Within five (5) business days following mutual execution of this Agreement by the City and Developer, the City shall cause this Agreement to be recorded in the official records of Fresno County, California (the **'Official Records'**) with respect to: (a) the Main Parcels; (b) Parcel A, if and only if, Developer has then acquired fee simple title to Parcel A; and (c) Parcel B, if and only if, Developer has then acquired fee simple title to Parcel B. Following the recordation of this Agreement in the Official Records, the City shall deliver to Developer a conformed copy of this Agreement evidencing the recording information.

1.5 Binding Covenants. The Developer represents that, except as provided in Sections 1.2 and 1.3 of this Agreement, it has a legal or equitable interest in the Marketplace Project Area and that all other persons holding legal title in the Marketplace Project Area are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Marketplace Project Area property, and the burdens and benefits hereof shall bind an inure to all successors in interest to the Parties.

2. Term of Agreement.

2.1 Definitions. For purposes of this Agreement, the following shall have the meanings set forth below:

"Adoption Date" means the date on which the City Council adopted the ordinance approving this Agreement and authorizing the City Manager to execute this Agreement on behalf of the City.

"Effective Date" means the later of: (a) thirty (30) days after the Adoption Date; or (b) if a referendum petition is timely and duly circulated and filed with respect to this Agreement, the date the election results on the ballot measure by City voters approving this Agreement are certified by the City Council in the manner provided in the Elections Code.

"Laws" means the Constitution and laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder.

"State" means the State of California.

"Terminate" means the expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. The term "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

2.2 Term. The term of this Agreement (the **"Term"**) shall commence on the Effective Date and shall continue for a period of five (5) years following the Effective Date; provided that such period shall be extended for any events of Force Majeure pursuant to Section 13.1 and during the pendency of: (a) any legal action challenging the (i) Plan Amendments, the Zoning Amendments and the Marketplace Approvals, or (ii) the certification by the City Council of the EIR; or (b) any legal action challenging or contesting the adoption of this Agreement. Any extension based upon an event described in this Section 2.2 shall be granted pursuant to the procedures set forth in Section 13.2.

2.3 Effect of Termination. Upon any Termination of this Agreement, each Party shall retain any and all of the respective benefits that it received as of the date of Termination under or in connection with this Agreement. Termination of this Agreement shall not: (a) alter, impair or otherwise affect any City Permits for the Marketplace Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay Developer from (i) commencing, performing or completing the construction of any buildings or improvements in the Marketplace Project or (ii) obtaining any certificates of occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in the Marketplace Project, that were authorized pursuant to City Permits for such construction issued by the City prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or Existing City Requirements to prevent, stop or correct any violation of Laws or Existing City Requirements occurring before, during or after construction of the buildings and improvements in the Marketplace Project by Developer.

3. Development of the Project.

3.1 For purposes of this Agreement, the following shall have the meanings set forth below:

“Applicable Rules” collectively means: (a) the terms and conditions of the Marketplace Approvals; (b) the terms and conditions of this Agreement; and (c) the Existing City Requirements.

“City Agency” means any office, board, commission, department, division or agency of the City.

“City Permits” collectively means any and all permits or approvals that are required under the City Requirements in order to develop, use and operate the Marketplace Project, other than: (a) the Plan Amendments; (b) the Zoning Amendments; (c) the Marketplace Approvals; and (d) Future Discretionary Approvals (as hereinafter defined) that the Developer may elect to obtain from the City pursuant to Section 3.4. “City Permits” specifically include, without limitation, building permits and Technical City Permits.

“City Requirements” collectively means all of the following which are in effect from time to time: (a) the Charter of the City of Fresno; (b) the Fresno Municipal Code; and (c) all rules, regulations and official plans and policies, including the 2025 Fresno General Plan and the Bullard Community Plan, of the City governing development, subdivision and zoning that are applicable to C-3 zone. The City Requirements include, without limitation, requirements governing building height, maximum floor area, permitted and conditionally permitted uses, floor area ratios, maximum lot coverage, building setbacks and stepbacks, parking, signage, landscaping, Exactions (as hereinafter defined) and dedications, growth management, environmental consideration, grading, and construction.

“Developer Approved Changes” means those amendments, revisions or additions to the City Requirements adopted or enacted after the Adoption Date that: (a) Developer elects, in its sole discretion, to have applied to the development and occupancy of the Marketplace Project and the Marketplace Project Area during the Term of this Agreement; and (b) the Planning Director approves such application, which approval shall not be unreasonably withheld

“Existing City Requirements” means the City Requirements that are in effect as of the Adoption Date of this Agreement.

“Permitted Rules Revisions” collectively means the following: (a) any Minor Changes to this Agreement that are proposed by Developer and approved by the City in accordance with Section 3.3; (b) any Future Discretionary Approvals that are applied for by Developer and approved by the City pursuant to Section 3.4; (c) any Authorized Code Revisions under Section 3.5 that are uniformly applied on a City-wide basis; and (d) written amendments to this Agreement that are mutually executed by City and Developer pursuant to Section 16.2.

“Planning Director” means the Director of Planning and Development Department of the City of Fresno.

“Technical City Permits” collectively means any of the following technical permits issued by the City or any City Agency in connection with any building or improvement in the Marketplace Project: (a) demolition, excavation and grading permits; (b) foundation permits; (c) permits for the installation of underground lines and facilities for utilities, including without limitation, water, sewer, storm drain and dry utilities (electrical, gas, phone and cable); (d) any encroachment permits; and (e) any street improvement permits, including without limitation, permits for street lighting and traffic signals. “Technical City Permits” specifically excludes building permits from the City or any City Agency for the construction of particular buildings or improvements in the Marketplace Project.

3.2 Applicable Rules.

3.2.1 Except for the Permitted Rules Revisions and any Developer Approved Changes, Developer shall have the right to develop and occupy the Marketplace Project during the Term in accordance with the Applicable Rules. In the event of any conflict between the provisions in this Agreement, the Marketplace Approvals and the Existing City Requirements, such conflict shall be resolved in the following order of priority: (a) first, this Agreement; (b) then, the Marketplace Approvals; and (c) finally, the Existing City Requirements.

3.2.2 Except for the Permitted Rules Revisions and any Developer Approved Changes, no amendment to, revision of, or addition to any of the City Requirements that is adopted or enacted after the Adoption Date shall (i) be effective or enforceable by the City with respect to the Marketplace Project or the Marketplace Project Area or (ii) modify or impair the rights of Developer under this Agreement during the Term without the Developer’s written approval, whether such amendment, revision or addition is adopted or approved by: (a) the City Council; (b) any City Agency; or (c) by the people of the City through charter amendment, referendum or initiative measure.

3.3 Minor Changes.

3.3.1 The Parties acknowledge that further planning and development of the Marketplace Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire that Developer retain a certain degree of flexibility with respect to the details of the development of the Marketplace Project and with respect to those items covered in general terms under this Agreement. If and when

Developer finds that Minor Changes (as hereinafter defined) are necessary or appropriate, then upon written request by Developer, the Parties shall, unless otherwise required by Laws, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary, with approval by the City Manager and the Developer.

3.3.2 The term “**Minor Changes**” collectively means: (a) minor deviations to the Marketplace Approvals and the City Approvals that are permitted under the Existing City Requirements and are reasonably approved by the Planning Director; (b) changes or modifications to the Marketplace Parcel Map that are implemented by Developer prior to recordation by Developer of the final Marketplace Parcel Map in the Official Records, provided that (i) the total number of Permitted Parcels in the Marketplace Project Area does not exceed twenty-five (25) Permitted Parcels, and (ii) the changes and modifications are approved by the Planning Director, which approval shall not be unreasonably withheld or denied; (c) a reduction in the parking ratio requirements for the Marketplace Project under Section 12-306-I of the Fresno Municipal Code, provided that (i) the reduction does not exceed ten percent (10%) of the Code requirement, and (ii) the reduction is approved by the Planning Director, which approval shall not be unreasonably withheld or denied; or (d) such other changes, modifications or adjustments to the Marketplace Approvals, including without limitation, the site plan approval under the Marketplace CUP, which the Planning Director determines are consistent with the overall intent of the Marketplace Approvals and which do not materially alter the overall nature, scope, or design of the Marketplace Project.

3.3.3 In effecting any Minor Changes, the City shall cooperate with the Developer, provided that the aggregate total density and intensity of the Marketplace Project are not increased, the permitted uses are not modified from those in the Marketplace Approvals and any changes are in accordance with the Existing City Requirements. Minor Changes shall not be deemed to be an amendment to this Agreement under California Government Code Section 65868 but are ministerial clarifications and adjustments, and unless otherwise required by law, no such administrative amendments shall require prior notice or hearing by the Planning Commission and City Council. Any amendment or change requiring a subsequent or supplemental environmental impact report pursuant to CEQA shall not be considered a Minor Change, but shall be considered substantive amendment which shall be reviewed and approved by the Planning Commission or the City Council as determined by the applicable provisions of the Fresno Municipal Code relating to the hearing and approval procedures for the specific Marketplace Approval.

3.4 Future Discretionary Approvals. Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Developer from applying to the City during the Term of this Agreement for any of the following new approvals with respect to any proposed buildings and improvements in the Marketplace Project (collectively, the “**Future Discretionary Approvals**”): (a) any new variance or conditional use permit that is required under the Existing City Requirements; and (b) any other approval (i) which is not otherwise addressed or set forth in this Agreement and (ii) which the Existing City Requirements mandate must be reviewed and approved by the Planning Commission or City Council. The City shall process, review and approve or disapprove any application for a Future Discretionary Approval filed by Developer in accordance with the City Requirements then in effect. The approval by the City of an application by Developer for a Future Discretionary Approval shall not require an amendment of this Agreement.

3.5 Authorized Code Revisions. This Agreement shall not prevent the City from applying to the Marketplace Project the following rules, regulations and policies adopted or enacted after the Adoption Date, if uniformly applied on a City-wide basis (collectively, the “**Authorized Code Revisions**”):

3.5.1 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided that such changes in procedural regulations do not have the effect of materially interfering with the substantive benefits conferred to Developer by this Agreement.

3.5.2 Regulations which are not in conflict with this Agreement and which would not, alone or in the aggregate, cause development of the Marketplace Project to be materially different, more burdensome, time consuming or expensive.

3.5.3 Regulations which are necessary to avoid serious threats to the public health and safety, provided that, to the maximum extent possible, such regulations shall be construed and applied in a manner to preserve the substantive benefits conferred to Developer by this Agreement.

3.5.4 Mandatory regulations of the State and the United States of America applicable to the Marketplace Project, provided that, to the maximum extent possible, such regulations shall be construed and applied in a manner to preserve to the Developer the substantive benefits conferred to Developer by this Agreement.

3.5.5 City Requirements imposing life safety, fire protection, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then current applicable building codes.

3.6 Timing of Buildings. The actual timing and order of the development of particular buildings within the Marketplace Project shall be determined by Developer, in its sole discretion, based upon the then projected needs and resources of Developer, as long as all requirements set forth in this Agreement and the Marketplace Approvals related to each designated building or buildings are satisfied by Developer.

3.7 No Obligation to Develop. Nothing in this Agreement is intended, should be construed nor shall require Developer to proceed with the construction of any improvements in the Marketplace Project Area. The decision to proceed or to forbear or delay in proceeding with the implementation or construction of the Marketplace Project or any buildings or improvements on the Marketplace Project Area shall be in the sole discretion of Developer and the failure of Developer to proceed with construction of the Marketplace Project or any such buildings or improvements on the Marketplace Project Area shall not: (a) give rise to any rights of the City to terminate this Agreement; or (b) constitute an Event of Default (as hereinafter defined) or give rise to any liability, claim for damages or cause of action against Developer.

3.8 Hold on Certificate of Occupancy. Except as otherwise provided in Section 6.2.3, the City reserves the right to place a hold on the issuance of a Certificate of Occupancy for a building in the Marketplace Project in the event the Existing City Requirements or Conditions of Approval with respect to that building have not been substantially completed by Developer.

3.9 No-Build Covenant. At the written request of Developer, City and Developer shall enter into a No-Build Covenant for the Marketplace Project Area in the form attached as Exhibit "H" to this Agreement. Upon mutual execution of the No-Build Covenant by City and Developer, the No-Build Covenant shall be recorded in the Official Records.

3.10 Final Map.

3.10.1 Developer shall have the right to elect to submit to the City for processing, approval and recording in the Official Records, either: (a) one final map covering all of the Permitted Parcels; or (b) more than one final map, each of which will cover some but not all of the Permitted Parcels. Any final maps submitted by Developer (collectively, the "**Final Maps**") shall be processed in accordance with Applicable City Rules and the California Subdivision Map Act (California Government Code Section 66410, et. seq.).

3.10.2 Pursuant to the requirements of the Subdivision Map Act and the City's Parcel Map Ordinance, if at the time the Developer requests that the City approve and record a Final Map for all or some of the parcels delineated in the approved Tentative Parcel Map (the "**Applicable Parcels**"), Developer has not complied with the applicable conditions of approval for the Tentative Parcel Map, as reasonably determined by the City Engineer, Developer shall execute a Parcel Map Subdivision Agreement with respect to the Applicable Parcels in substantially the same form as Exhibit "G" (the "**Subdivision Agreement**"), provide all improvement and warranty security required by the Subdivision Agreement, pay all necessary fees, execute any covenants necessary to comply with the conditions of approval for the Tentative Parcel Map with respect to the Applicable Parcels, and provide all necessary signature authorities related to the Subdivision Agreement and covenants prior to the City Council's consideration of approval of the Final Map. Thereafter Developer shall fully comply with all terms and conditions in the Subdivision Agreement.

3.11 Alcohol Beverage Sales. The City agrees that once the City approves the Plan Amendments and Zoning Amendments, the new zoning would permit the following uses in the Marketplace Project subject to (i) issuance of a conditional use permit for such uses, and (ii) the requirements set forth in the Applicable Rules: (a) on-site alcoholic beverage sales within restaurants in the Marketplace Project; and (b) the sale of liquor products (packaged) in wine shops and major beverage retailers in the Marketplace Project for on-site and off-site consumption. The City acknowledges that restaurant or retail tenants or operators shall be entitled during the Term of this Agreement to seek conditional use permits for alcohol beverage sales for their respective restaurant or retail store in the Marketplace Project and that the City shall evaluate the findings required for each such conditional use permit in the applicable restaurant or store in accordance with Applicable City Rules.

4. Design Review. Prior to application by Developer for any building permit to construct any buildings or improvements in the Marketplace Project Area, Developer shall obtain approval of a Design Submittal (as hereinafter defined) for such buildings or improvements from the City in accordance with the Marketplace at El Paseo Design Guidelines Version 3, prepared by DLR Group WWCOT, together with the Target Development Guide, Edition 2.10 or the most recent version of the Target Development Guide then in effect (which Guide shall apply to any building in the Marketplace Project that is designed for occupancy by Target) (collectively, the "**Design Guidelines**"). In the event of any conflict or ambiguity between the Design Guidelines and any design standards in the Existing City Requirements, the Design Guidelines shall govern and prevail. The term "**Design Submittal**" means all plans, details, elevations, specifications and material

samples necessary to adequately illustrate the final design of the proposed buildings and improvements in the Marketplace Project as required in accordance with the Design Guidelines. City and Developer mutually acknowledge that, notwithstanding the fact that the pylon sign designed as "Sign C.1" on the Master Sign Program that is part of the Design Guidelines is located outside of the Marketplace Project Area, Sign C.1 is for the Marketplace Project Area and the Marketplace Project.

4.1 Design Submittal. Developer shall make a Design Submittal to the Director of the City's Planning and Development Department (the "**Planning Director**"). Upon receipt of such Design Submittal from Developer, the Planning Director shall determine whether the Design Submittal is complete and, if not, by written notice to Developer, shall detail what additional design information is required to make the Design Submittal complete. The Planning Director's determinations regarding the completeness of a Design Submittal is not appealable. Upon the determination by the Planning Director that a Design Submittal is complete, the Planning Director shall review the specific design features in such Design Submittal in accordance with the Design Guidelines. Such Design Submittal shall be approved by the Planning Director if it substantially complies with the Design Guidelines and meets all Existing City Requirements. As used in this Section 4.1, the term "**substantially complies**" means: (a) the Developer has made a good faith attempt to comply with the requirements of the approved Design Guidelines, applicable Existing City Requirements and applicable Authorized Code Revisions sufficient to reasonably carry out the intent and purpose of the Design Guidelines, Existing City Requirements and Authorized Code Revisions; (b) Developer has provided to the Planning Director an explanation as to any items which are not in compliance with the foregoing that is reasonably acceptable to the Planning Director, and (c) the alternative proposed by the Developer as to any item which is not in compliance with the foregoing is reasonably acceptable to the Planning Director.

4.2 Appeal of Planning Director Decision. Upon Director determination that the Design Submittal is complete, any subsequent decision of the Planning Director under Section 4.1 may be appealed by the Developer to the Planning Commission and, if permitted by the procedures in the Existing City Requirements, any decision of the Planning Commission may be appealed by Developer to the City Council in accordance with the procedures in the Existing City Requirements related to the appeal of actions on Special Permits. If (i) the Planning Director makes a determination that the Design Submittal is not complete or (ii) the Planning Director, the Planning Commission or the City Council, as applicable, determines that a Design Submittal for a particular building or improvement in the Marketplace Project does not substantially comply with the Design Guidelines and therefore does not approve that Design Submittal, then Developer shall have the right, in addition to any other rights or remedies available under this Agreement, to modify the Design Submittal and resubmit such modified Design Submittal for processing in accordance with this Section 4. Developer shall pay the City Application Fee to process a modified Design Submittal.

4.3 Building Permit. If the Design Submittal for a particular building or improvement is approved by the City, then Developer shall have the right to apply for a building permit for such building or improvement, the applications for which shall be processed in accordance with Section 5.

4.4 Time Requirements for Decisions. All decisions of the Planning Director as to whether the Design Submittal substantially complies with the Design Guidelines shall be made within thirty (30) days following the date on which the Design Submittal is complete. Any appeals to the Planning Commission or City Council made pursuant to this Section 4 shall be filed with the Planning Director within fifteen (15) days of the decision to be appealed, shall comply with all of the requirements of Fresno Municipal Code, Section 12-401-H, and shall be governed by the appeal

process for Special Permits.

4.5 Consultation with Developer. The Parties acknowledge that the preparation by Developer of a Design Submittal for buildings and improvements is an iterative process requiring a high degree of consultation and cooperation by the City with Developer and its design consultants. Accordingly, upon Developer's request, the Planning Director (or his or her designated staff member) shall, from time to time, consult and advise with Developer and its design consultants regarding proposed schematic designs for buildings and improvements in the Marketplace Project to be incorporated into a Design Submittal. However, such consultation or advice by the Planning Director (or his or her staff) shall not constitute a decision or determination of the City under this Section 4.

4.6 Technical City Permits. Notwithstanding anything in this Section 4 to the contrary, prior to the filing by the Developer of a Design Submittal with the Planning Director or the issuance of any approval of any such Design Submittal for particular buildings or improvements in the Marketplace Project pursuant to this Section 4, Developer shall have the right to apply to the City for Technical City Permits related to such buildings and improvements and to obtain the issuance by the City of such Technical City Permits in accordance with Section 5.

5. City Permits.

5.1 Review and Processing of City Permits. Except as otherwise expressly provided in this Agreement, all City Permits required for the construction and development of the Marketplace Project and any buildings and improvements therein which comply with the requirements of the Applicable Rules: (a) shall be issued over-the-counter by the Planning Director or the director of the other applicable City Agency having responsibility for the issuance of such City Permits; (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission; and (c) shall not require a public hearing.

5.2 Review and Processing of City Permits for Off-Site Improvements. City Permits required for Off-Site Improvements (as hereinafter defined), as required under Exhibit "E", including, but not limited to, construction plans for streets, sidewalks, street lighting, median landscaping, sewer lines, water lines, reclaimed water mains and system and traffic signals, must comply with the requirements of the Applicable Rules; provided that the City may impose policies, ordinances and standards in effect at the time the applications for City Permits for the Off-Site Improvements are submitted to the City, if and only if, all of the following conditions are met (i) such policies, ordinances and standards shall not impose any new City Development Fees (as hereinafter defined) or increase the amount of any City Development Fees on the Marketplace Project over and above the Required Development Fees (as hereinafter defined), (ii) such policies, ordinances and standards shall not impose any Exaction on the Marketplace Project other than the Required Exactions (as hereinafter defined), and (iii) in the reasonable determination of the City Engineer, such policies, ordinances and standards shall not substantially increase the costs to Developer of the construction of the Off-Site Improvements or substantially increase the time required by Developer for the construction of the Off-Site Improvements.

5.3 Duration of City Permits and Marketplace Approvals. Notwithstanding any provisions in the Marketplace Approvals, the City Permits, the Existing City Requirements and the Permitted Rules Revisions that may establish earlier expiration dates for the Marketplace Approvals or the City Permits, the Parties mutually acknowledge and agree that, pursuant to the provisions of

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California Government Code Sections 66452.6(a) and 65863.9, the Marketplace Approvals and any City Permits for the Marketplace Project shall remain valid and effective throughout the Term.

6. Exactions and City Development Fees.

6.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“City Application Fees” means fees levied or assessed by the City and any City Agency to review and process applications for City Permits.

“City Development Fees” means any and all fees and assessments, other than City Application Fees, charged or required by the City or any City Agency as a condition of, or in connection with, the Marketplace Approvals or any City Permits: (a) to defray, offset or otherwise cover the cost of public services, improvements or facilities; or (b) that are imposed for a public purpose.

“Exaction” means any exactions or mitigation measures, other than the payment of City Development Fees and City Application Fees, that are imposed by the City or any City Agency, as a condition of, or in connection with, the Marketplace Approvals. “Exactions” includes, without limitation: (a) a requirement for the dedication of any portion of the Marketplace Project Area to the City or any City Agency; (b) an obligation for the construction of any on-site or off-site improvements, including any Off-Site Improvements; (c) an obligation to provide services; or (d) the requirement to dedicate any easements, rights or privileges with respect to the Marketplace Project or any portion thereof to the City or any City Agency.

6.2 Exactions.

6.2.1 All of the Exactions that Developer shall be required to perform or caused to be performed in connection with the development, construction, use and occupancy of the Marketplace Project, during the term of the Agreement (collectively, the **“Required Exactions”**), and the timing requirements for the performance of such Required Exactions, are set forth in Part B of Exhibit “E” to this Agreement. The Required Exactions include, without limitation, all Conditions of Approval imposed by the City, to fully mitigate adverse impacts resulting from, and reasonably related to, the development of the Marketplace Project.

6.2.2 Except for the Required Exactions listed in Part B of Exhibit “E”, no Exaction shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Marketplace Project; or (b) any applications filed for any City Permit for the development, construction, use or occupancy of the Marketplace Project or any portion thereof.

6.2.3 City acknowledges and agrees that in the event that the performance by Developer of any off-site improvements listed as a Required Exaction (collectively, the **“Off-Site Improvements”**) requires construction or installation on land in which neither the City or Developer has sufficient legal title or interest to allow such construction or installation to be performed, then: (a) City shall acquire the necessary Required ROW (as hereinafter defined) in accordance with the provisions of Section 6.3 of this Agreement and, upon such acquisition, the City shall make such Required ROW available to Developer for the construction and installation of such Off-Site

Improvements; and (b) provided that Developer performs its obligations under Section 6.3 of this Agreement, Developer shall not be required to construct or install such Off-Site Improvements until (i) City acquires title or interest in such Required ROW sufficient to allow such construction or installation to be performed, and (ii) City promptly makes such Required ROW available to Developer for the construction and improvement of such Off-Site Improvements. The City shall neither postpone nor refuse approval of a Final Map, nor of any City Permits, because Developer has failed to construct or install any or all of the Off-Site Improvements if neither Developer nor City has sufficient title or interest in the Required ROW to permit such Off-Site Improvements to be constructed or installed so long as Developer has provided the improvement security required by the Subdivision Agreement for the Final Map or, with regard to other City permits has otherwise provided appropriate improvement Security, as determined by the City Engineer, to ensure improvements are constructed once the right-of-way is acquired. The term "**Required ROW**" means all land located outside of the Marketplace Project Area that (i) is not owned by the City, any City Agency or Developer as of the Adoption Date of this Agreement, and (ii) is necessary for the construction or installation of any Off-Site Improvements pursuant to this Agreement. Required ROW may take the form of easement areas, rights-of-way and other land interests.

6.2.4 Construction Standards. All Off-Site Improvements shall be designed and constructed in accordance with the Applicable Rules (subject to any Permitted Rules Revisions). Engineered improvement plans for street improvements, signing, striping, traffic signals, storm drains, sewer and water facilities shall be prepared by a Registered Civil Engineer. Street lighting and traffic signal plans may alternatively be prepared by a Registered Electrical Engineer. Landscaping, planting and irrigation plans for areas within the public right-of-way shall be prepared by a Registered Civil Engineer or Licensed Landscape Architect. Plans shall be submitted for Department of Public Works and Department of Public Utilities review and approval. The Developer shall pay all plan check and inspection fees in accordance with the City of Fresno Master Fee Schedule at the time of plan submittal.

All proposed sewer and water main easements shall be clear and unobstructed by buildings or other structures. No fencing or walls shall either enclose or be located above the sewer or water main unless otherwise approved by the City's Public Works Director. The planting plan for any proposed landscape within the easement area for proposed sewer and water main easements shall be approved by the Department of Public Utilities. No trees shall be located within 8 feet of the water main or within 15 feet of the sewer main. All public sewer and water mains within unpaved areas of an easement shall be clearly marked with signage above indicating the exact location and type of facility below. All public sewer and water facilities shall be constructed in accordance with the Applicable Rules (subject to any Permitted Rules Revisions). All sanitary sewer facilities located within the Marketplace Project Area shall be private.

Off-Street parking facilities and geometrics shall conform to the approved site plan as well as the Applicable Rules (subject to any Permitted Rules Revisions). Developer shall provide a 4-foot minimum clear path of travel along all walkways. All walkways directly fronting parking stalls shall have a 7-foot minimum width. Walkways constructed between parking stalls shall be a 10-foot minimum clear width (no planters or lights within the 10-foot path).

6.2.5 Prevailing Wages. Developer shall: (a) be required to pay, and shall cause its contractor and subcontractors to pay, prevailing wages for the construction of (i) those specific Off-Site Improvements for which the Developer receives credits or reimbursements pursuant to Section 6.6 of this Agreement as identified in Part B of Exhibit "E", and (ii) those Off-Site

Improvements that are “public works” under California Labor Code Section 1720(a) (collectively, the “**PW Improvements**”); and (b) comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. Developer shall or shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. During the construction of the PW Improvements, Developer shall, or shall cause its contractor to, post at the Marketplace Project Area the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations in connection with construction of the PW Improvements.

6.3 Acquisition of Required ROW. If Developer requires the City’s assistance in obtaining right-of-way or land for the purpose of constructing Off-site improvements, the City and Developer shall follow the procedures and be subject to the obligations and remedies set forth in Exhibit “F” entitled, “Procedures for Right-of-Way Acquisition.”

6.4 City Development Fees.

6.4.1 All of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Marketplace Project (collectively, the “**Required Development Fees**”), and the timing requirements for the payment of such Required Development Fees, are set forth in Part “A” of Exhibit “E” to this Agreement. The amount of each of the Required Developer Fees that Developer shall be required to pay with respect to the Marketplace Project shall be the lesser of: (i) the amounts listed for each such Required Development Fee in the Master Fee Schedule in effect as of the Adoption Date of this Agreement; or (ii) the amount then charged by the City or the applicable City Agency for the Required Development Fee at the time that the Required Development Fee is required to be paid by Developer.

6.4.2 Notwithstanding the provisions of Section 6.4.1, Developer shall be responsible for paying: (a) any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law; and (b) any fees the City is legally required to collect for other State or Federal agencies pursuant to (i) State or Federal law or (ii) any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

6.4.3 Except for the Required Development Fees listed on Part A of Exhibit “E” to this Agreement, no City Development Fees shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Marketplace Project; or (b) any application filed for any City Permit for the development, construction, use or occupancy of the Marketplace Project.

6.5 City Application Fees. Developer shall pay to the City the City Application Fees chargeable in accordance with the City’s Master Fee Schedule that is in effect at the time the relevant application for a City Permit is made; provided that such City Application Fees are

uniformly imposed by the City and any City Agency at similar stages of project development on all similar applications for development in the City.

6.6 Fee Credits.

6.6.1 The column titled "Subject to Reimbursement/Credit" on Part B of Exhibit "E" to this Agreement sets forth: (a) those costs which hereafter may be incurred by Developer in the performance of the Required Exactions that shall be subject to credit or reimbursement under this Section 6.6 (collectively, the "**Eligible Costs**"); and (b) the Required Development Fees (the "**Eligible Fees**") against which either (i) those Eligible Costs may be credited, or (ii) for which Developer may be entitled to reimbursement in accordance with this Section 6.6. The term "**Eligible Exaction**" means a Required Exaction for which Eligible Costs may be incurred by Developer. The amount of the fee credits and/or reimbursements shall be determined by the City Engineer consistent with the fee studies prepared in connection with the City's initial adoption or subsequent adjustment of the Eligible Fees.

6.6.2 In the event that, at or prior to the time an Eligible Fee is required to be paid to the City, (x) all City Permits for the performance of an applicable Eligible Exaction have been issued or granted by the City, (y) Developer has provided to the City a signed contract for the performance of such Eligible Exaction with a contractor licensed to do business in the State of California (the "**Exaction Contract**"), and (z) Developer has delivered to the City a performance and payment bond or bonds issued by a surety licensed to do business in the State of California, or another form of security reasonably acceptable to the City Engineer, that insures the payment of one hundred percent (100%) of the contract sum due under the Exaction Contract (the "**Contract Sum**") and the performance of such Eligible Exaction under the Exaction Contract, then: (a) at the time of the required payment of the Eligible Fee, Developer shall receive an immediate credit against the Eligible Fee in the amount of the Eligible Costs within that Contract Sum for the performance of the Eligible Exaction; (b) upon completion of the Eligible Exaction, Developer shall provide written documentation, in a form reasonably required by the City, evidencing the Eligible Costs incurred by Developer to perform the Eligible Exaction (the "**Cost Documentation**"); (c) if the Cost Documentation shows that the total Eligible Costs of the performance of the Eligible Exaction exceeds the credit received by Developer against the Eligible Fee under clause (a), the City shall (i) place the Developer on the appropriate reimbursement list maintained by the City for reimbursement of Eligible Costs incurred by owners and developers of projects in the City (the "**Reimbursement List**") in priority order based upon the date such costs were submitted to the City by such owner and developers, and (ii) reimburse Developer for such Eligible Costs in accordance with Applicable Rules based upon the priority order on the Reimbursement List; and (d) if the Cost Documentation shows that the credit received by Developer against the Eligible Fee under clause (a) exceeds the total Eligible Costs of the performance of the Eligible Exaction, Developer shall pay such excess amount to the City concurrent with its delivery of the Cost Documentation.

6.6.3 In the event that all of the conditions in clauses (x) through (z) inclusive, of Section 6.6.2 with respect to a particular Eligible Fee have not been satisfied at or prior to the time that the Eligible Fee is required to be paid to the City, then: (a) Developer shall pay the Eligible Fee without the immediate application of any credit for the projected Eligible Costs of the applicable Eligible Exaction; and (b) within ten (10) days of the City's acceptance of the completed Eligible Exaction and submittal by Developer to the City of the Cost Documentation of the Eligible Costs incurred by Developer in the performance of the Eligible Exaction, the City shall (i) place the Developer on the Reimbursement List in priority order based upon the date such costs were

submitted to the City by such owner and developers, and (ii) reimburse Developer for such Eligible Costs in accordance with Applicable Rules based upon the priority order on the Reimbursement List.

6.7 Transfer of Off-Site Improvements. Upon completion by Developer of any Off-Site Improvements and upon City's acceptance of the work performed, the Off-Site Improvements shall be conveyed and transferred by Developer to the City, and the City shall accept the Off-Site Improvements and thereafter assume responsibility for the ownership, operation, repair and maintenance thereof. The City shall not accept the (i) required median island landscaping, (ii) any street trees located in the sidewalk area, (iii) street lighting or (iv) the two traffic signals at Palo Alto Avenue and Bryan Avenue and Drive A and Bryan Avenue (collectively, the "**CFD Improvements**") for maintenance until: (a) the Marketplace Project Area is annexed into Community Facilities District Number 9 ("**CFD 9**") to fund the maintenance of the CFD Improvements pursuant to an annexation agreement between the City and Developer that will establish a maximum annual amount of special tax that can be imposed by CFD 9 upon the Marketplace Project, with the maximum special tax to be adjusted annually by three percent (3%) plus the increase, if any, in the construction cost index (CCI) for the San Francisco region for the prior 12-month period (December through December) as published in the Engineering News Record; and (b) the Developer has deposited with the City funds sufficient to maintain the CFD Improvements to be covered by CFD 9 for the period of time between the acceptance of the CFD Improvements by the City and the time when the City begins to receive special tax revenues for CFD 9. The City shall refund any unused portion of the Developer deposit at the end of that period of time.

6.8 Extension Sidewalk. In connection with the railroad extension for the Golden State Boulevard Project, the City shall construct a new six (6) foot wide sidewalk on the south side of Herndon Avenue from Golden State Boulevard to Weber Avenue (the "**Extension Sidewalk**"). Within fifteen (15) business days following written notice from the City, Developer shall reimburse the City for all direct out-of-pocket expenses incurred by the City to construct the Extension Sidewalk; provided that the amount such reimbursement shall not exceed the sum of Ten Thousand Dollars (\$10,000).

6.9 City Preparation Costs. On or prior to the Effective Date of this Agreement, Developer shall reimburse the City for all of the reasonable costs incurred by the City to negotiate, prepare and execute this Agreement (collectively, the "**City Preparation Costs**"); provided that the Developer's obligation to reimburse the City for its City Preparation Costs shall not exceed the aggregate sum of Ninety-Four Thousand Dollars (\$94,000). The term "City Preparation Costs" includes, without limitation, reimbursement for staff time and City Attorney time, based upon reasonable imputed hourly rates.

7. Actions by City.

7.1 Other Governmental Permits. The City agrees to cooperate with Developer in Developer's endeavors to obtain permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Marketplace Project Area or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over transportation facilities and air quality issues) so long as the cooperation by the City will not require the City to incur any cost, liability or expense without adequate indemnity against or right of reimbursement therefore from Developer.

7.2 Cooperation in Dealing with Legal Challenge. If any action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of this Agreement (collectively, a “**Third Party Action**”), the Parties shall cooperate in the defense of the Third Party Action to the maximum extent reasonably possible under the circumstances. The City shall timely take all actions which are necessary or required to uphold the validity and enforceability of this Agreement. The City shall not enter into any settlement with respect to a Third Party Action without the prior written consent of Developer.

7.3 Indemnification.

7.3.1 Third Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term “**Third Party Action**” collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Master Plan Applications and Approvals, and the Marketplace Approvals; or (b) claims or alleges a violation of CEQA or another law in connection with the certification of the EIR by the City Council or the grant, issuance or approval by the City of any or all of this Agreement, the Master Plan Applications and Approvals, and the Marketplace Approvals. Developer’s obligations under this Section 7.3.1 shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section 7.3.1 shall survive the termination of this Agreement.

7.3.2 Damage Claims. The nature and extent of Developer’s obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 7.3.1 shall be governed by this Section 7.3.2. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of Off-Site Improvements unless and until such Off-Site Improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City

and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a "design professional" as defined in Section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

This Section 7.3 shall survive termination or expiration of this Agreement.

7.4 Insurance. From the Effective Date of this Agreement through the date of City's final formal acceptance of Off-Site Improvements constructed pursuant to the terms of this Agreement (the "**Insurance Period**"), Developer shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

7.4.1 COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$5,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$5,000,000 general aggregate and \$5,000,000 aggregate for products and completed operations and \$5,000,000 general aggregate.

7.4.2 COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than \$5,000,000 per accident for bodily injury and property damage.

7.4.3 WORKERS' COMPENSATION insurance as required under the California Labor Code.

7.4.4 EMPLOYERS' LIABILITY with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 policy limit and \$1,000,000 for each employee.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section 7.4 are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.

If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor

to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than \$1,000,000 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer's failure to comply with these requirements shall constitute an "Event of Default" as that term is defined in Section 10.1.

8. Benefits

8.1 Benefits to the City. The City has extensively reviewed the terms and conditions of this Agreement and, in particular, has specifically considered and approved the impact and benefits of the Marketplace Project upon the regional welfare. The terms and conditions of this Agreement have been found by the City to be fair, just, and reasonable, and to provide appropriate benefits to the City. This Agreement and the development of the Marketplace Project will serve the best interests, and the public health, safety, and welfare of the residents and invitees, of the City and the general public. This Agreement will help provide effective and efficient development of Off-Site Improvements and other Required Exactions in the vicinity of the Marketplace Project Area; help maximize effective utilization of resources within the City; increase City tax revenues; and provide other substantial public benefits to the City and its residents by achieving the goals and purposes of the Development Agreement Laws, the Charter of the City of Fresno, the Fresno Municipal Code and the 2025 Fresno General Plan (as amended by the Plan Amendments).

8.2 Benefits to the Developer. The Developer has expended and will continue to expend substantial amounts of time and money on the planning and development of the Marketplace Project. In addition, the Developer will expend substantial amounts of time and money for the construction of the Off-Site Improvements and other Required Exactions and for the payment of the Required Development Fees in connection with the Marketplace Project. The Developer would not make such expenditures except in reliance upon this Agreement. The benefit to the Developer under this Agreement consists of the assurance that the City will preserve the rights of Developer to develop the Marketplace Project Area as planned and as set forth in the Marketplace Approvals and this Agreement.

9. Annual Review of Compliance.

9.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Marketplace Project in accordance with the provisions of California Government Code Section 65865.1 and this Section 9. The Parties recognize that this Agreement and the Marketplace Approvals and City Permits referenced herein contain extensive requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the Parties' resources. Accordingly, Developer shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith compliance, as that term is used in Government Code, Section 65865.1, with the material provisions of this Agreement.

9.2 Developer Report. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement. Developer shall submit with such application a report to the Planning Director describing Developer's good faith compliance with the terms of this Agreement during the preceding year (the "**Developer Report**"). The Developer Report shall include a statement that the report is submitted to City pursuant to the requirements of California Government Code Section 65865.1.

9.3 Finding of Compliance. Within thirty (30) days after Developer submits the Developer Report under Section 9.2, the Planning Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith compliance with the material terms of this Agreement. If the Planning Director finds and determines that Developer has in good faith complied with the material terms of this Agreement, or does not determine otherwise within thirty (30) days after delivery of the Developer Report, the annual review shall be deemed concluded. If the Planning Director initially determines that the Developer Report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith compliance with the material terms of this Agreement. If the Planning Director concludes that Developer has not demonstrated good faith compliance with the material terms of this Agreement, he or she shall so notify Developer prior to the expiration of the thirty (30) day period herein specified and prepare a staff report to the City Council with respect to the conclusions of the Planning Director and the contentions of Developer with respect thereto (the "**Staff Report**").

9.4 Hearing Before City Council to Determine Compliance. After submission of the Staff Report of the Planning Director, the City Council shall conduct a noticed public hearing to determine the good faith compliance by Developer with the material terms of this Agreement. At least sixty (60) days prior to such hearing, the Planning Director shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the Staff Report and other information concerning Developer's good faith compliance with the material terms of this Agreement and the conclusions and recommendations of the Planning Director. At such public hearing, Developer and any other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the Staff Report on, or with respect or germane to, the issue of Developer's good faith compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time adequate to bring Developer's performance into good faith compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to Force Majeure pursuant to Section 13.1, then the City Council may by subsequent noticed public hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement, or take such other actions as may be specified in the Development Agreement Laws. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to perfect the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised

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in the notice of noncompliance or failure on a point-by-point basis in any hearing held by the City Council hereunder.

9.5 Meet and Confer Process. If either the Planning Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the Planning Director and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer in order to determine a resolution acceptable to both Parties of the bases upon which the Planning Director or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. If, as a result of such meet and confer process, the Parties agree on a resolution of the bases related to the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution achieved through such meet and confer process. Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon City Council acceptance of the results and recommendations of the meet and confer process.

9.6 Certificate of Compliance. If the Planning Director (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement, the Planning Director shall issue a certificate of compliance within ten (10) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the certificate of compliance in the Official Records.

9.7 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to Section 9.4 and takes any of the actions specified in Section 10.4 with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by the City Council pursuant to a legal action filed in accordance with Section 16.5.

9.8 City Costs. In the event that the Planning Director concludes in its Staff Report pursuant to Section 9.3 of this Agreement, that Developer is not in good faith compliance with the material terms of this Agreement, then Developer shall reimburse the City for all of the City's reasonable costs, (including but not limited to, staff time, attorney's fees, and administrative costs) incurred in connection with Sections 9.4 and 9.5 of this Agreement. Pursuant to this section, Developer shall remit payment to the City within thirty (30) days of receiving an invoice from the City for its costs. Notwithstanding the foregoing, Developer shall have the right to contest any determination by the Planning Director (pursuant to Section 9.4) or the City Council (pursuant to Section 9.7) that Developer is not in good faith compliance with the material terms of this Agreement, and if Developer prevails in such contest: (a) Developer shall have no reimbursement obligation under this Section 9.8; and (b) any monies previously reimbursed by Developer to the City pursuant to this Section 9.8 shall be returned to Developer by the City within thirty (30) days after the conclusion of the contest.

10. Events Of Default; Remedies; Estoppel Certificates.

10.1 Events of Default.

10.1.1 The failure by a Party to perform any material term or provision of this Agreement (including but not limited to the failure of a Party to approve a matter or take an action within the applicable time periods governing such performance under this Agreement) shall, subject to the provisions of this Agreement, constitute an "**Event of Default**", if: (a) such defaulting Party does not cure such failure within thirty (30) days following delivery of a Notice (as hereinafter defined) of default from the other Party ("**Notice of Default**"), where such failure is of a nature that can be cured within such thirty (30) day period; or (b) where such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting Party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in reasonable detail the nature of the failures in performance by the defaulting Party and the manner in which such failures of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

10.1.2 Any Notice of Default to the defaulting Party pursuant to Section 10.1.1 shall satisfy the requirements of Section 15 of this Agreement and shall include a provision in at least fourteen face bold type as follows: "YOU HAVE FAILED TIMELY TO PERFORM OR RENDER AN APPROVAL OR TAKE AN ACTION REQUIRED UNDER THE DEVELOPMENT AGREEMENT: [SPECIFY IN DETAIL]. YOUR FAILURE TO COMMENCE TIMELY PERFORMANCE AND COMPLETE SUCH PERFORMANCE AS REQUIRED UNDER THE AGREEMENT OR RENDER SUCH APPROVAL TO TAKE SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE SHALL ENTITLE THE UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED UNDER THE AGREEMENT AS A RESULT OF THE FOREGOING CIRCUMSTANCES."

10.2 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to: (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus; and/or (b) bring any action at law or in equity as may be permitted by laws of the State of California or this Agreement.

10.3 Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any failure of performance, including an Event of Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction. Nothing in this Agreement shall limit or waive any other right or remedy available to a party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.4 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing: (a) that this Agreement is in full force and effect and a binding obligation of the Parties; (b) that this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (c) to the knowledge of such other Party, that neither Party has committed an Event of Default under this Agreement, or if an Event of Default has to such other Party's knowledge occurred, to describe the nature of any such Event of Default; and (d) such other certifications that may be reasonably requested by the other Party or a Mortgagee (as hereinafter defined). A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, and if a Party fails so to do within such twenty (20) day period, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The City Manager, as to the City, shall execute certificates requested by Developer hereunder. Each Party acknowledges that a certificate hereunder may be relied upon by Transferees (as hereinafter defined) and Mortgagees (as hereinafter defined). No Party shall, however, be liable to the requesting Party, or other Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

11. Mortgagee Protection.

11.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Mortgage" means: (a) a mortgage or deed of trust, or other transaction, in which Developer conveys or pledges as security its interest in the Marketplace Project or the Marketplace Project Area, or a portion thereof, or interest therein, or any buildings or improvements thereon for the purpose of (i) financing the acquisition of the Marketplace Project Area or the development of the Marketplace Project, or any portion thereof, (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering the Marketplace Project or the Marketplace Project Area or a portion thereof; and (b) a sale and leaseback arrangement, in which Developer sells and leases back concurrently therewith its interest in the Marketplace Project, or a portion thereof, or interest therein, or improvements thereon for the purpose of (i) financing the acquisition of the Marketplace Project Area, or the development of the Marketplace Project, or any portion thereof, (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering the Marketplace Project or the Marketplace Project Area or a portion thereof.

"Mortgagee" means: (a) the holder of the beneficial interest under a Mortgage; (b) the lessor under a sale and leaseback Mortgage; and (c) any successors, assigns and designees of the foregoing.

11.2 Mortgagee Protection. This Agreement and any covenants entered into between the Developer and City required for the approval of any Marketplace Approvals shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Marketplace Project or the Marketplace Project Area. No Event of Default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but, subject to the provisions of Section 11.3, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any Mortgagee) who acquires title to the Marketplace Project, the

Marketplace Project Area or any portion thereof or interest therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.3 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Marketplace Project Area, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City, under this Agreement, unless and until such Mortgagee elects to become a Transferee in the manner specified in Section 12.4. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a Transferee to another Person.

11.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If the City receives notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof (a "**Notice Request**"), then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default thereafter given to Developer. From and after the delivery of a Notice Request to the City by a Mortgagee, no Notice of Default delivered to the Developer shall be effective unless and until a copy of such Notice of Default is also delivered to the Mortgagee. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed within the applicable time periods for cure specified in this Agreement. If, however, the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project, or portion thereof, such Mortgagee shall seek to obtain possession with diligence and continuity (but in no event later than one hundred eighty (180) days after a copy of the Notice of Default is given to Mortgagee) through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than an Event of Default or noncompliance (i) for failure to pay money or (ii) that is reasonably susceptible of remedy or cure prior to a Mortgagee obtaining possession, so long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 11.4, the City shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance. When and if a Mortgagee acquires the interest of Developer encumbered by such Mortgagee's Mortgage and such Mortgagee becomes a Transferee pursuant to Section 12.4, then such Mortgagee shall promptly cure all monetary or other Events of Default or noncompliance then reasonably susceptible of being cured by such Mortgagee to the extent such that such Events of Default or noncompliance are not cured prior to such Mortgagee becoming a Transferee pursuant to Section 12.4.

11.5 Priority of Mortgages. For purposes of exercising any remedy of a Mortgagee pursuant to this Section 11 or for becoming a Transferee in the manner specified in Section 12.4, the applicable laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

11.6 Collateral Assignment. As additional security to a Mortgagee under a Mortgage on the Marketplace Project, the Marketplace Project Area or any portion thereof, Developer shall have the right, without the consent of the City, to execute a collateral assignment of Developer's rights, benefits and remedies under this Agreement in favor of the Mortgagee (a "**Collateral Assignment**") on the standard form provided by the Mortgagee.

11.7 Interpretations and Modifications. The City acknowledges that prospective Mortgagees may request certain interpretations and modifications of this Agreement during the Term, and agrees upon request, from time to time, to meet with Developer and representatives of such Mortgagees to discuss in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification which the City reasonably determines is consistent with the intent and purposes of this Agreement.

12. Transfers.

12.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“**Affiliate**” means any Person directly or indirectly Controlling, Controlled by or under Common Control with Owner.

“**Control**” means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person. The term "Control" includes any grammatical variation thereof, including "Controlled" and "Controlling".

“**Common Control**” means that two Persons are both controlled by the same other Person.

“**Person**” means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

“**Transfer**” means the sale, assignment, or other transfer by Developer of this Agreement, or any right, duty or obligation of Developer under this Agreement, including by foreclosure, trustee sale, or deed in lieu of foreclosure, under a Mortgage, but excluding: (a) a dedication of any portion of the Marketplace Project Area to the City or another governmental agency; (b) a Mortgage; (c) ground leases, leases, subleases, licenses and operating agreements entered into by Developer with tenants or occupants of the Marketplace Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases) in the Marketplace Project, and any assignment or transfer of any such ground lease, lease, sublease, license or operating agreement by either party thereto; (d) any sale of a building pad and surrounding area in the Marketplace Project Area to a future retail or restaurant occupant (or its affiliated entity) for the intended purpose of the development and occupancy of a building or improvement thereon; and (e) any Collateral Assignment of this Agreement to a Mortgagee.

“**Transferee**” means the Person to whom a Transfer is effected.

12.2 Conditions Precedent to Developer Right to Transfer. Except as otherwise provided in this Section 12, Developer shall only have the right to effect a Transfer subject to and upon fulfillment of the following conditions precedent:

12.2.1 No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, unless the City Council has received adequate

assurances satisfactory to the City Council that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

12.2.2 Prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the “**Assumption Agreement**”) in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee; (b) the obligations of Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer to be assumed by the Transferee in connection with the proposed Transfer. The Assumption Agreement shall be recorded in the Official Records concurrently with the consummation of the Transfer.

12.2.3 Prior to the effective date of the proposed Transfer, City consents in writing to the Transfer. City's consent shall not be unreasonably withheld. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed Transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of Transferee, its principals, officers or owners with the provisions of federal or state law, the Fresno Municipal Code or agreements with the City relating to development projects within the City of Fresno.

12.3 Transfer to Affiliate. Notwithstanding the provisions of Section 12.2, Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to an Affiliate of Developer. Such Affiliate shall become a Transferee upon: (a) the acquisition by such Affiliate of the affected interest of Developer under this Agreement; (b) delivery to the City of an Assumption Agreement executed by the Affiliate pursuant to which the Affiliate assumes, from and after the date such Affiliate so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement and (c) delivery to the City of documents and other evidence establishing, to the reasonable satisfaction of the City, the Affiliate's financial capacity to meet all of its duties and obligations under this Agreement. By virtue of its demonstrated status as an Affiliate of Developer and recognizing that Transfers to Affiliates will facilitate Developer's ability to develop the Marketplace Project consistent with this Agreement, the City hereby consents to any Transfer to an Affiliate in accordance with this Section 12.3 and no further consent of the City shall be required for any Transfer by Developer to an Affiliate.

12.4 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee's Mortgage; and (b) delivery to the City of an Assumption Agreement executed by the Mortgagee pursuant to which the Mortgagee assumes assuming, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such Transfer to a Mortgagee.

12.5 Effect of Transfer. A Transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the Transfer and then only to the extent set forth in the Assumption Agreement delivered under Sections 12.2.2, 12.3 and 12.4. When and if

Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with Section 12.2, 12.3 or 12.4, Developer shall be released from any and all obligations accruing after the date of the Transfer under this Agreement. If Developer effectuates a Transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the Transfer which the Transferee assumes in the Assumption Agreement.

13. Enforced Delay; Extension of Time of Performance; Excused Performance.

13.1 Force Majeure. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, the discovery and remediation of hazardous waste or significant geologic, hydrologic, archaeologic or paleontologic problems on the Marketplace Project Area, fires, casualties, acts of God, shortages of labor or material, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal statutes or regulations, judicial decisions, litigation not commenced by a Party to this Agreement claiming the enforced delay, or any other basis for excused performance which is not within the reasonable control of the Party to be excused. Causes for delay as set forth above are collectively referred to as "**Force Majeure.**"

13.2 Notice. If Notice (as hereinafter defined) of such delay or impossibility of performance is provided to a Party within thirty (30) days after the commencement of such delay or condition of impossibility, an extension of time for such cause shall not be unreasonably denied by such Party. The extension shall be for the period of the enforced delay, or longer as may be mutually agreed upon by the applicable Parties in writing. Any performance rendered impossible shall be excused in writing by the Party so notified.

14. Project Approvals Independent. Except to the extent otherwise recognized by CEQA, all City Permits which may be granted pursuant to this Agreement, and all Plan Amendments, Zoning Amendments and Marketplace Approvals which have been issued or granted by the City with respect to the Marketplace Project Area and the Marketplace Project, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement is Terminated for any reason, then such invalidity, unenforceability or Termination of this Agreement, or any part hereof, shall not affect the validity or effectiveness of any such City Permits or the Plan Amendments, Zoning Amendments and Marketplace Approvals. In such cases, such City Permits and Plan Amendments, Zoning Amendments and Marketplace Approvals will remain in effect pursuant to their own terms, provisions, and conditions of approval. As such, the City may place conditions of approval on all City Permits which may be granted pursuant to this Agreement, and all Plan Amendments, Zoning Amendments and Marketplace Approvals which have been issued or granted by the City with respect to the Marketplace Project Area and the Marketplace Project, so long as such conditions are consistent with the terms of this Agreement.

15. Notices

15.1 Form of Notices; Addresses. All notices and other communications (the "Notices") required or permitted to be given by any Party to another Party pursuant to this Agreement shall be properly given only if the Notice is: (a) made in writing (whether or not so stated

elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 15.2; and (c) sent to the Party (to which it is addressed at the address set forth below (with a copy to the appropriate entity as indicated below) or at such other address as such Party (or the addressee required to be sent a copy) may hereafter specify by at least five (5) calendar days' prior written notice:

If to City: City of Fresno
City Hall
2600 Fresno Street
Fresno, CA 93721-3600
Attention: Mark Scott, City Manager
Facsimile: (559) 621-7776

and to: City Attorney
City of Fresno
City Hall
2600 Fresno Street
Fresno, CA 93721-3600
Attention: James C. Sanchez, City Attorney
Facsimile: (559) 488-1084

If to Developer: John Allen Company, LLC.
P. O. Box 8548
Calabasas, CA 91372
Attention: John E. Allen
Facsimile: (818) 225-8458

Gryphon Capital, LLC
94 Manhattan Ave.
Manhattan Beach, CA 90266
Attention: Chris Shane
Facsimile: (310) 388-1199

and to: Law Offices of Richard A. Lawrence
2815 Townsgate Road
Suite 140
Westlake Village, CA 91361
Attention: Richard A. Lawrence, Esq.
Facsimile: (805) 496-5371

15.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or (c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt.

16. General Provisions.

16.1 City's Reservation of Authority. The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted to Developer herein to the maximum extent allowed by law. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; and (b) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

16.2 Amendment or Cancellation. Subject to meeting the notice and hearing requirements of Section 65867 of the California Government Code, this Agreement may be amended from time to time, or canceled in whole or in part, by mutual written consent of the City and Developer, or their respective successors in interest in accordance with the provisions of Section 65868 of the California Government Code.

16.3 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 and referring expressly to this Section. 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 of event.

16.4 Successor and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and any subsequent owners of all or any portion of the Marketplace Project Area and their respective successors and assigns. Any successors in interest to the City shall be subject to the provisions set forth in Sections 65865.4 and 65868.5 of the California Government Code.

16.5 Interpretation and Governing State Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard in the Superior Court of the State of California, County of Fresno.

16.6 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have any right of action based upon any provision of this Agreement.

16.7 Future Acquisitions. In the event that Developer or an affiliate of Developer acquires or obtains a legal or equitable interest in any portion of the El Paseo Project Area other than the Marketplace Project Area (the "After Acquired Land") during the Term of this Agreement, the City and Developer shall engage in good faith negotiations for a development agreement between the

City and Developer pursuant to the Development Agreement Laws for the development of a portion of the El Paseo Project on the After Acquired Land.

16.8 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16.9 Limitation of Legal Acts. Except as provided in Section 16.8, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

16.10 Validation. If so requested in writing by the Developer, the City agrees to initiate appropriate procedure under California Code of Civil Procedure Section 860 et seq., in order to validate this Agreement, and the obligations thereunder. Any validation undertaken at the request of the Developer shall be at the sole cost of the Developer.

16.11 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

16.12 Incorporation of Attachments. All recitals and attachments to this Agreement, including all Exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

16.13 Negation of Partnership. The Parties specifically acknowledge that the Marketplace Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

16.14 Not A Public Dedication. Except for Required Exactions specifically set forth in this Agreement and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Marketplace Project Area or any buildings or improvements constructed in the Project, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the

Marketplace Project Area as private property.

16.15 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

16.16 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

16.17 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

16.18 CFD. At the written request of Developer, the City agrees to reasonably cooperate with Developer, at no cost or expense to the City, in the establishment of a Community Facility District encompassing the Marketplace Project Area to assist in the financing of certain off-site improvements and Exactions related to the Marketplace Project.

16.19 Days. Unless otherwise specified in this Agreement, the term “days” means calendar days.

SIGNATURES ARE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

“City”

CITY OF FRESNO
a municipal corporation

Dated: July ~~___~~, 2011

By: Mark Scott
Mark Scott
City Manager

ATTEST:

Sherrie L. Badertscher
City Clerk Deputy 8/4/11

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: John W. Fox
Date: 7/25/2011

“Developer”

JOHN ALLEN COMPANY, LLC,
a California limited liability company

Dated: July 7, 2011

By: John E. Allen
Its: Manager

ACKNOWLEDGMENT

State of California)

County of Ventura)

On July 7, 2011 before me, Tama Warner, Notary Public,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Tama Warner

(Seal)

CLERK'S CERTIFICATION

State of California)
County of Fresno)

On August 4, 2011 before me, Sherrie L. Badertscher, Deputy City Clerk, personally appeared, Mark Scott, City Manager, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

REBECCA E. KLISCH, CMC
City Clerk, City of Fresno

By *Sherrie L. Badertscher*
Deputy



EXHIBIT "A"
El Paseo Project Area

The El Paseo Project Area is depicted on the following page



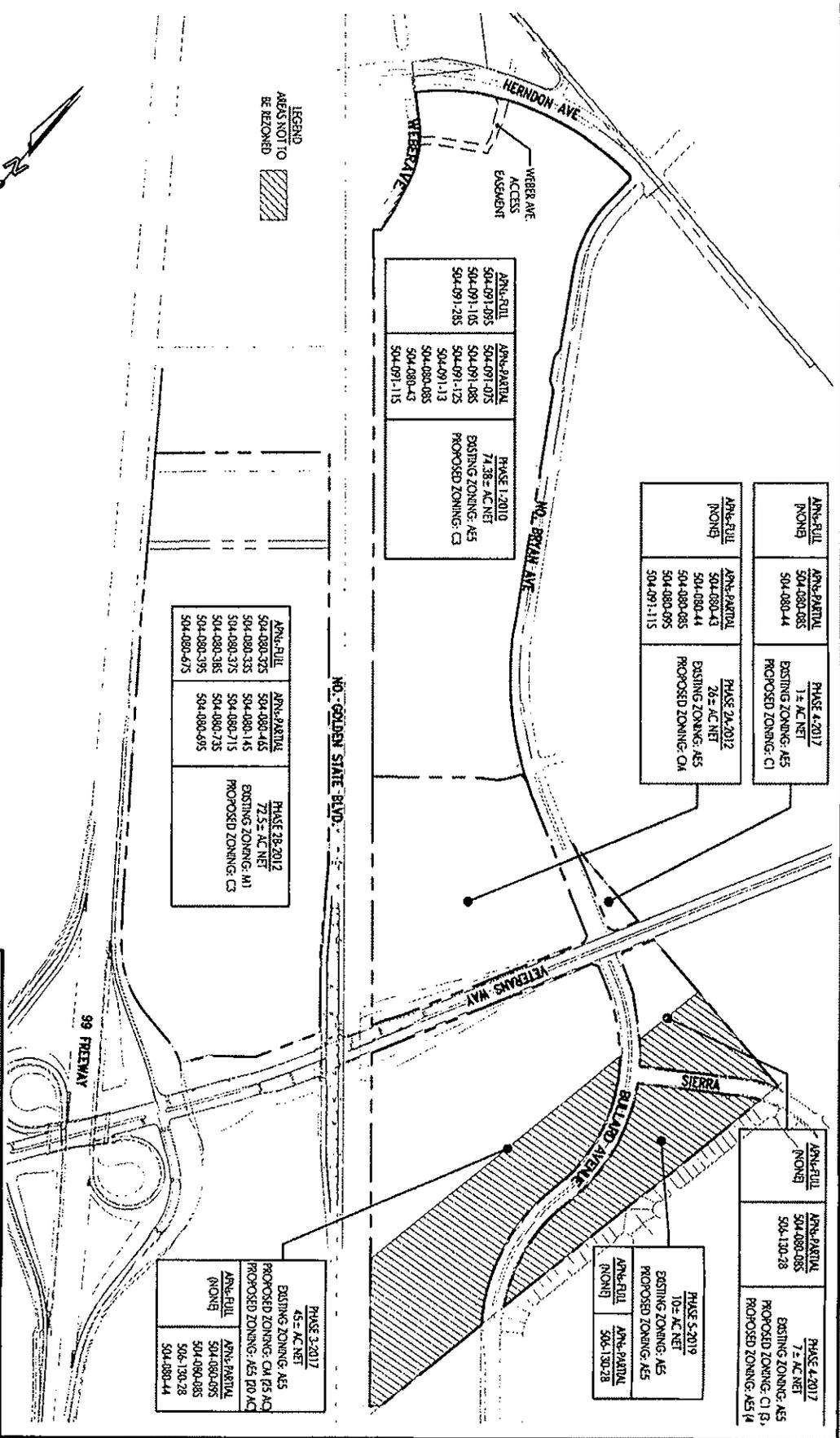
LEGEND
AREAS NOT TO
BE REZONED



EXHIBIT A

DATE REVISION
01/23/2009
DATE REVISION
10/24/2010

SHEET
1 OF 1



APN: FULL 504-091-095 504-091-105 504-091-285	APN: PARTIAL 504-091-075 504-091-085 504-091-125 504-091-113 504-080-085 504-080-43 504-091-115	PHASE 1-2010 71.38 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: C3
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APN: FULL (NON)	APN: PARTIAL 504-080-085 504-080-44 504-080-085 504-080-095 504-091-115	PHASE 4-2017 1 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: C1
APN: FULL (NON)	APN: PARTIAL 504-080-43 504-080-44 504-080-085 504-080-095 504-091-115	PHASE 2A-2012 26 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: O4

APN: FULL 504-080-325 504-080-335 504-080-345 504-080-375 504-080-385 504-080-395	APN: PARTIAL 504-080-415 504-080-145 504-080-715 504-080-735 504-080-695	PHASE 2B-2012 77.5 ± AC NET EXISTING ZONING: M1 PROPOSED ZONING: C3
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APN: FULL (NON)	APN: PARTIAL 504-080-085 504-100-28	PHASE 4-2017 7 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: C1 B, PROPOSED ZONING: A5 I4
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APN: FULL (NON)	APN: PARTIAL 504-100-28	PHASE 5-2019 10 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: A5
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APN: FULL (NON)	APN: PARTIAL 504-080-085 504-100-28 504-080-44	PHASE 3-2017 45 ± AC NET EXISTING ZONING: A5 PROPOSED ZONING: CM (5 AC PROPOSED ZONING: A5 PD AC
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EXHIBIT "B"
Marketplace Project Area

The Marketplace Project Area is depicted on the following page

EXHIBIT "C"
Legal Description of Main Parcels

Legal Description is on the following pages

EXHIBIT C

PORTIONS OF J.C. FORKNER FIG GARDENS SUBDIVISIONS NO. 3 AND 10, ALSO BEING PORTIONS OF SECTION 4, AND THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 13 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF WEST PALO ALTO AVENUE AND THE NORTHEASTERLY LINE OF NORTH WEBER AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 54, PAGES 25 THROUGH 29, FRESNO COUNTY RECORDS, SAID POINT ALSO BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY AS COURSE "L23" HAVING A BEARING AND DISTANCE OF NORTH 15°44'21" WEST 96.42 FEET; THENCE ALONG THE BOUNDARIES OF SAID RECORD OF SURVEY THE FOLLOWING COURSES:

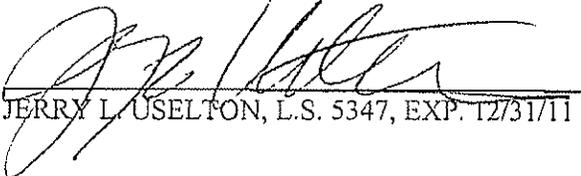
- 1) NORTH 15°44'21" WEST 96.42 FEET,
 - 2) NORTH 20°18'21" WEST 177.11 FEET,
 - 3) NORTH 23°50'21" WEST 67.70 FEET,
 - 4) NORTH 31°17'21" WEST 70.54 FEET,
 - 5) NORTH 38°53'21" WEST 70.44 FEET,
 - 6) NORTH 46°11'21" WEST 69.88 FEET,
 - 7) NORTH 52°59'21" WEST 55.73 FEET,
 - 8) NORTH 56°47'44" WEST 181.51 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1243.29 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 56°47'44" WEST,
 - 9) NORTHEASTERLY 662.31 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 30°31'18",
 - 10) NORTH 26°16'26" WEST 8.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 1697.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 26°16'29" WEST,
 - 11) EASTERLY 646.00 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°48'39",
 - 12) SOUTH 88°18'38" EAST 47.53 FEET,
 - 13) SOUTH 04°48'48" EAST 189.04 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 648.00 FEET,
 - 14) SOUTHEASTERLY 403.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°41'32",
 - 15) SOUTH 40°30'20" EAST 54.24 FEET,
 - 16) SOUTH 00°23'56" WEST 629.58 FEET,
 - 17) NORTH 89°54'20" EAST 541.43 FEET,
 - 18) SOUTH 40°30'20" EAST 156.65 FEET,
 - 19) SOUTH 00°26'02" WEST 86.99 FEET,
 - 20) SOUTH 41°00'45" EAST 45.32 FEET,
 - 21) SOUTH 40°45'13" EAST 731.93 FEET AND SOUTH 40°45'13" EAST 126.88 FEET;
- THENCE LEAVING SAID BOUNDARY SOUTH 40°32'46" WEST 746.11 FEET TO THE SOUTHWESTERLY LINE OF NORTH WEBER AVENUE 60.00 FEET IN WIDTH, AS SHOWN

ON SAID RECORD OF SURVEY, SAID LINE ALSO BEING THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE;
THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 49°49'49" WEST 2205.78 FEET TO A POINT ON A LINE PERPENDICULAR TO SAID SOUTHWESTERLY LINE WHICH PASSES THROUGH THE POINT OF BEGINNING;
THENCE ALONG SAID PERPENDICULAR LINE NORTH 40°10'11" EAST 42.65 FEET TO THE POINT OF BEGINNING.

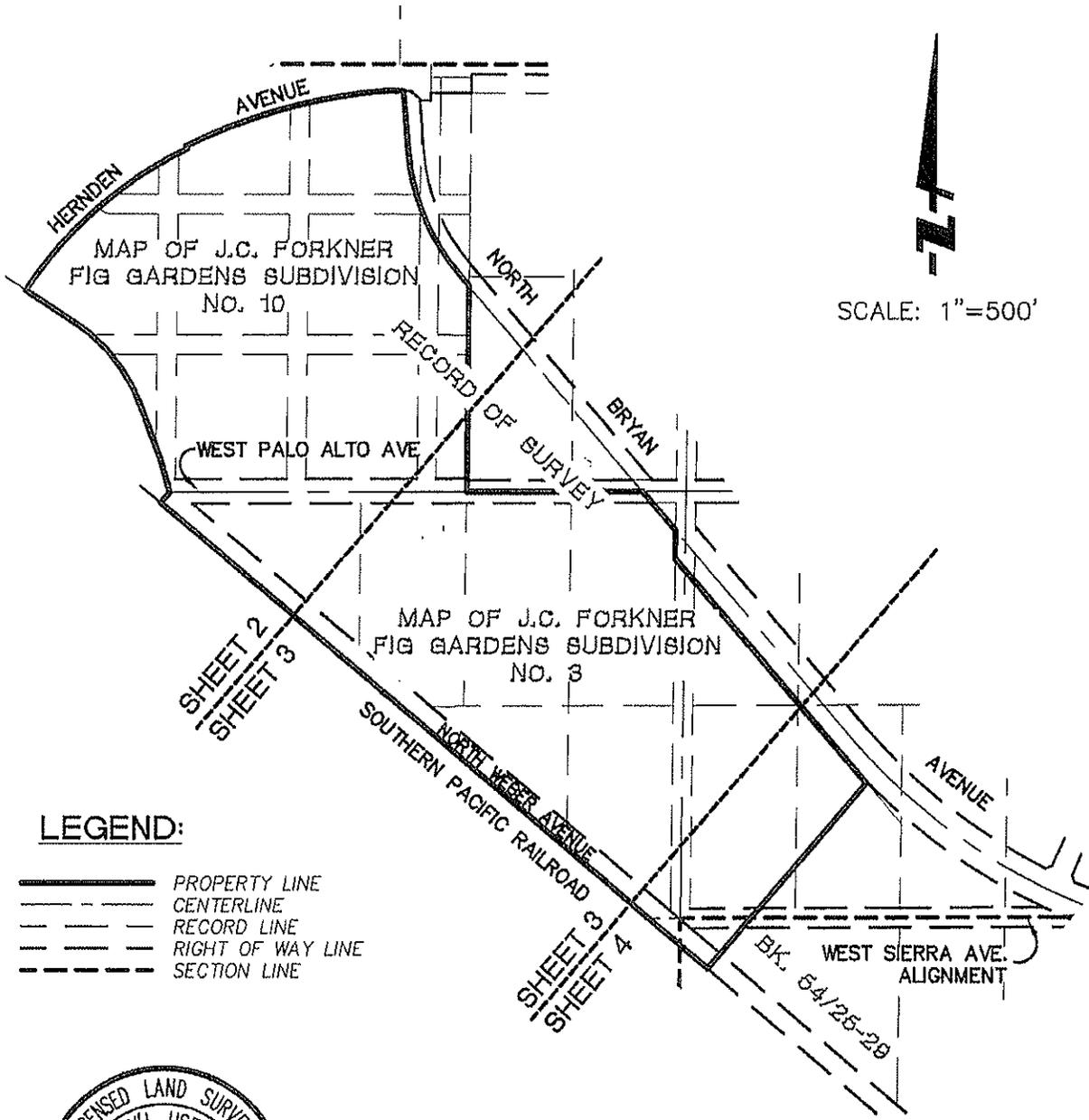
CONTAINING 2,678,294 SQUARE FEET, 61.485 ACRES MORE OR LESS.

AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED THIS 23rd DAY OF March, 2010.


JERRY L. USELTON, L.S. 5347, EXP. 12/31/11





LEGEND:

-  PROPERTY LINE
-  CENTERLINE
-  RECORD LINE
-  RIGHT OF WAY LINE
-  SECTION LINE



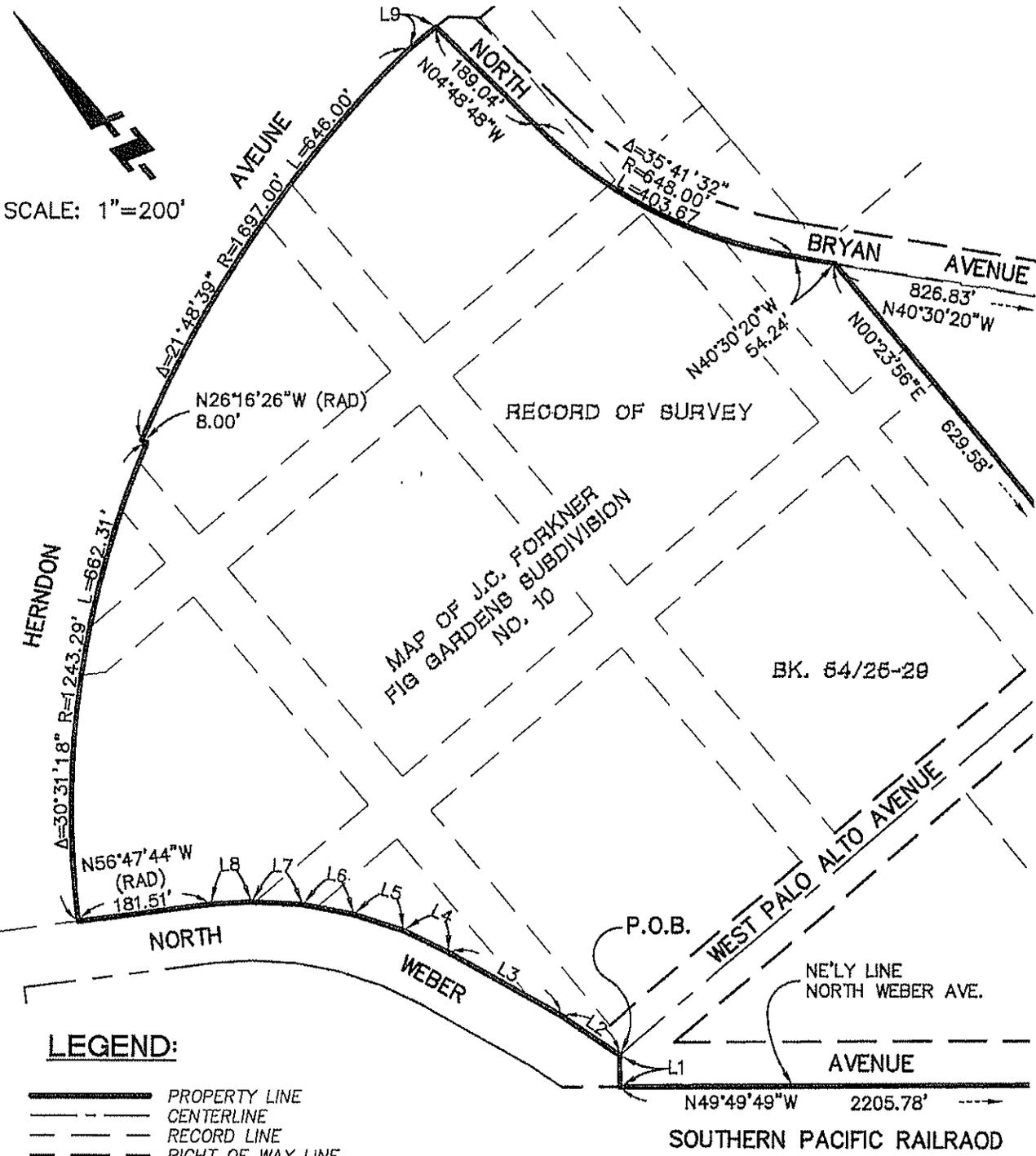
16795 Von Karman, Suite 100, Irvine, California 92606
 tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

EXHIBIT 'A'
 DEVELOPMENT AGREEMENT
 A PORTION OF THE NORTHEAST QUARTER OF
 SECTION 4, T.13 S., R.10 E., M.D.B. & M.,
 CITY OF FRESNO, COUNTY OF FRESNO
 CALIFORNIA

DATE: MAR. 22, 2010
 SCALE: 1" = 500'
 JN: 875.0101
 SHEET 1 OF 4

46

SCALE: 1"=200'



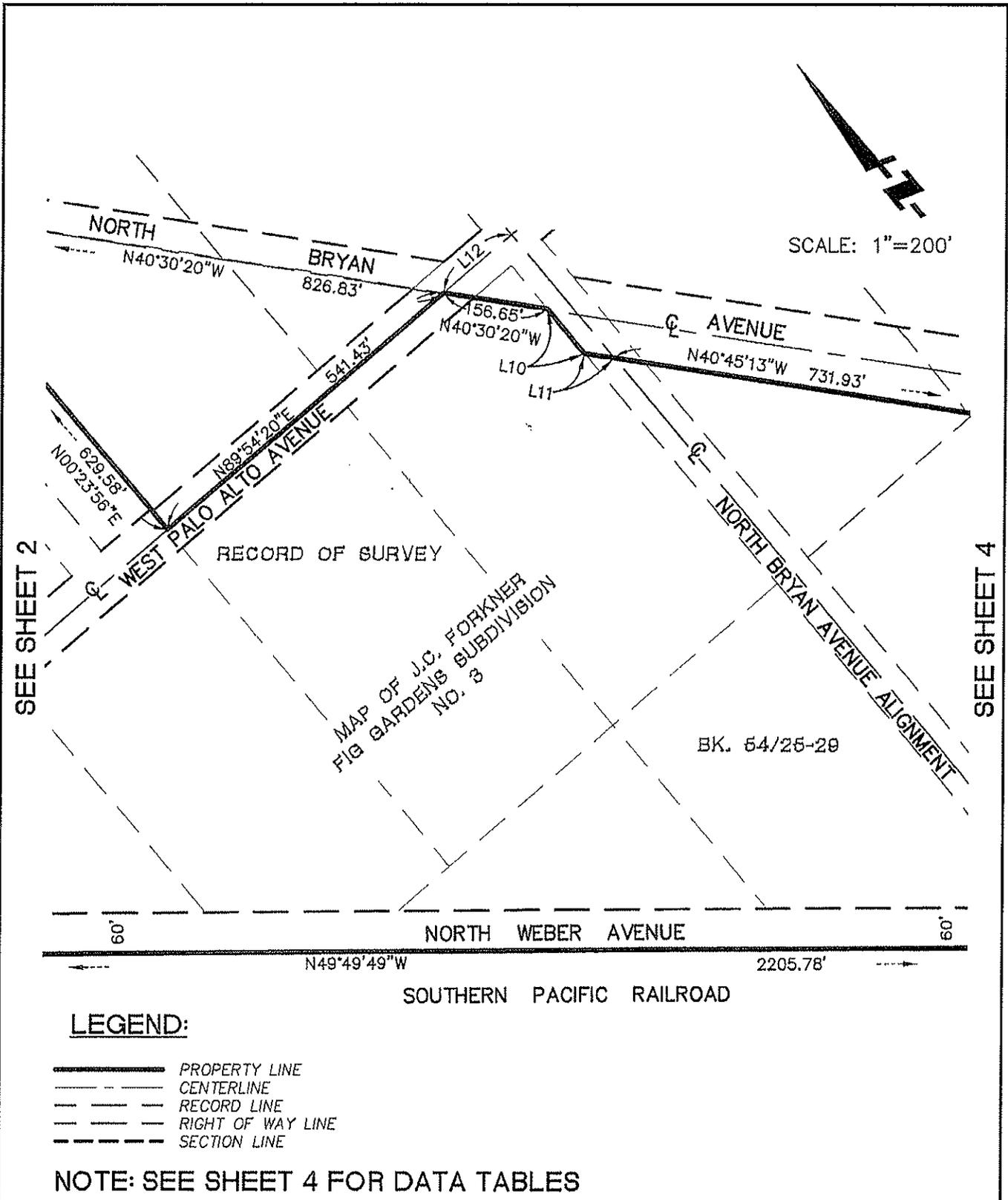
SEE SHEET 3

FUSCOE
 ENGINEERING
 16795 Von Karman, Suite 100, Irvine, California 92606
 tel 949.474.1960 • fax 949.474.5315 • www.fusco.com

EXHIBIT 'A'
 DEVELOPMENT AGREEMENT
 A PORTION OF THE NORTHEAST QUARTER OF
 SECTION 4, T.18 S., R.10 E., M.D.B. & M.,
 CITY OF FRESNO, COUNTY OF FRESNO
 CALIFORNIA

DATE: MAR. 22, 2010
 SCALE: 1" = 200'
 JN: 875.0101
 SHEET 2 OF 4

47



FUSCOE
ENGINEERING

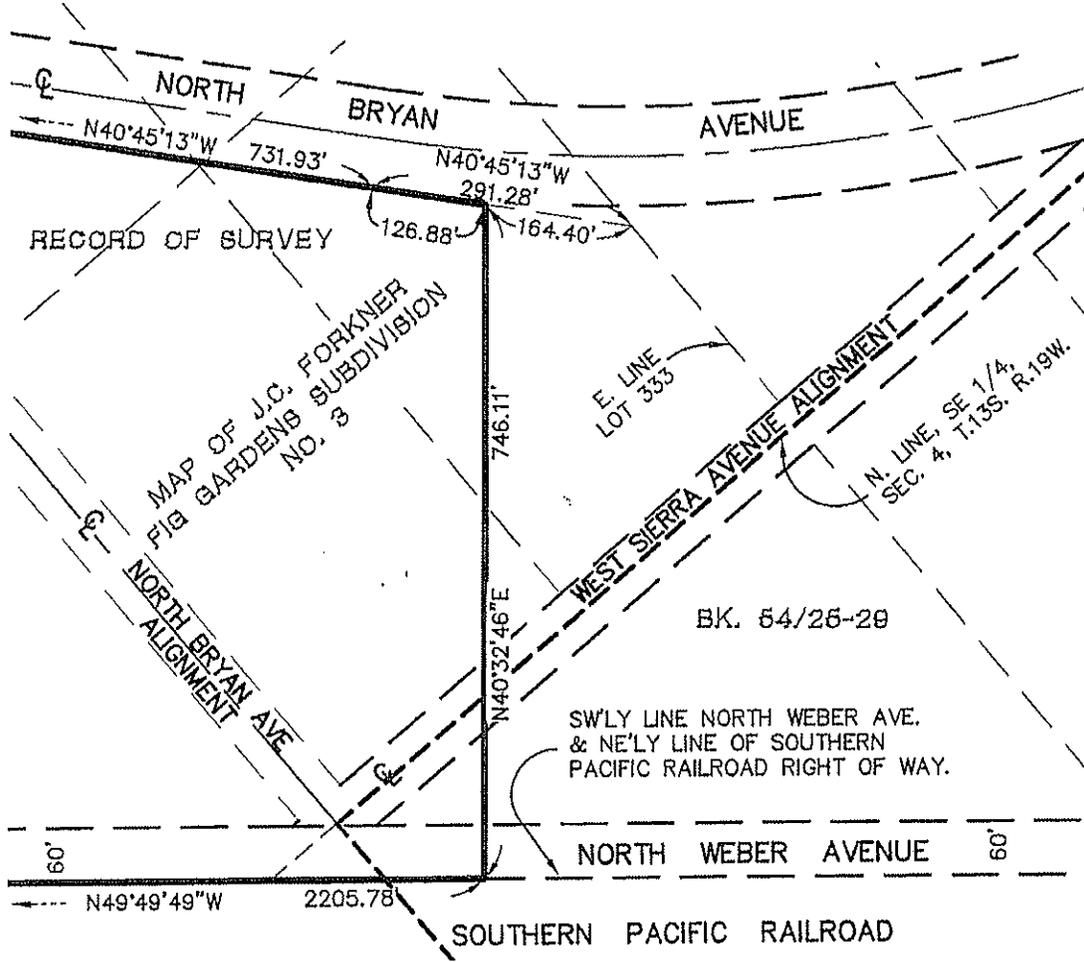
16795 Von Karman, Suite 100, Irvine, California 92606
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CITY OF FRESNO, COUNTY OF FRESNO
CALIFORNIA

DATE: MAR. 22, 2010
SCALE: 1" = 200'
JN: 875.0101
SHEET 3 OF 4

48

SEE SHEET 3



LEGEND:

- — — — — PROPERTY LINE
- — — — — CENTERLINE
- — — — — RECORD LINE
- — — — — RIGHT OF WAY LINE
- — — — — SECTION LINE

SCALE: 1"=200'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N40°10'11"E	42.65'
L2	N15°44'21"W	96.42'
L3	N20°18'21"W	177.11'
L4	N23°50'21"W	67.70'
L5	N31°17'21"W	70.54'
L6	N38°53'21"W	70.44'
L7	N46°11'21"W	69.88'
L8	N52°59'21"W	55.73'
L9	N88°18'38"W	47.53'
L10	N00°26'02"E	86.99'
L11	N41°00'45"W	45.32'
L12	N89°54'20"E	132.65'

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EXHIBIT 'A'
DEVELOPMENT AGREEMENT
A PORTION OF THE NORTHEAST QUARTER OF
SECTION 4, T.13 S., R.10 E., M.D.B. & M.,
CITY OF FRESNO, COUNTY OF FRESNO
CALIFORNIA

DATE: MAR. 22, 2010
SCALE: 1" = 200'
JN: 875.0101
SHEET 4 OF 4

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EXHIBIT "D"
Depiction of Main Parcels,
Parcel A and Parcel B

The respective areas of the Main Parcels, Parcels A and Parcel B are depicted on the following page

EXHIBIT "E"
Required Exactions, Required Development Fees
and Fee Credits

The list of Required Exactions, Required Development Fees and Fee Credits
is on the following pages

EXHIBIT E

**EXACTIONS: OFF-SITE IMPROVEMENTS
DEVELOPMENT FEES, DEDICATIONS**

**EXHIBIT E
EXACTIONS**

Development of the Marketplace Project under the Agreement shall be subject to the following impacts fees, dedications and improvements and other agency fees, dedications and improvements pursuant to the terms, conditions and requirements provided in this Exhibit E. Unless otherwise expressly provided in this Exhibit E, all public facilities shall be constructed to standards and pursuant to procedures adopted by the City and existing at the time the plans are submitted to the City for approval.

A. CITY IMPACT FEES

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
1	Lateral Sewer Charge	Pursuant to FMC ⁽¹⁾ and MFS ⁽²⁾ .	Per FMC	No	n/a
2	Oversize Sewer Charge	Per FMC and MFS.	Per FMC	No	n/a

⁽¹⁾ "FMC" shall refer to the Fresno Municipal Code and any adopted Council resolutions, uncodified ordinances and/or policies adopted for a particular fee in effect as of the adoption date of this Agreement.

⁽²⁾ "MFS" refers to the Master Fee Schedule in effect as of the adoption date of this Agreement.

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
3	Wastewater Facility Charge (including STEP Fees where appropriate)	Per FMC and MFS.	Per FMC	No	n/a
4	Water Frontage Charge	Per FMC and MFS.	Per FMC	No	n/a
5	UGM Water Transmission Grid Main (TGM) Charge	Per FMC and MFS.	Per FMC	No	n/a
6	Transmission Grid Main (TGM) Bond Debt Service Charge	Per FMC and MFS.	Per FMC	No	n/a
7	UGM Water Supply Area 201S	Per FMC and MFS.	Per FMC	No	n/a
8	Wet-tie(s), water service and/or meter(s) installation(s)	Per FMC and MFS.	Per FMC	No	n/a
9	Citywide Fire Facilities Impact Fee	Per FMC and MFS.	Per FMC	No	n/a

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
10	Citywide Park Facility Impact Fee (only applicable for residential units, not applicable for commercial development)	Pursuant to FMC and MFS. Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC	Per FMC Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.
11	Parkland Dedication In-Lieu Fee (To be handled in conjunction with Citywide Park Facility Impact Fee, only applicable to residential units, not applicable for commercial development)	Pursuant to FMC and MFS, taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC	Per FMC. taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC, taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.
12	Citywide Police Facility Impact Fee	Pursuant to FMC and MFS.	Per FMC	Per FMC	Per FMC

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
13	Citywide Regional Street Fee	Per FMC and MFS.	Per FMC	Per FMC	Per FMC
14	Citywide Traffic Signal Charge	Per FMC and MFS.	Per FMC	<p>The Developer may obtain construction credits for any traffic signal installations that are occurring prior to occupancy of the particular building(s) and may apply for traffic signal impact fee reimbursement, less any unpaid fee obligation for which credits were issued, upon acceptance of the completed improvements by the City.</p> <p>The Developer may obtain construction credits for a traffic signal installation if the Developer secures for the construction of the traffic signal with a performance bond and a payment bond in amounts approved by the City Engineer.</p> <p>Should the installations be accomplished for less than the TSMI Fee obligation or for less than the construction credits that were allowed, the Project shall owe the remaining amount to the City. Should the installations be more expensive than the TSMI fee obligation, the Developer shall be entitled to full reimbursements of any excess eligible amounts exceeding the TSMI fee obligation, subject to availability of funds and Council appropriations of the funds for developer reimbursements.</p>	

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
15	Regional Transportation Mitigation Fee, as applicable as determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.

B. CITY DEDICATIONS; IMPROVEMENTS AND REQUIREMENTS

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
1	<p>HERNDON AVENUE FROM UPRR TO BRYAN AVENUE: Full frontage improvements on south half of Herndon Avenue (three 12-foot wide lanes in eastbound direction, 44 feet half-width total pavement), raised median island, median island landscaping and project frontage landscaping. These improvements shall be designed so as to leave two 12-foot westbound lanes and a 5' shoulder on Herndon Avenue. A portion of these required improvements will be constructed by the City's current CIP street improvement project for Herndon Avenue and Goldenstate Boulevard. The developer is not required to install the improvements constructed under the CIP and will not receive fee credit for the improvements installed under the CIP.</p>	DPW ⁽³⁾	Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF of total Gross Leasable Area)	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the median curbs, three eastbound 12' travel lanes and 5' shoulder are eligible for reimbursement or credit against the Citywide Regional Street Impact Fee.</p>

⁽³⁾ City of Fresno Department of Public Works

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
2	HERNDON AVENUE FROM WEBER AVENUE TO BRYAN AVENUE: Construct third westbound lane on Herndon Avenue from Bryan Avenue to Weber Avenue, including outside curb and gutter, to result in 44' from westbound median face of curb to westbound outside face of curb.	DPW	Prior to occupancy of any buildings in Phase 1B (more than 200,000 SF but less than 300,001 SF of total Gross Leasable Area)	In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the third westbound 12' travel lane and 5' shoulder are eligible for reimbursement or credit against the Citywide Regional Street Impact Fee.
3	BRYAN AVENUE FROM HERNDON AVENUE TO PALO ALTO AVENUE: Full Bryan Avenue frontage improvements on the west half (two 12-foot wide lanes in southbound direction, 32 feet half-width total pavement) and median island from Herndon Avenue to Palo Alto Avenue plus transition paving south of Palo Alto Avenue to match the existing street. Construct two northbound lanes with AC dike on east side of Bryan Avenue (two 12-foot travel lanes and one 5-foot shoulder/bike lane) from Palo Alto Avenue to Herndon Avenue.	DPW	Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF of total Gross Leasable Area)	In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the median curbs, two 12' southbound travel lanes and 5' shoulder will be eligible for reimbursement or credits against the New Growth Area Major Street Impact Fee.
4	BRYAN FROM THE SOUTH BOUNDARY OF PHASE 1B TO THE SOUTH BOUNDARY OF PHASE 1C: Full Bryan Avenue frontage improvements on the	DPW	Prior to occupancy of any buildings in Phase 1C (more	In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
	west half (two 12-foot wide lanes in southbound direction, 32-foot half-width total pavement) and median island to the south boundary of Phase 1C plus transition paving south of Phase 1C to match the existing street.		than 300,000 SF but less than 400,001 SF of total Gross Leasable Area)	Area Major Street Impact Fees", the median curbs, two 12' southbound travel lanes and 5' shoulder will be eligible for reimbursement or credits against the New Growth Area Major Street Impact Fee.
5	BRYAN AVENUE FROM THE SOUTH BOUNDARY OF PHASE 1C TO THE SOUTH BOUNDARY OF PHASE 1D: Full Bryan Avenue frontage improvements on the west half (two 12-foot wide lanes in southbound direction, 32-foot half-width total pavement) and median island to the south boundary of Phase 1D plus transition paving south of Phase 1D to match the existing street.	DPW	Prior to occupancy of any buildings in Phase 1D (more than 400,000 SF but less than 500,001 SF of total Gross Leasable Area)	In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the median curbs, two 12' southbound travel lanes and 5' shoulder will be eligible for reimbursement or credits against the New Growth Area Major Street Impact Fee.

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
6	<p>BRYAN AVENUE FROM THE SOUTH BOUNDARY OF PHASE 1D TO THE SOUTH BOUNDARY OF PHASE 1E: Full Bryan Avenue frontage improvements on the west half (two 12-foot wide lanes in southbound direction, 32-foot half-width total pavement) and median island to the south boundary of Phase 1E plus transition paving south of Phase 1E to match the existing street</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1E (more than 500,000 SF but less than 600,001 SF of total Gross Leasable Area)</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the median curbs, two 12' southbound travel lanes and 5' shoulder will be eligible for reimbursement or credits against the New Growth Area Major Street Impact Fee.</p>
7	<p>BRYAN AVENUE EXTENSION SOUTH TO CONNECT TO BULLARD AVENUE: Construct the extension of Bryan Avenue to the existing terminus of Bullard Avenue west of Carnegie Avenue as a two-lane roadway with two 17' center section travel lanes separated by a 16' wide dirt median on a 60' right-of-way.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1D (more than 400,000 SF but less than 500,001 SF of total Gross Leasable Area)</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the two 17' travel lanes and the 60' of right-of-way acquisition will be eligible for credits or reimbursements against the New Growth Area Major Street Impact Fee.</p>
8	<p>PALO ALTO BETWEEN HAYES AVENUE AND BRYAN AVENUE: Install two residential street traffic circles on Palo Alto Avenue between Hayes Avenue and Bryan Avenue at the major access points to</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF</p>	<p>No</p>

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
9	<p>the subdivision on the south side of Palo Alto Avenue with consideration for bus access.</p> <p>TRAFFIC SIGNAL AT HERNDON/BRYAN: Modify Bryan Avenue/Herndon Avenue traffic signal. Revised lane configurations shall consist of: (a) dual left turn lanes and a right turn lane on the northbound approach; (b) a third through lane and dedicated right turn lane on the eastbound approach; and (c) a dual left turn lane on the westbound approach. Traffic signal facilities shall be placed at ultimate locations that will accommodate the future geometrics of six through lanes on Herndon Avenue, four through lanes on Bryan Avenue, dual left turn lanes on all four legs and dedicated right turn pockets on all four legs.</p>	DPW	<p>of total Gross Leasable Area)</p> <p>Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF of total Gross Leasable Area)</p>	Traffic signal work shall be creditable/ reimbursable against the TSMI fee.
10	<p>BRYAN AVENUE / ANCHOR "A" DRIVEWAY INTERSECTION AND TRAFFIC SIGNAL: The "Anchor A driveway" (located approximately 950 feet south of Herndon Avenue center line) shall contain dual eastbound left turn lanes and a separate right turn lane. Install required Bryan Avenue/Anchor A driveway traffic signal and coordinate traffic signals on Bryan Avenue.</p>	DPW	Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF of total Gross Leasable Area)	No
11	SR-99/HERNDON AVENUE NORTHBOUND OFF-RAMP/HERNDON	DPW	Traffic signals shall be	Yes, from TSMI fees

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
	<p>AVENUE AT PARKWAY DRIVE. At the commencement of Phase 1A construction activities, Developer shall commence the installation of traffic signals at Herndon Avenue/Parkway Drive and at the SR 99 northbound off-ramp/Herndon Avenue, , and close access to the SR-99 south-bound slip off-ramp to Herndon Avenue.</p>		<p>operational no later than six (6) months after commencement of Phase 1A construction activities</p>	
12	<p>SR-99/HERNDON AVENUE NORTHBOUND OFF-RAMP: Widen SR 99 northbound off-ramp at Herndon Avenue and add a third lane. Revised approach lane configuration would be a separate left turn land and two right turn lanes. Coordinate/synchronize (through an ITS conduit trunk line) the traffic signals previously installed at Herndon Avenue/Parkway Drive and at the SR 99 northbound off-ramp/Herndon Avenue with the existing Golden State Boulevard/Herndon Avenue traffic signal.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1A (the first 200,000 SF of Total Gross Leasable Area)</p>	<p>Yes, from TSMI fees</p>
12A	<p>SR-99 SOUTHBOUND OFF-RAMP: Remove the existing SR 99 southbound slip off-ramp to Herndon Avenue. Revise the lane configurations at Parkway Drive/Herndon Avenue to consist of dual left turn lanes and a right lane on the westbound approach.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1B (more than 200,000 SF but less than 300,001 SF of total Gross</p>	<p>Yes, from TSMI fees</p>

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
13	<p>PARKWAY DRIVE / GRANTLAND AVENUE / SR-99 SOUTHBOUND ON-RAMP INTERSECTION: Install Parkway Drive traffic signal at Grantland Avenue (SR 99 southbound on-ramp). This requires southbound on-ramp widening for a total of two lanes with ramp metering. Revised lane configurations at Parkway Drive/Grantland Avenue shall consist of a left turn lane and right turn lane on the Grantland Avenue approach.</p>	DPW	Leasable Area. Prior to occupancy of any buildings in Phase 1B (more than 200,000 SF but less than 300,001 SF of total Gross Leasable Area)	Yes, from TSMI fees
14	<p>HERNDON AVENUE FROM PARKWAY DRIVE TO THE SR-99 NORTHBOUND OFF-RAMP: Construct (primarily slurry and restripe) Herndon Avenue to have two westbound lanes and one eastbound lane between Parkway Drive and the SR 99 northbound ramps, maintaining 6-foot paved shoulders under the mainline structure. Reference is made to the City's capital improvement project currently under construction to widen Herndon Avenue to three eastbound lanes from the SR-99 Northbound off-ramp to the UPRR tracks. The developer's improvements shall tie in and match the City's improvements at Herndon Avenue in the vicinity of the SR-99 northbound off-ramp.</p>	DPW	Prior to occupancy of any buildings in Phase 1B (more than 200,000 SF but less than 300,001 SF of total Gross Leasable Area)	No

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
15	<p>BRYAN AVENUE / PALO ALTO AVENUE INTERSECTION: Install traffic signal at Bryan Avenue/Palo Alto Avenue to facilitate access between school and shopping center and residential. Install diverters (pork chops) on the eastbound and westbound approaches on Palo Alto Avenue and shopping center driveway to prohibit east and westbound through traffic. Coordinate traffic signals on Bryan Avenue per City's Intelligent Transportation System (ITS) wireless standards.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1C (more than 300,000 SF but less than 400,001 SF of total Gross Leasable Area)</p>	No
16	<p>HERNDON AVENUE BETWEEN BRYAN AVENUE AND HAYES AVENUE: Widen and stripe for three eastbound lanes between Bryan Avenue and Hayes Avenue.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1E (more than 500,000 SF but less than 600,001 SF of total Gross Leasable Area)</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the striping of the third lane will be eligible for reimbursement or credits against the Citywide Regional Major Street Impact Fee.</p>

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
17	<p>BRYAN AVENUE PHASE 1F FRONTAGE IMPROVEMENTS: Full Bryan Avenue frontage improvements on the west half (two 12-foot wide lanes in southbound direction, 32-foot half-width total pavement) and median island to the south boundary of Phase 1F plus transition paving south of Phase 1F to match the existing street.</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1F (more than 600,000 SF of total Gross Leasable Area)</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the median curbs, two 12' southbound travel lanes and 5' shoulder will be eligible for reimbursement or credits against the New Growth Area Major Street Impact Fee. Transition paving is not eligible for credit or reimbursement.</p>
18	<p>BRYAN AVENUE FROM SOUTHERLY BOUNDARY OF T-5078 TO VETERANS BOULEVARD ALIGNMENT: Construct four 12' wide center section travel lanes and 5' shoulders, separated by a 16' dirt median island, from the southeasterly limits to Veteran's Boulevard if Veterans Boulevard is extended to Bryan Avenue. Install a three-way stop at the intersection of Veterans Boulevard and Bryan Avenue. Dedication shall be sufficient to accommodate arterial</p>	DPW	<p>Prior to occupancy of any buildings in Phase 1E (more than 500,000 SF but less than 600,001 SF of total Gross Leasable Area) if Veterans Boulevard has</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the four travel lanes and 5' shoulder are eligible for credit and/or reimbursement from the New Growth Area Major Street Impact Fee.</p>

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
19	<p>standard and any other grading or transitions as determined by the City Traffic Engineer.</p> <p>HERNDON AVENUE FROM BRYAN AVENUE TO HAYES AVENUE: Construct third westbound travel lanes including curb and gutter.</p>	DPW	<p>been extended to Bryan Avenue.</p> <p>Prior to occupancy of any buildings in Phase 1F (more than 600,000 SF of total Gross Leasable Area)</p>	<p>In accordance with the "Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees", the third westbound 12' travel lane and 5' shoulder are eligible for reimbursement or credit against the Citywide Regional Street Impact Fee.</p>
20	<p>Provide adequate right-of-way dedication for Herndon Avenue to accommodate a 6-lane underpass for Herndon Avenue under the Union Pacific Railroad tracks. The future underpass geometrics shall require a raised median island (width varies from 27' at UPRR to 16' at project entrance to 26' east of project entrance), three 12' travel lanes and an 8' shoulder, curb and gutter, 10' for sidewalk from back of curb to toe of slope, and 10' from the top of the slope to the street right-of-way line. Dedicate 62' to 100' (to be verified) from Center Line to allow for future underpass. The engineer shall supply the future toe of slope and future top of slope</p>	DPW	<p>Prior to building permit issuance for Phase 1A (the first 200,000 SF of total Gross Leasable Area) and prior to parcel map or subdivision map recordation.</p>	<p>Yes, from Citywide Regional Street Impact Fees utilizing a current appraisal for the value of the land being dedicated that is the area beyond the standard at-grade Herndon Avenue street right-of-way that would typically be required.</p>

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
	grades to demonstrate the adequacy of the proposed right-of-way dedication per the conceptual profile provided by Nolte Engineering. At the intersection of Herndon and Bryan, dedicate 67' to 70' (to be verified) of property, from Center Line for public street purposes within the limits of this application as per the Public Works Department Super Arterial Standards, P-52, P-52A, P-69 and the Approved Street Geometrics.			
21	Acquire and dedicate all right-of-way as necessary to construct the improvements for each phase including corner cut-offs for ADA curb ramps.	DPW	Before issuance of any street work permits for the particular phase	Right-of-way beyond the development will be eligible for credits and/or reimbursement under the Citywide Regional and New Growth Area Major Street Impact Fees.
22	Construct curb ramps meeting current City standards at all intersections and 6' curvilinear sidewalk along all project street frontages.	DPW	Prior to building occupancy for the particular phase	No
23	Underground all overhead utilities along the project frontage with each phase of development.	DPW	Prior to building occupancy for the particular phase	No
24	Construct bus bays where required on the approval site plan per City standards, including conduit for future transit shelters per the standards.	DPW	Prior to building occupancy for the particular phase	No

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
25	WEBER AVENUE SOUTH OF HERNDON AVENUE: Vacate Weber Avenue from the Site boundary to Herndon Avenue and maintain as a private street –OR- Dedicate a public access easement across the site property on the final parcel map as depicted on Attachment 1 to this Exhibit “E”	DPW	Prior to any Phase 1A building permits and prior to recording of any Parcel Map or Subdivision Map for the project.	No
26	Construct an underground street lighting system to Public Works Standard E-1 within the limits of this application. Spacing and design shall conform to Public Works Standard E-7 for Arterial Streets..	DPW	Prior to building occupancy for the particular phase	No
27	PRIVATE LOCAL INDUSTRIAL STREET (WEBER AVE CONNECTION): Construct and maintain 40’ wide curb-to-curb private local industrial street with 8’ on one side designated for parking and “No Stopping Anytime” posted or red curb painted along one side. Install “Residential Parking Only” signs on the residential side of the street.	DPW	Phase 1A (the first 200,000 SF of total Gross Leasable Area)	No
28	Construct a landscaped median island in Herndon Avenue between the Union Pacific Railroad tracks and Bryan Avenue. Hardscaped portions shall be Davis color brick red per City standard specifications. A portion of these required improvements will be constructed by the City’s current CIP street improvement project for Herndon Avenue and Goldenstate Boulevard. The	DPW	Phase 1A (the first 200,000 SF of total Gross Leasable Area)	No

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
29	<p>developer is not required to install the improvements constructed under the CIP.</p> <p>Construct a landscaped median island in Bryan Avenue from Herndon Avenue to the southerly boundary of Phase I.</p>	DPW	May be phased to the southerly boundary of each particular subphase (1A through 1F).	No
30	Install street trees along Herndon Avenue and Bryan Avenue frontages of the project, in accordance with City standards. Irrigation shall be connected to the on-site system.	DPW	Prior to occupancies of buildings within each subphase.	No
31	Construct an 8-inch sanitary sewer main (including sewer house branches to adjacent properties) in North Weber Avenue from West Herndon Avenue south to the West Palo Alto Avenue Alignment.	DPU	Prior to permanent street paving and prior to any Phase 1 occupancies	Per FMC
32	Provide 30-foot sewer main easements centered over the proposed sewer mains for operation and maintenance of the portions of the sewer mains that traverse private property.	DPU	Prior to any Phase 1 building permits and prior to parcel map or subdivision map recordation.	No
33	Construct an 8-inch sanitary sewer main in North Bryan Avenue from the existing 12-inch sewer main at West Palo Alto Avenue north across the project frontage.	DPU	Prior to permanent street paving and prior to any Phase 1 occupancies	Per FMC
34	Construct an 8-inch sanitary sewer main (including sewer house branches to adjacent	DPU	Prior to permanent street	Per FMC

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
	properties) from the intersection of the existing 15-inch sewer mains at the future Bryan/Bullard Diagonal and Sierra Avenue southeasterly to the existing 8-inch sewer main located approximately 700 feet north of N. Carnegie Avenue in W. Bullard Avenue.		paving of the street in the area of the proposed main lines.	
35	Separate sewer house branches are required for each new lot created. Multiple house branches can be extended to lots as necessary to serve multiple buildings or single buildings with multiple laterals. On-site private sewer mains may be used across multiple lots in lieu of separate house branches with appropriate provisions for the private sewer mains in the Project CC&Rs..	DPU	Prior to recordation of any parcel map or subdivision map.	No
36	Abandon all existing on-site private septic systems.	DPU	Prior to any Phase I occupancies.	No
37	The Project Developer shall contact Wastewater Management Division/Environmental Services at (559) 621-5100 regarding conditions of service for special users.	DPU	Prior to pulling building permits	No
38	Construct a 14-inch transmission grid water main (including installation of City fire hydrants) in North Bryan Avenue from West Herndon Avenue south to West Palo Alto Avenue.	DPU	Prior to permanent street paving and prior to any Phase I occupancies.	Per FMC (TGM Area A)
39	Construct a 12-inch water main along the western boundary of Phase I from the	DPU	Prior to permanent street	Per FMC (TGM Area A)

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
	<p>existing City water main in Weber Avenue to the south boundary of Phase I, then east connecting to the existing 14-inch water main in North Bryan Avenue. Provide a minimum 20-foot wide water main easement for the operation and maintenance of the proposed 12-inch water main for the portions of the water main that traverse private property. Backflow prevention devices are required at the property line.</p>		<p>paving and prior to any Phase I occupancies.</p>	
40	<p>Dedicate a water well site(s) of a size and at a location acceptable to the Assistant Director of Public Utilities. The cost of acquiring the well site(s) shall be reimbursed from the UGM water Supply Well Service Area Fund 201s, in accordance with established UGM policies. The well site(s) shall be capable of producing a total of 2,000 gallons per minute.</p>	DPU	<p>Prior to the occupancy of the 75th percentile of the square footage available for occupancy identified in Phase I as specified in the EIR.</p>	Per FMC (UGM Water Supply 201-S)
41	<p>Construct a reclaimed water distribution main and services along the Bryan Avenue Project Frontage in public street right-of-way or within a Public Utilities Easement adjacent to the right-of-way that will utilize future tertiary treated wastewater for landscape irrigation purposes. Design of the reclaimed water mains will be subject to the approval by the Assistant Director of Public Utilities.</p>	DPU	<p>Prior to Bryan Avenue permanent street paving and prior to any Phase I occupancies.</p>	No

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEPT	TIME OF COMPLETION	SUBJECT TO REIMBURSEMENT/ CREDIT
42	Separate water services with meters shall be provided to each lot created. Multiple water meters serving single lots shall be allowed. Location and configuration of meters is subject to approval by the Assistant Director of Public Utilities.	DPU	Prior to recordation of any parcel map or subdivision map.	No
43	Two independent sources of water, meeting Federal and State Drinking Water Acts, are required to serve the Project Area including any subsequent phases thereof. The two-source requirement may be accomplished through a combination of water main extensions, construction of supply wells, or other acceptable sources of water supply approved by the Assistant Director of Public Utilities.	DPU	Prior to permanent street paving and prior to any Phase I occupancies.	Per FMC.
44	Cap and abandon existing on-site wells in compliance with the State of California Well Standards, Bulletin 74-90 or current revision issued by the California Department of Water Resources and City of Fresno standards.	DPU	Prior to obtaining building permits.	No

Attachment 1 to Exhibit "E"

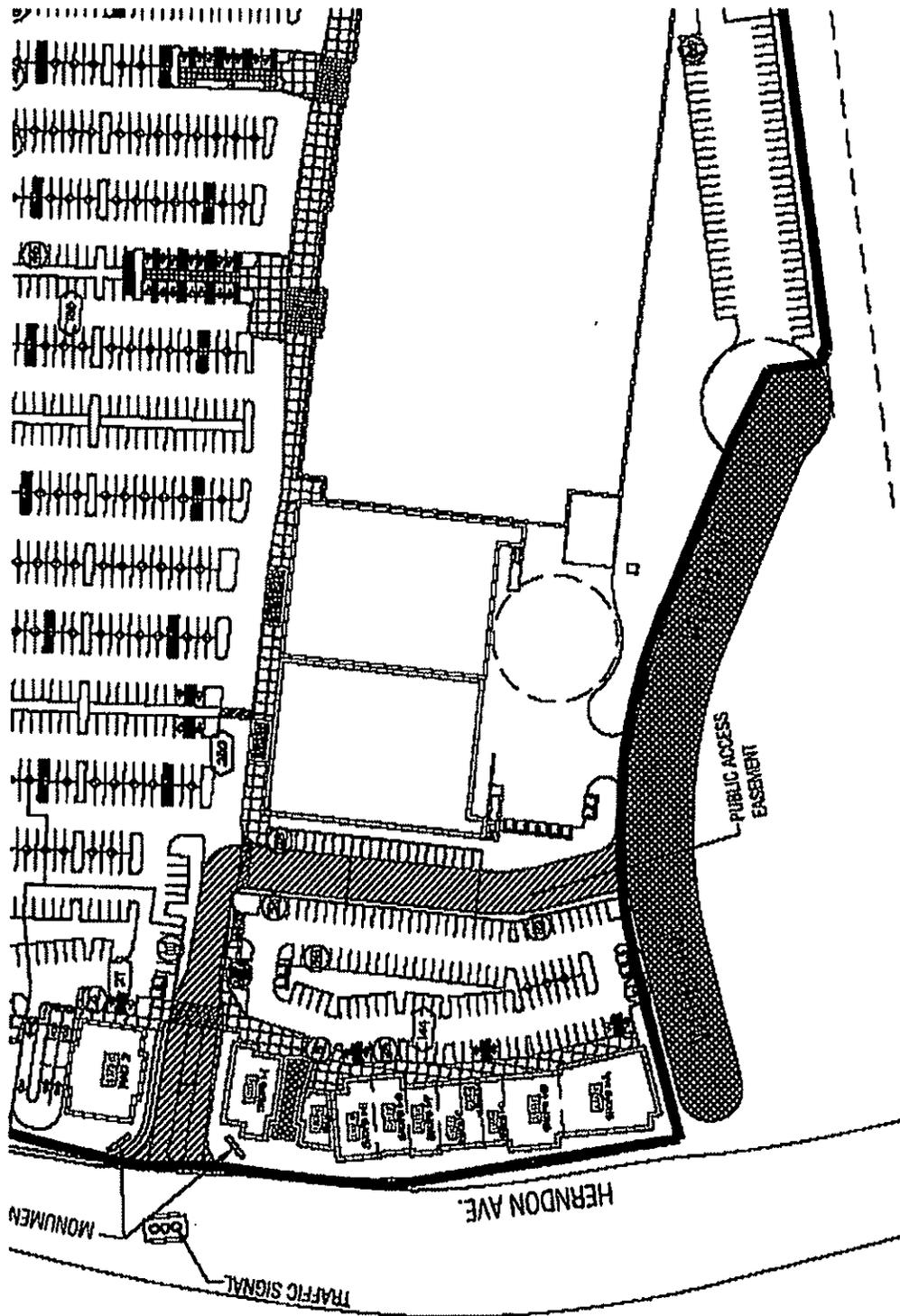


EXHIBIT "F"
Procedures for Right-of-Way Acquisition

The Procedures for Right-of-Way Acquisition are on the following pages

EXHIBIT "F"

PROCEDURE FOR RIGHT-OF-WAY ACQUISITION

Developer shall be responsible for the entire cost of acquiring the necessary easements, whether the City acquires through negotiation or by use of its powers of eminent domain, including, but not limited to the fair market value of the easements or other property interests, legal fees, non-legal staff time, appraisal fees, title and escrow fees, and any necessary court costs. For property with an appraised value in excess of \$25,000.00 as set forth in the most current appraisal, unless prior written consent is given by Developer or a court so orders, the City shall not purchase any right-of-way required by the Agreement for an amount that exceeds fifteen percent (15%) of the appraised value of the parcel as set forth in the most current appraisal.

1. Developer shall initially deposit, within thirty (30) days following (i) written request by Developer that City acquire the right of way, and (ii) delivery by the City to Developer of a written estimate of the costs of such acquisition, the sums set out in the paragraph below captioned, "Summary of Initial Deposit". Such sums shall be utilized by the City to acquire the necessary easement and right-of-ways. If the initially deposited funds are less than the actual full cost to acquire all necessary right-of-ways, the Developer shall remit to the City such additional sums as may be required from time to time to conclude the matters, such further payments to be made within ten (10) days of the mailing to the Developer of a notice requesting such additional funds. The notice shall state what costs have been incurred to date, what additional costs are anticipated; and how the City intends to apply these additional deposits. Developer's dissatisfaction with the adequacy or sufficiency of the notice for any reason shall not excuse Developer from any duty or obligation, including the obligation to deposit additional sums. If deposited sums exceed the actual full cost to acquire the subject right-of-ways, then at the conclusion of acquisition, City shall refund the difference as soon as the City determines the amount of such excess.
2. Developer shall have the option of providing a current or updated appraisal and title reports from qualified and reputable appraisers and title companies, subject to approval of the City Attorney, in lieu of deposit of appraisal and title report fees. If the City requires additional appraisals or updated title reports, the Developer shall have the option of providing those documents pursuant to the requirements of this paragraph so long as these documents are provided within the time frame reasonably established by the City.
3. Developer acknowledges that the initial cash deposits are estimates only and may increase if it is necessary to acquire the necessary easement through Eminent domain. Developer agrees to pay all proper and necessary charges incurred or paid by City in pursuing the condemnation proceedings to a settlement or final judgment. City incurs no liability for its failure to accurately or properly estimate the actual costs incurred in the condemnation action.

4. If Developer fails to pay the sums stated in the notice to deposit by the date prescribed, the City shall have the following remedies in addition to any other remedies available to it under law or in equity:
 - a. City may, in its sole discretion, elect to terminate any acquisition proceedings commenced pursuant to this agreement. If City so elects, Developer shall indemnify and hold City harmless from any and all costs, fees, damages and expenses incurred as a result of the proceedings and the termination and abandonment thereof.
 - b. The City shall not approve any permits to construct any particular improvement for which property acquisition is required until such time as all of the property necessary to fully complete the particular improvement is acquired either by the Developer or Developer pays in full the sum in the City's notice to deposit.
6. It is anticipated that it may be necessary for City to exercise its powers of eminent domain in order to acquire the necessary public right-of-way easements. Any determination to proceed with eminent domain will be made by the City Council of the City of Fresno, upon necessary findings.
7. In the event eminent domain proceedings are commenced, prior to the date of any settlement conference set by the superior court in the eminent domain proceedings, Developer shall be given notice and an opportunity to participate in any decision to settle the acquisition proceedings if the proposed compensation exceeds the opinion of value established by the City's appraisal or the property owner's appraisal. However, such participation shall be limited to advising City staff where the giving of such advice does not interfere with, restrict, delay or impede the City Attorney in the prosecution or compromise of the condemnation proceedings, as he/she deems necessary and appropriate in the exercise of his/her sole professional judgment and discretion.
8. Developer agrees that, if for any reason the City determines it necessary to assign the City's rights and responsibilities under this task to the County in order for the offsite road conditions to be implemented, the City may do so with written notice to Developer. Upon such assignment, all references to statutorily required actions on the part of the City in connection with eminent domain proceedings shall be construed to mean those same actions or legal equivalents on the part of the County. The Developer's responsibilities remain unchanged.
9. City shall have a lien upon any and all performance, payment and other bonds or deposits posted by or for Developer in conjunction with the development as security for the payment of any costs, charges or fees called for by this Agreement.
10. Upon recordation of the Development Agreement to which this Exhibit is incorporated by reference, City shall have a lien upon the lands more particularly described in the Development Agreement as security for the payment of any costs, charges or fees called for by this Exhibit.
11. At the conclusion of the acquisition of the necessary easements or other property, City shall provide to Developer a final statement of the expenditures of the City relating to the subject acquisition. Failure of the City to provide any accounting required by this agreement,

however, shall not excuse Developer's duty to perform any act, particularly the duty to make full and timely deposits in accordance with any demands and notices by the City. Upon rendering of the final accounting referenced herein, Developer may question or challenge any use of funds set forth in such accounting and may appeal same to the City Council.

12. Any amounts deposited by Developer shall be maintained by City in an interest-bearing account of the City's choice, and may be co-mingled with other City funds in such account. Interest accruing upon any such deposit shall inure to and be created for the benefit of Developer, less the City's reasonable or actual costs of administering the account and less any other charges which may be required or authorized by law.
13. Time is of the essence to this agreement since the City may suffer certain consequences in the event of Developer's breach, such as inverse condemnation liability, abandonment (by operation of law) of the condemnation action, and award to the property owner of her litigation expenses and reasonable attorneys' fees and sanctions imposed by the Permit Streamlining Act (Government Code Section 65920, et seq.).
14. No partial invalidity of this agreement shall invalidate the remainder.
15. **Summary of Initial Deposit.**
Easement/Land Acquisition for APN: _____

AMOUNT TO BE DEPOSITED		ITEM
\$		Value of Easement or Land Acquisition, including damages, RAP, etc.
		Appraisal, Escrow and Title expenses
		Real Estate Staff time
		Attorney Staff time
		Contingency (15%)
\$0		SUB-TOTAL
\$		TOTAL (rounded to nearest \$1000)

EXHIBIT "G"
Form of Subdivision Agreement

The form of Subdivision Agreement is on the following pages

WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

NO FEE-Government Code 6103

City of



PUBLIC WORKS DEPARTMENT
2600 Fresno Street
Fresno, California 93721-3616
(559) 621-8650

P.W. File No. *****

**SUBDIVISION AGREEMENT
FINAL MAP OF TRACT NO. *******
[including ADDENDUM TO SUBDIVISION AGREEMENT FOR
RIGHTS OF WAY ACQUISITION]

NOTES FOR PREPARER:

1. Text in square brackets " [] " either applies or does not apply. If not applicable, DELETE the brackets and all text within the brackets. If applicable, customize the ***** for this map and delete the brackets.
2. Text or ***** in RED and/or in French brackets { } are to be customized and color, space indicators and brackets are to be deleted for the final draft.
3. Re-paginate the final document.

THIS AGREEMENT is made this _____ day of _____ 20____, by and between the **City of Fresno**, a Municipal Corporation, hereinafter designated and called the "City," and, {Subdivider Name and located at Address .. un-bold address} hereinafter designated and called the "Subdivider," without regard for number or gender.

RECITALS

A. The Subdivider has filed with the City, a Final Map or Final Maps (collectively, the "Final Map") which proposes the subdivision of land owned by Subdivider, situated in the City of Fresno, County of Fresno, State of California, dividing the real property more particularly described as follows:

[to be provided]

B. The City requires, as a condition precedent to the acceptance and approval of the Final Map, the dedication of such streets, highways and public places and easements as are delineated and shown on the Final Map, and deems the same as necessary for the public use, and also requires that any and all streets delineated and shown on the Final Map shall be improved by the construction and the installation of the improvements hereinafter specified.

C. Section 12-1014 of the Municipal Code of the City of Fresno requires the Subdivider to enter into this Agreement with the City whereby Subdivider agrees to do, perform and complete the work and matters required as Conditions of Approval for Vesting Tentative Map No. **** dated ***** [and Master CUP No. C-**-*** dated *****] issued by the City and any amendments thereto (hereinafter referred to as AConditions of Approval®, hereinafter set forth in detail, within the time hereinafter mentioned, in consideration of the acceptance of the offers of dedication by the City of Fresno.

D. The Subdivider desires to construct the improvements and develop the subdivision.

E. The Subdivider hereby warrants that any and all parties having record title interest in the Final Map which may ripen into a fee have subordinated to this instrument and that all such instruments of subordination, if any, are attached hereto and made a part of this instrument.

F. City and Subdivider are parties to that certain Development Agreement, dated as of _____, 2010 (the "Development Agreement").

AGREEMENT

In consideration of the acceptance of the offers of dedication of the streets, highways, public ways, easements and facilities as shown and delineated on the Final Map, and in consideration of finding of substantial compliance with said Tentative Map, it is mutually agreed and understood by and between the Subdivider and the City, and the Subdivider and the City do hereby mutually agree as follows:

1. The Subdivision is subject to the following:

a. The work and improvements shall be performed hereinafter specified on or before **two (2) years** of the date of this agreement, except as noted below.

b. The Street Trees required for each lot shall be provided and planted by the Subdivider upon occupancy of each lot. All species of Street Trees to be planted in the subdivision shall be as approved by the City Engineer. The Subdivider shall notify the Public Works Department - Construction Management Division of the planting schedules and to schedule inspections.

c. Subject to the provisions of the No-Build Covenant between the City and Subdivider, the Issuance of building permits for any structure within the subdivision shall conform to the requirements of the prevailing Uniform Fire Code (UFC). The Subdivider's

attention is particularly called to Part III, Article 9 of UFC relating to Fire Department access and water supply. Subject to the provisions of the No-Build Covenant between the City and Subdivider: (i) no building permit shall be issued until all Fire Department access and fire fighting water supply requirements have been met and (ii) no occupancy permit shall be issued until all Fire Department requirements for occupancy have been met. The issuance of any occupancy permits by the City for dwellings located within said subdivision shall not be construed in any manner to constitute an acceptance and approval of any or all of the streets and improvements in the subdivision.

d. No certificates of occupancy will be issued nor any human occupancy allowed for any building on any lot of the subdivision until permanent sanitary sewer and water service is determined to exist by the Director of Public Utilities Department.

e. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the Subdivider, the time of completion may be extended for a period justified by the effect of such delay on the completion of the work. The Subdivider shall file a written request for a time extension with the Director of Public Works prior to the above noted date, who shall ascertain the facts and determine the extent of justifiable delays, if any. Extension of time for completion of improvements (including street trees planting) may be granted by the Public Works Director with an extension fee from the current Master Fee Schedule based upon the initial estimated total improvement cost. The Director of Public Works shall give the Subdivider written notice of his determination in writing, which shall be final and conclusive.

2. The work and improvements ("Improvements"), more specifically shown on the referenced plans which are incorporated by reference and made a part of this Agreement, shall be done in accordance with the provisions of Section 5.2 of the Development Agreement (hereinafter referred to as "Public Works Standards") at the sole cost and expense of the Subdivider including

all costs of engineering, inspection and testing. The construction cost estimates, and corresponding Improvement and warranty security requirements for these Improvements are set forth in Exhibit "A" which is incorporated by reference

3. The Improvements are as follows:
 - a. Set all landmarks, monuments and lot corners required to locate land divisions shown on the Final Map. Pursuant to Section 66497 of the State Subdivision Map Act, prior to the City's final acceptance of the subdivision and release of securities, the Subdivider shall submit evidence to the City of Fresno of payment and receipt thereof by the Subdivider's engineer or surveyor for the final setting of all monuments required in the subdivision.
 - b. All utility systems shall be installed underground. Subdivider's attention is directed to the installation of street lights in accordance with Resolution No. 78-522 or any amendments or modifications which may be adopted by Council prior to the actual installation of the lights. The Subdivider shall construct a complete underground serviced street light system as approved by the City Engineer prior to final acceptance of the subdivision. Height, type, spacing, etc. of standards and luminaires shall be in accordance with Resolution Nos. 78-522 and 88-229 or any amendments or modifications which may be adopted by Council prior to the actual installation of the lights and shall be approved by the City Engineer.
 - c. Water main extensions and services shall be provided in accordance with applicable provisions of Chapter 14, Article 1 of the Fresno Municipal Code and all applicable charges shall apply.
 - d. Sanitary sewer extensions and services shall be provided in accordance with applicable provisions of Chapter 9, Article 5 of the Fresno Municipal Code and all applicable

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charges shall apply.

e. Lot drainage shall be in accordance with Section 13-120.3315 of the Fresno Municipal Code.

f. Except for the south end of Weber Avenue (which will terminate in a driveway to the on-site rear truck access drive), all "Dead-End" streets created by this subdivision shall be barricaded in accordance with Public Works Standards within seven (7) days from the time said streets are surfaced, or as directed by the City Engineer.

g. Any temporary storm drainage basins constructed or enlarged to serve this subdivision shall be fenced in accordance with Public Works Standards within seven (7) days from the time said basins become operational, or as directed by the City Engineer. The Subdivider shall maintain these temporary storm drainage basins so as not to create a nuisance as defined by Fresno Municipal Code, section 9-804 or California Law until such time as the City Engineer provides official notice to the Subdivider, its successors or assignees, that these temporary storm drainage basins are no longer required. This term shall survive the termination or expiration of this Agreement.

h. "Wet-Ties" (i.e., the physical connection of newly constructed water system facilities to the existing water system facilities already in service) shall be in accordance Sections 14-107 and 14-111 of the Fresno Municipal Code. The amounts identified as "Wet-Tie Charges" are estimates only and serve as a deposit to cover the actual cost of construction. Should the actual construction cost be less than the deposit, the Subdivider shall be refunded the excess. Should the actual construction cost be greater than the deposit, the Subdivider shall be billed by the City of Fresno for the difference and shall be directly responsible for payment.

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i. The Subdivider shall install and maintain the fencing/walls, landscaping, irrigation system and certain miscellaneous improvements in accordance with the approved improvement plans (i.e., Landscape and Irrigation Plans, Grading Plans), within the designated easements or areas required in the Conditions of Approval and delineated on the Final Map.

The improvement plans for such landscaping, irrigation system and miscellaneous improvements shall be prepared by a licensed Landscape Architect, certified irrigation designer or other persons with landscaping and irrigation design expertise acceptable to the Planning and Development Director, except that for improvements to be maintained by a City Community Facilities District ("CFD"), such improvement plans shall be approved by the City Engineer.

j. Perform and construct all work shown on construction plans and any amendments thereto to be provided by Subdivider and approved by the City prior to the approval of the Final Map.

Install and complete all other street improvements required by Section 12-1012 of the Fresno Municipal Code in accordance with the Public Works Standards and the construction plans.

k. Prior to approval of the Final Map by the City, the Subdivider shall pay to the City and /or execute a covenant to defer certain impact fees due which are eligible to be deferred by relevant Fresno Municipal Code provisions, the total fees and charges due as a condition of Final Map approval. The total fees and charges are more particularly itemized and made a part of this agreement in the attached Exhibit "B."

l. In connection with the amounts set forth in Exhibits "A" and "B", the City has made its best faith efforts at predicting the amounts to be credited as reimbursements for

Improvements that will benefit other properties. Because the subject Improvements have not been completed at the time of execution of this Agreement, the actual cost of construction is not yet known. Some degree of reasonable estimation is incorporated into the calculations. Subdivider agrees that these figures represent City's best estimates only and that they are subject to fluctuation following calculation of actual construction costs after improvement completion and acceptance. It is further subject to Subdivider's submission and City review of a financial accounting which sets forth those actual costs, and the application, by City, of all relevant Fresno Municipal Code provisions which relate to the Subdivider's payment of fees and reimbursement thereto. This would include any pertinent provisions contained within City's Master Fee Schedule which would also apply to the payment of fees or reimbursements.

4. It is agreed that the City shall inspect all Improvements. All of the Improvements and materials shall be done, performed and installed in strict accordance with the approved construction plans for said work on file with the City Engineer and the Public Works Standards, which said construction plans and Public Works Standards are hereby referred to and adopted and made a part of this Agreement. In the event there are not any Public Works Standards for any of said Improvements, it is agreed that the same shall be done and performed in accordance with the standards and specifications of the State of California, Division of Highways. All of said Improvements and materials shall be done, performed and installed under the inspection of and to the satisfaction of the City Engineer.

5. Prior to the approval by the Fresno City Council of the Final Map, the Subdivider shall furnish to the City the following improvement securities in the amounts set forth in Exhibit A. Bonds shall be by one or more duly authorized corporate sureties licensed to do business in California subject to the approval of the City and on forms furnished or approved by the City, Certificates of Deposit and Irrevocable Standby Letters of Credit must be in a form acceptable to the City's Controller.

a. PERFORMANCE SECURITY. The total amount shall equal 100% of the final Cost Estimate, as approved by the City Engineer, to be conditioned upon the faithful performance of this Agreement.

i. 95% of the final Cost Estimate shall be in the form of a bond or irrevocable standby letter of credit; and

ii. 5% of the final Cost Estimate shall be in cash or a certificate of deposit that is made payable only to the City of Fresno.

b. PAYMENT SECURITY. The total amount shall equal 50% of the final Cost Estimate, as approved by the City Engineer, to secure payment to all contractors and subcontractors performing work on said improvements and all persons furnishing labor, materials or equipment to them for said improvements. Payment Security shall be in the form of a bond or irrevocable standby letter of credit.

c. Any and all other improvement security as required by Section 12-1016 of the Fresno Municipal Code.

d. Subject to the requirements of Resolution No. 2008-100 adopted by the City Council on May 6, 2008, the Subdivider may request a one-time partial acceptance, for maintenance only, of public improvements required by this agreement that the Subdivider has constructed, to reduce the amount of the Performance Security required by this Agreement. At the time of the City's partial acceptance, the City and Subdivider shall enter into an amendment to this Agreement reducing the Performance Security to an amount consistent with the requirements of Resolution No. 2008-10 required by this Agreement. The City shall not release any of the original Performance Security or execute the Amendment to this Agreement until such time as the Subdivider has provided the Performance Security required by the Amendment.

6. Any damage to the work and improvements constructed pursuant to this agreement that occurs after installation shall be made good to the satisfaction of the City Engineer by the Subdivider before any securities are released or the final acceptance of the completed work.

7. The Subdivider shall remedy any defective work or labor or any defective materials relating to the Improvements and pay for any damage to other work or improvements resulting from the installation therefrom which shall occur within a period of one (1) year from the date of acceptance of the Improvements.

8. To insure the Subdivider complies with its obligations set forth in paragraph 7, on acceptance of the required work by the City Engineer, a warranty security shall be furnished to or existing securities retained by the City, in the minimum amount identified in said Exhibit A, as a guarantee and warranty of the work for a period of one (1) year following acceptance against any defective work or labor done or defective materials furnished. In accordance with Section 12-1016 of the Fresno Municipal Code, said warranty security shall be in the form of cash or a Certificate of Deposit. The warranty security shall be released, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the subdivision Improvements.

9. This Agreement shall in no way be construed as a grant by the City of any rights to the Subdivider to trespass upon land rightfully in the possession of, or owned by, another, whether such land be privately or publicly owned.

10. Indemnification. To the furthest extent allowed by law, Subdivider shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Subdivider or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to

have arisen directly or indirectly out the construction or installation of any structures or improvements on the Subject Property, or the maintenance of the Subject Property. Subdivider's obligations under the preceding sentence shall apply regardless of whether Subdivider or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Subdivider should subcontract all or any part of the construction or installation of structures or improvements on the Subject Property, or the maintenance of the Subject Property, Subdivider shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph in this Section 9. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the preceding paragraph of this Section 9, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agency and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

11. Insurance. Throughout the life of this Agreement, Subdivider shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$1,000,000 aggregate for products and completed operations.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

c. PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to the respective person's profession (applicable only to those subcontractors who are providing Professional Services to the Subdivider), with limits of liability of not less than \$1,000,000 per claim/occurrence and policy aggregate.

d. WORKERS' COMPENSATION insurance as required under the California Labor Code.

e. EMPLOYERS' LIABILITY with minimum limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Subdivider shall be responsible for payment of any deductibles contained in any insurance

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policies required hereunder and Subdivider shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, Subdivider shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Subdivider shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Subdivider's insurance shall be primary and no contribution shall be required of City. In the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a five (5) year discovery period, or (ii) the coverage shall be maintained for a minimum of five (5) years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. **Subdivider shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement.** Subdivider shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

The fact that insurance is obtained by Subdivider or his/her/it's subcontractors shall not be deemed to release or diminish the liability of Subdivider or his/her/it's subcontractors including

without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Subdivider or his/her/it's subcontractors. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Subdivider, its principals, officers, agents, employees, persons under the supervision of Subdivider, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If at any time during the life of the Agreement or any extension, Subdivider fails to maintain the required insurance in full force and effect, the Director of Public Works, or his/her designee, may order that the Subdivider, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Subdivider shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Subdivider should hire a general contractor to provide all or any portion of the services to be performed under this Agreement, Subdivider shall require such general contractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Subdivider and City prior to the commencement of any work by the subcontractor. If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Subdivider shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each

subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal injury, \$2,000,000 aggregate for products and completed operations and \$2,000,000 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than \$1,000,000 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Subdivider and City prior to the commencement of any work by the subcontractor. Subdivider's failure to comply with these requirements shall constitute an "Event of Default" as that term is defined in Subsection 10.1.

12. The Subdivider and his subcontractors shall pay for any materials, provisions, and other supplies used in, upon, for, or about the performance of the Improvements contracted to be done, and for any work or labor thereon of any kind, and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor.

13. Compaction and other materials testing performed for determination of compliance with Public Works Standards shall conform to Section 2-11 of the City Standard Specifications, entitled "*Materials Acceptance Testing*." Materials testing shall at all times remain under the review of the City Engineer who may determine additional test procedures, and additional locations to be tested. All materials testing for improvement work within the public easements and rights-of-way shall be ordered and paid for by the Subdivider.

14. Except as otherwise provided in the Development Agreement, the Subdivider shall comply with Street, Plumbing, Building, Electrical, Zoning Codes and any other codes or ordinances of the City.

15. It shall be the responsibility of the Subdivider to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the

determination of liability if one operation delays another. In no case shall representatives of the City be placed in the position of making decisions that are the responsibility of the Subdivider. It shall further be the responsibility of the Subdivider to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the Subdivider to notify the City Engineer may cause delay for which the Subdivider shall be solely responsible.

16. Whenever the Subdivider varies the period during which work is carried on each day, it shall give due notice to the City Engineer so that proper inspection may be provided. If Subdivider fails to duly notify City as herein required, any work done in the absence of the City Engineer will be subject to rejection. The inspection of the Improvements shall not relieve the Subdivider of any obligation to fulfill the Agreement as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or City Inspector and accepted.

17. Adequate dust control shall be maintained by the Subdivider on all streets within and without the subdivision on which work is required to be done under this Agreement from the time work is first commenced in the subdivision until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or the laying of an approved dust palliative thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the subdivision in strict compliance with all rules and regulations established by the San Joaquin Valley Air Pollution Control Board. Whenever in the opinion of the City Engineer adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to the Subdivider to comply ("Notice to Comply") with the provisions of this paragraph forthwith. If in the opinion of the City Engineer the Subdivider's failure to comply with the provisions of this paragraph is having an immediate and significant impact on the public's health, safety and welfare, the City Engineer may immediately issue a stop work order until the City receives

reasonable assurances that the Subdivider shall comply with the provisions of this paragraph forthwith. Such notices and stop-work orders may be personally served upon the Subdivider or, if the Subdivider is not an individual, upon any person who has signed this Agreement on behalf of the Subdivider or, at the election of the City Engineer, such notices and stop-work orders may be mailed to the Subdivider at his address on file with the City Engineer. If the City Engineer has issued a Notice to Comply and within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided, the Subdivider shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled or oiled, as it may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and the Subdivider agrees to pay to City forthwith, upon receipt of billing therefore, the entire cost to City of such sprinkling or treating. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

18. Concrete curbs and gutters, the sanitary sewer system and house connections, together with water mains, gas mains, and their respective service connections, and all other facilities required to be installed under ground shall be completed in the streets and alleys before starting the street and alley surfacing.

19. Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

20. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by the Subdivider without the written consent of City.

21. In addition to the Covenants Affecting Land Development:

- a. Acknowledging Right-to-Farm Law
- b. Landscape Maintenance
- c. Providing Special Solid Waste Disposal Services for Certain lots
- d. Deferring Certain Sewer Connection Charges, Water Connection Charges, Urban Growth Management Fees, City-wide fees, and Development Fees
- e. Temporary Drainage Facilities

f. [NOTE TO PREPARER >> INCLUDE ALL REQUIRED COVENANTS],

as referenced on the Final Map and this Agreement, Subdivider shall comply with all of the Conditions of Approval set forth in the Conditions of Approval for Vesting Tentative Map No. **** dated ***** [and Master CUP No. C-**-**** dated _____], **and any amendments thereto** that it has not already fully complied with as of the date of the approval of the Final Map and which are not otherwise set forth in this Agreement, including but not limited to, any condition to convey to a specific party a fee interest or easement in any parcels, upon Subdivider's completion of all required improvements to said parcels. Subdivider's compliance with such conditions shall be completed within a reasonable time, as determined by the City, after receiving written notice from the City Engineer of the outstanding condition or term with which the Subdivider is required to comply.

22. In performing its obligations set forth in this Agreement, Subdivider shall comply with all applicable laws, regulations, and rules of other governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Subdivider, not the City, is responsible for determining applicability of and

compliance with all local, state, and federal laws including, without limitation, the California Labor Code, Public Contract Code, Public Resources Code, Health & Safety Code, Government Code, the City Charter, and Fresno Municipal Code. The City makes no representations regarding the applicability of any such laws to this Agreement, the project, or the parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Subdivider's failure to comply with any such laws, whether the City knew or should have known of the need for Subdivider to comply, or whether the City failed to notify Subdivider of the need to comply. The Subdivider is referred to the City's Department of Public Works, Construction Management Division to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the Improvements.

23. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

25. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

26. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Subdivider.

27. In the event of a conflict between the provisions of this Agreement and the Development Agreement during the Term of the Development Agreement, the provisions of the Development Agreement shall control.

The parties have executed this Agreement on the day and year first above written.

CITY OF FRESNO,
a Municipal Corporation

Public Works Department
Patrick Wiemiller, Director

By: _____
Shannon Chaffin
Deputy City Attorney

Date: _____

By: _____
Scott Mozier, P.E., Assistant Director

SUBDIVIDER

a _____

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: _____
Printed Name: _____
Title: _____

(Attach Notary Acknowledgments)

CITY'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)

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

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

WITNESS my hand and official seal.

REBECCA E. KLISCH, CMC
CITY CLERK, City of Fresno

By: _____
DEPUTY

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SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on _____, 20____, in the office of the Fresno County Recorder, as Document No. _____ of which the Deed of Trust in, by and between _____, as Trustor, _____, as Trustee and _____, Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing Subdivision Agreement for the Final Map of Tract No. **** [.] [including Addendum to Subdivision Agreement for Rights of Way Acquisition.]

DATED: _____

BENEFICIARY

By: _____

By: _____

(Beneficiary to print/type document information, Name, Title and attach Notary Acknowledgment)

EXHIBIT "H"
Form of Public Yard Easement

When Recorded Mail To:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

CITY OF FRESNO
Planning and Development Department

Project ID:

NO-BUILD COVENANT FOR MARKETPLACE PROJECT
APPLICATION NO. _____

102

RECITALS

WHEREAS, John Allen Company LLC, a California limited liability company (hereinafter referred to as the "Covenantor"), is the owner of the real property in the City of Fresno, County of Fresno, State of California, hereinafter referred to as the "Subject Properties" and more particularly described in the attached Exhibit "A"; and,

WHEREAS, the Covenantor desires to construct a certain building on Subject Properties that are depicted by the dotted areas on the Site Plan known as Exhibit "B" attached hereto and incorporated by reference herein (the "Subject Buildings"); and

WHEREAS, the exterior walls of some of the Subject Buildings, do not meet the minimum type of construction requirements necessary for exterior wall protection as set forth in the 2007 California Building Code (the "Exterior Fire Wall Standards"); and

WHEREAS, the Covenantor, its successors and assigns, agree and covenant to establish a clear area, set forth below feet adjacent to the Subject Buildings, measured perpendicular to the faces of the Subject Buildings (hereinafter called a "Yard"), as defined in the 2007 California Building Code and more particularly depicted as the single hatched (area (the "No Build Zone") on the Site Plan known as Exhibit "B" attached hereto and incorporated by reference herein; and

The Covenantor, and each of them, their successors and assigns, agree and covenant as follows:

1. No building, canopy or other permanent improvement may be installed or maintained within the "Yard", as depicted on the Site Plan known as Exhibit "B" and attached hereto and incorporated herein, except for (i) curb, gutter, parking, driveways, sidewalks, landscaping, fencing, protective barriers, light standards, utility structures, signage, bicycle racks and fire hydrants and (ii) such other such improvements as may be reviewed and allowed by the City of Fresno, Development Department. The Site Plan may be subject to revision by Covenantor subject to approval by the City in accordance with the provisions of the Development Agreement.

2. Should Covenantor desire to expand one of the Subject Buildings or add a new loading dock or area or other structure within the No Build Zone in a manner which would reduce any portion of the existing No Build Zone to a measurement that is less than sixty (60) feet, Covenantor may not undertake such expansion or installation until the Covenantor and the City of Fresno (the "City") execute a written agreement to modify this Covenant to modify the location of the No Build Zone to ensure that it continues to extend to a sixty (60) foot width around the entire perimeter of the Subject Buildings, as expanded or installed.

3. Any wall of any Subject Building within the No Build Zone that is adjacent to a common property line or parcel line shall be constructed with two hour walls at each of the adjacent or abutting

buildings to create a combined minimum fire rated assembly of two hours and shall include parapets, as required by the California Building Code, when the proximity to a property line requires mitigation.

4. The failure to comply with this Covenant may result in the revocation of the Certificate of Occupancy by the City for the proposed building on Subject Buildings, as well as actions to enforce said covenants in law or in equity by the City or any subsequent owner of said individual parcels.

5. This Covenant shall "run with the land" and shall bind Covenantor, and its respective heirs, the successors in interest and assigns to any portions of the Subject Properties, and shall inure to the benefit of the City and the general public.

6. All plans for development or improvements of the Subject Properties, shall be checked and approved by the Director of the Development Department of the City for compliance with the terms of this covenant.

7. Any violation of this Covenant is hereby deemed a nuisance and a threat to the public health.

8. Whenever the context hereof requires, the neuter shall include the masculine or feminine, or both, and the singular shall include the plural. It is the intention hereof that this shall constitute an enforceable covenant running with Subject Properties owned by the Covenantors and severally binding upon the undersigned and each of their heirs, representatives, successors and assigns.

9. Covenantor shall file, at its own expense, a true and correct copy of this Covenant in the public records of the County of Fresno and the rights and obligations under the Covenant shall commence upon recordation. The Covenant shall remain in full force and effect as long as the Subject Buildings exist or until the City records a release of this Covenant. The City shall record a release of this Covenant if Covenantor or its successors or assigns sends the City a written notice that (i) the California Building Code has been amended to eliminate the requirement of a sixty (60) foot clear area for buildings that do not meet the Exterior Fire Wall Standards, or (ii) Covenantor has demolished the Subject Buildings that do not meet the Exterior Fire Wall Standards, and City staff has confirmed that such notice is accurate. Upon such occurrence, City shall execute and deliver any documents necessary to release this Covenant.

10. If any party to this Covenant is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Covenant, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

11. The provisions of this Covenant shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

12. At such time Covenantor or subsequent owner(s) sells or transfers any parcel of the Subject Properties, the owner shall disclose this Covenant to the buyer and reserve and except from the deed for the parcel(s), the terms of this Covenant.

* * * *

Dated: _____

CITY OF FRESNO
a Municipal Corporation

COVENANTOR

JOHN ALLEN COMPANY LLC,
a California limited liability company

By _____,
_____, Director
Planning and Development Department

By _____
Name: John E. Allen
Title: Manager

By _____
Jerry Bishop, Assistant Director
Planning and Development Department

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

(Attach Notary Acknowledgments for Covenantor)

By _____

_____ City Attorney

Date _____

106

EXHIBIT A

PORTIONS OF J.C. FORKNER FIG GARDENS SUBDIVISIONS NO. 3 AND 10, ALSO BEING PORTIONS OF SECTION 4, AND THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 13 SOUTH, RANGE 19 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF WEST PALO ALTO AVENUE AND THE NORTHEASTERLY LINE OF NORTH WEBER AVENUE, 80.00 FEET IN WIDTH, AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 54, PAGES 25 THROUGH 29, FRESNO COUNTY RECORDS, SAID POINT ALSO BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN ON SAID RECORD OF SURVEY AS COURSE "L23" HAVING A BEARING AND DISTANCE OF NORTH 15°44'21" WEST 96.42 FEET; THENCE ALONG THE BOUNDARIES OF SAID RECORD OF SURVEY THE FOLLOWING COURSES:

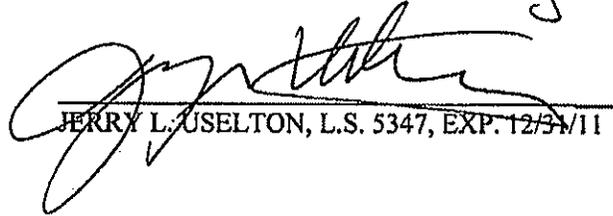
- 1) NORTH 15°44'21" WEST 96.42 FEET,
 - 2) NORTH 20°18'21" WEST 177.11 FEET,
 - 3) NORTH 23°50'21" WEST 67.70 FEET,
 - 4) NORTH 31°17'21" WEST 70.54 FEET,
 - 5) NORTH 38°53'21" WEST 70.44 FEET,
 - 6) NORTH 46°11'21" WEST 69.88 FEET,
 - 7) NORTH 52°59'21" WEST 55.73 FEET,
 - 8) NORTH 56°47'44" WEST 181.51 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1243.29 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 56°47'44" WEST,
 - 9) NORTHEASTERLY 662.31 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 30°31'18",
 - 10) NORTH 26°16'26" WEST 8.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 1697.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 26°16'29" WEST,
 - 11) EASTERLY 646.00 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°48'39",
 - 12) SOUTH 88°18'38" EAST 47.53 FEET,
 - 13) SOUTH 04°48'48" EAST 189.04 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 648.00 FEET,
 - 14) SOUTHEASTERLY 403.67 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 35°41'32",
 - 15) SOUTH 40°30'20" EAST 54.24 FEET,
 - 16) SOUTH 00°23'56" WEST 629.58 FEET,
 - 17) NORTH 89°54'20" EAST 541.43 FEET,
 - 18) SOUTH 40°30'20" EAST 156.65 FEET,
 - 19) SOUTH 00°26'02" WEST 86.99 FEET,
 - 20) SOUTH 41°00'45" EAST 45.32 FEET,
 - 21) SOUTH 40°45'13" EAST 731.93 FEET AND SOUTH 40°45'13" EAST 126.88 FEET;
- THENCE LEAVING SAID BOUNDARY SOUTH 40°32'46" WEST 746.11 FEET TO THE SOUTHWESTERLY LINE OF NORTH WEBER AVENUE 60.00 FEET IN WIDTH, AS SHOWN

ON SAID RECORD OF SURVEY, SAID LINE ALSO BEING THE NORTHEASTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY LINE;
THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 49°49'49" WEST 2205.78 FEET TO A POINT ON A LINE PERPENDICULAR TO SAID SOUTHWESTERLY LINE WHICH PASSES THROUGH THE POINT OF BEGINNING;
THENCE ALONG SAID PERPENDICULAR LINE NORTH 40°10'11" EAST 42.65 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,678,294 SQUARE FEET, 61.485 ACRES MORE OR LESS.

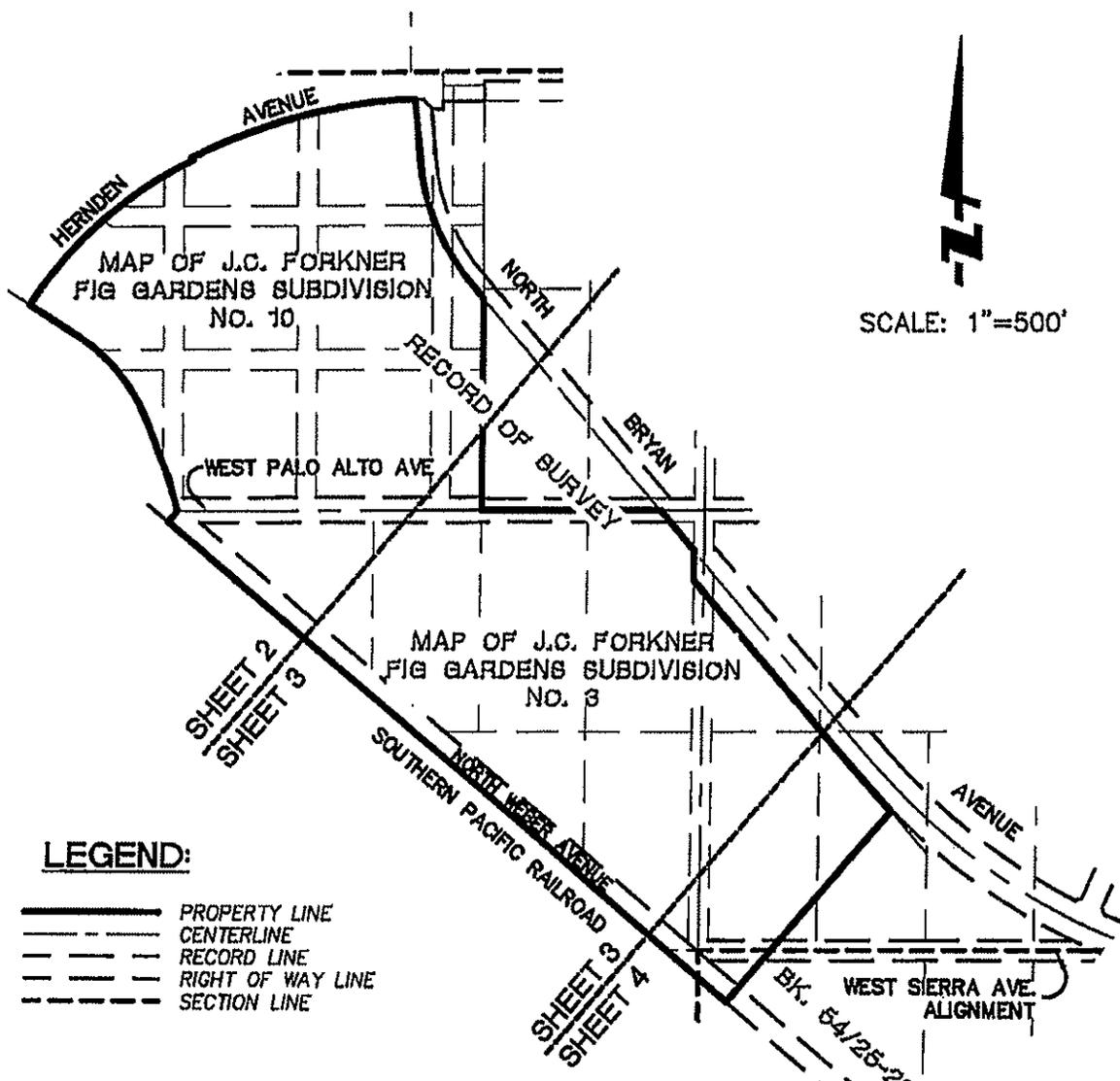
AS SHOWN ON ATTACHMENT "1" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED THIS 17th DAY OF January, 2011.



JERRY L. USELTON, L.S. 5347, EXP. 12/31/11





LEGEND:

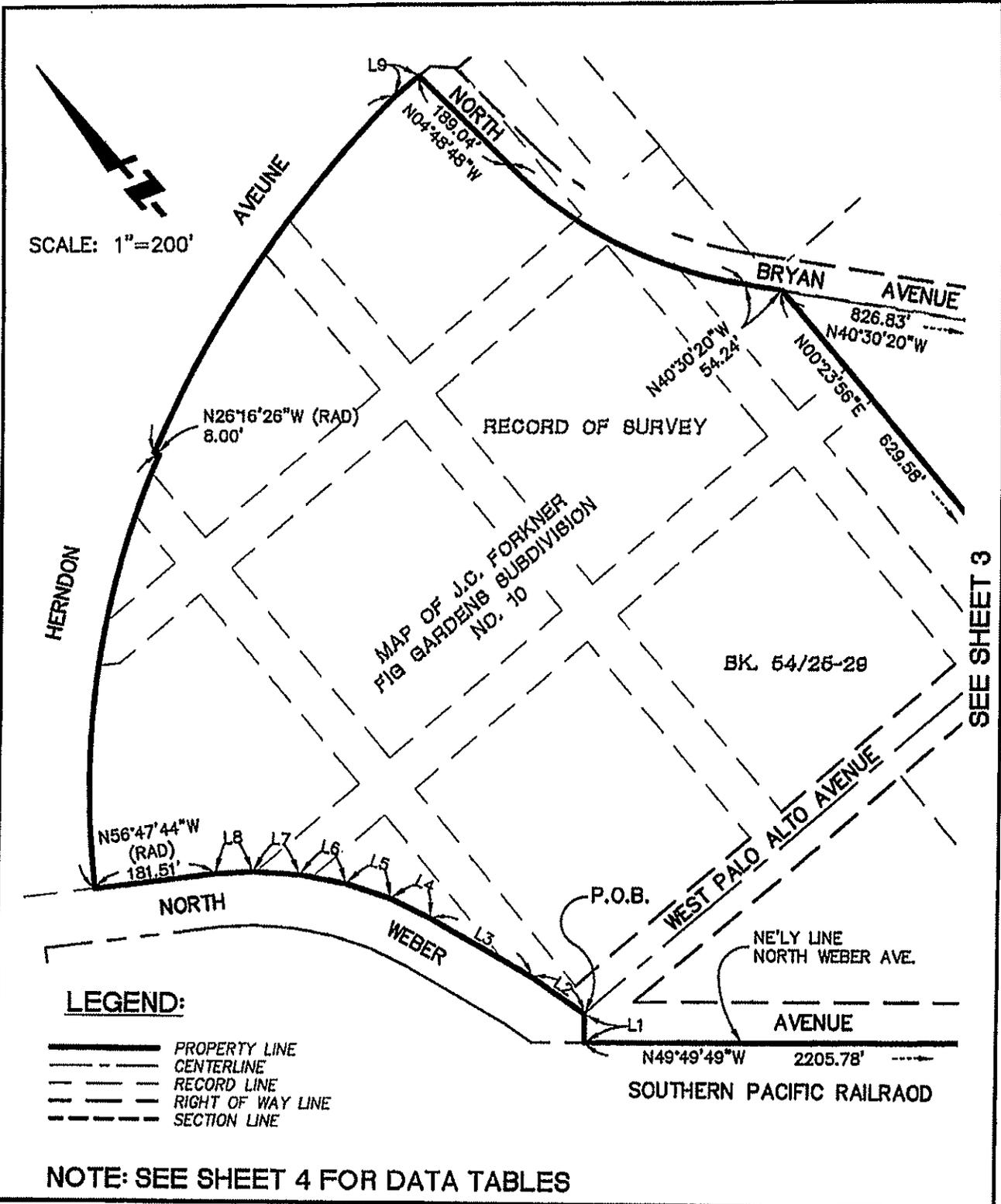
-  PROPERTY LINE
-  CENTERLINE
-  RECORD LINE
-  RIGHT OF WAY LINE
-  SECTION LINE




FUSCOE
ENGINEERING
16795 Von Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

ATTACHMENT 1 TO EXHIBIT 'A'
DEVELOPMENT AGREEMENT
A PORTION OF THE NORTHEAST QUARTER OF
SECTION 4, T.19 S., R.10 E., M.D.B. & M.
CITY OF FRESNO, COUNTY OF FRESNO
CALIFORNIA

DATE: MAR. 22, 2010
SCALE: 1" = 500'
JN: 875.0101
SHEET 1 OF 4



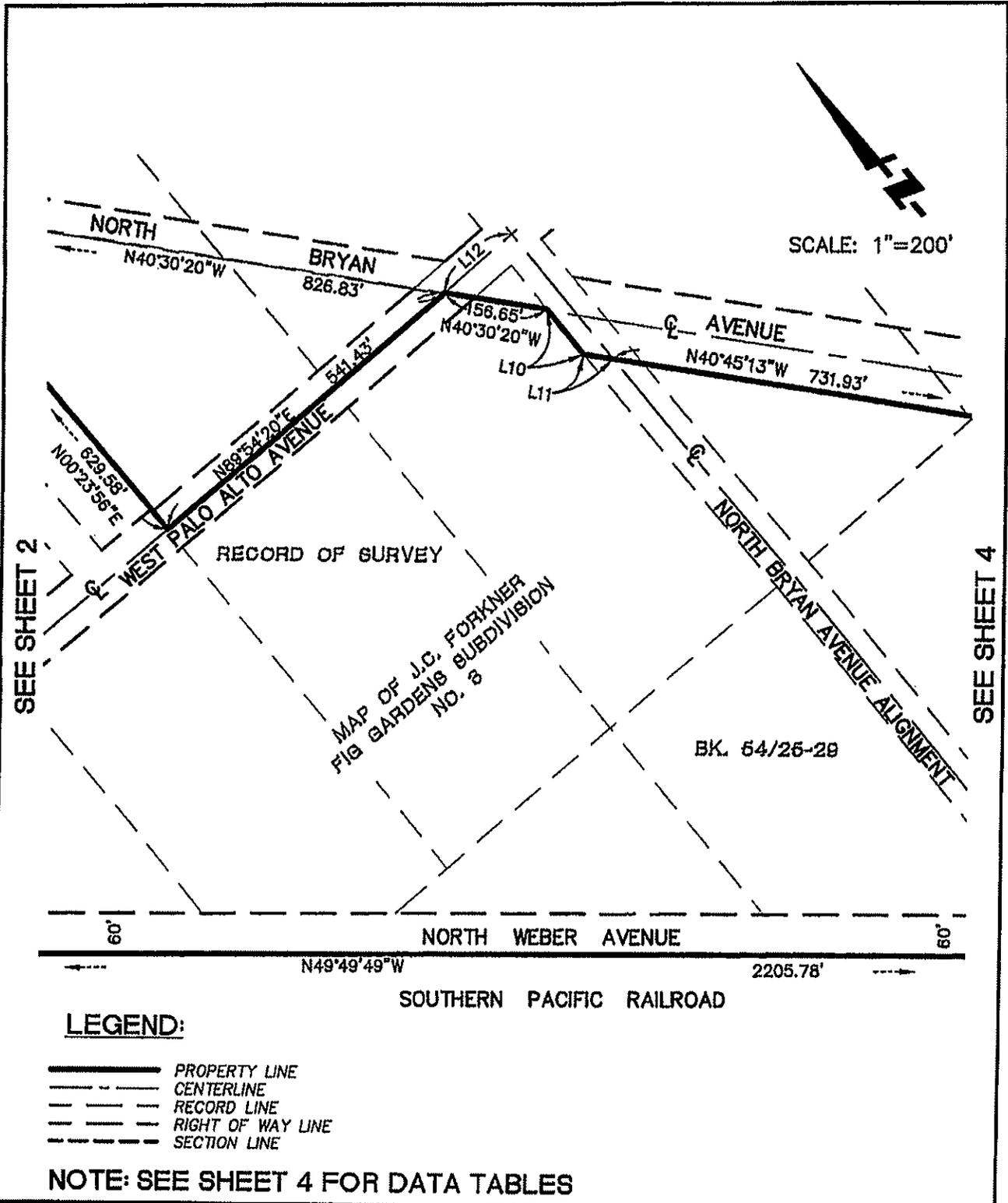
FUSCOE
ENGINEERING

16795 Van Karman, Suite 100, Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315 • www.fuscoo.com

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DEVELOPMENT AGREEMENT
A PORTION OF THE NORTHEAST QUARTER OF
SECTION 4, T3S 8, R10 E, M.D.B. & M,
CITY OF FRESNO, COUNTY OF FRESNO
CALIFORNIA

DATE: MAR 22, 2010
SCALE: 1" = 200'
JN: 875.0101
SHEET 2 OF 4

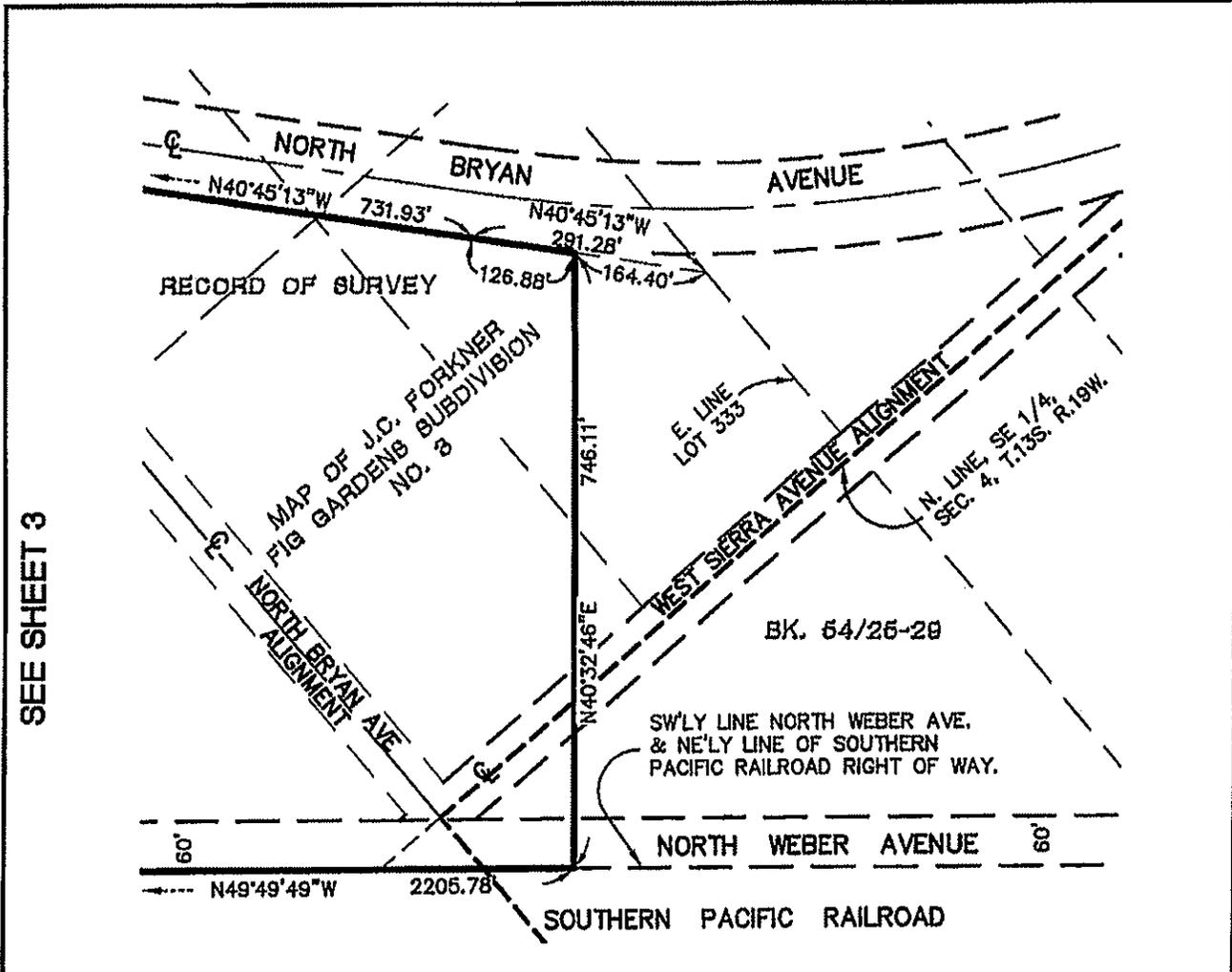


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tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

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SECTION 4, T.19 S., R.10 E., M.D.B. & M,
CITY OF FRESNO, COUNTY OF FRESNO
CALIFORNIA

DATE: MAR. 22, 2010
SCALE: 1" = 200'
JN: 873.0101
SHEET 3 OF 4

112

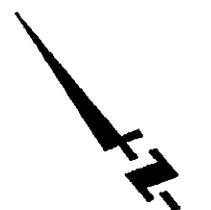


LINE TABLE

LINE	BEARING	LENGTH
L1	N40°10'11"E	42.65'
L2	N15°44'21"W	96.42'
L3	N20°18'21"W	177.11'
L4	N23°50'21"W	67.70'
L5	N31°17'21"W	70.54'
L6	N38°53'21"W	70.44'
L7	N46°11'21"W	69.88'
L8	N52°59'21"W	55.73'
L9	N88°18'38"W	47.53'
L10	N00°26'02"E	86.99'
L11	N41°00'45"W	45.32'
L12	N89°54'20"E	132.65'

LEGEND:

- PROPERTY LINE
- CENTERLINE
- RECORD LINE
- RIGHT OF WAY LINE
- SECTION LINE



SCALE: 1"=200'

FUSCOE
ENGINEERING

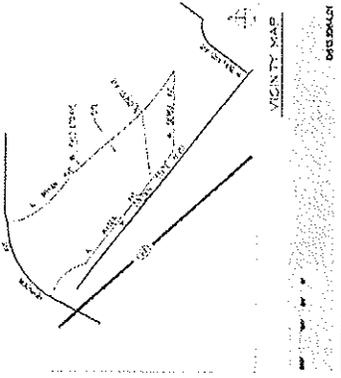
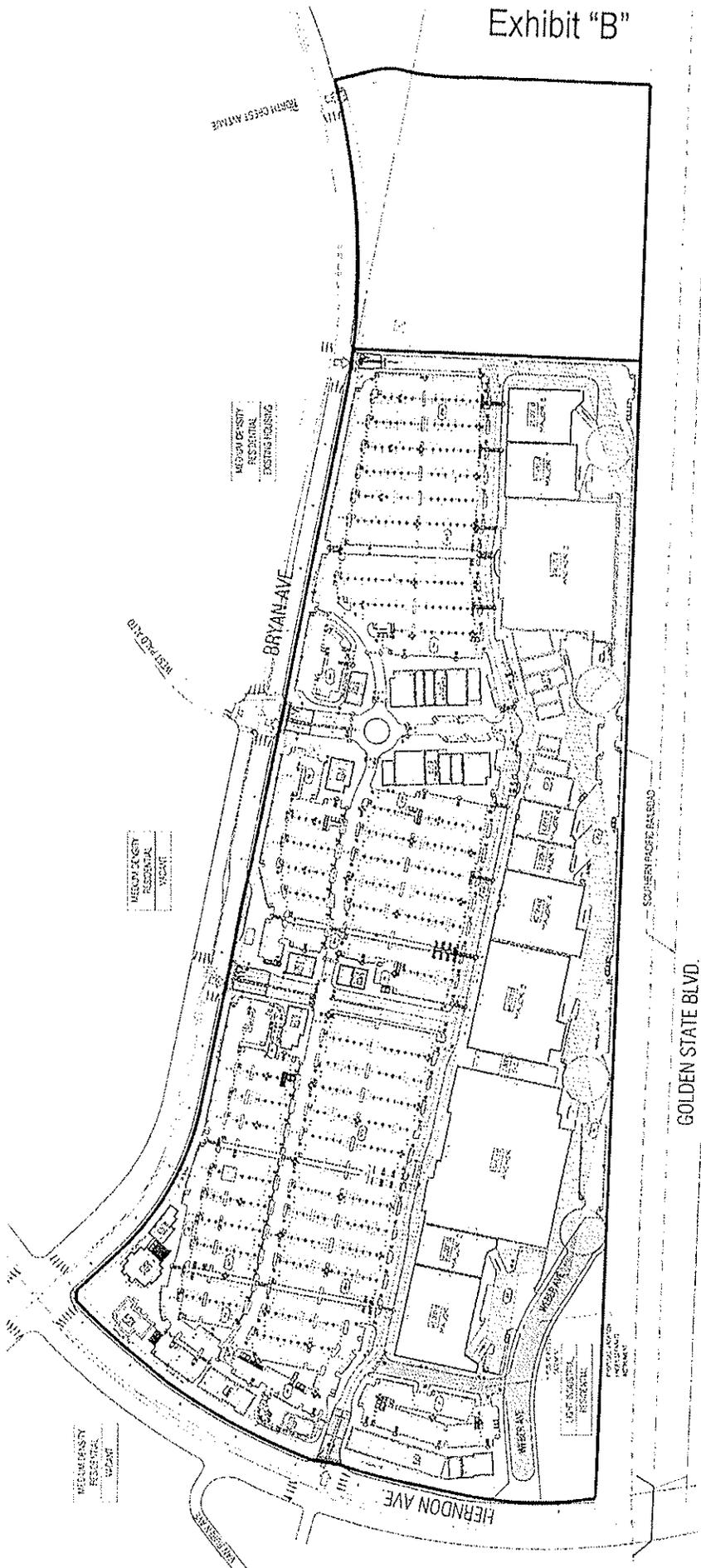
16795 Van Karman, Suite 100, Irvine, California 92606
 tel 949.474.1960 • fax 949.474.3313 • www.fuscoa.com

ATTACHMENT 1 TO EXHIBIT "A"
 DEVELOPMENT AGREEMENT
 A PORTION OF THE NORTHEAST QUARTER OF
 SECTION 4, T.13 S, R.10 E, M.D.B. & M,
 CITY OF FRESNO, COUNTY OF FRESNO
 CALIFORNIA

DATE: MAR. 22, 2010
 SCALE: 1" = 200'
 JN: 875.0101
 SHEET 4 OF 4

113

Exhibit "B"



MARKETPLACE

YARD EASEMENT



110 E. COLONIAL BOULEVARD
 PASADENA, CA 92366
 TEL: 626 799 4222
 FAX: 626 799 4222

A1.11

MARKETPLACE AT EL PASEO
 HERNDON AVENUE AND BRYAN AVENUE
 FRESNO, CA

Handwritten mark or signature.



REPORT TO THE CITY COUNCIL

December 16, 2010

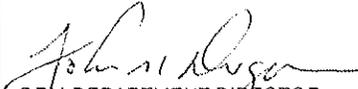
FROM: KEVIN FABINO, Planning Manager
Development & Resource Management Department

BY: MIKE SANCHEZ, Planning Manager
Development Services Division 

AGENDA ITEM NO. 4:00 p.m.

COUNCIL MEETING: 12/16/10

APPROVED BY


DRM DEPARTMENT DIRECTOR


CITY MANAGER

SUBJECT: CONTINUED CONSIDERATION OF PLAN AMENDMENT APPLICATION NO. A-08-11, REZONE APPLICATION NO. R-08-15, A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND JOHN ALLEN COMPANY LLC., AND FINAL ENVIRONMENTAL IMPACT REPORT NO. 10141 (SCH NO. 2008011003) FOR THE "EL PASEO" PROJECT

RECOMMENDATION

Staff recommends the City Council take the following action:

1. **ADOPT RESOLUTION** approving the Revised Water Supply Assessment Report prepared for the El Paseo Project generally located on the southwest corner of West Herndon and North Bryan Avenues in northwest Fresno proposed by John Allen Company, LLC.
2. **ADOPT RESOLUTION** certifying Final Environmental Impact Report (EIR No. 10141) dated November, 2010(SCH No. 2008011003), which consists of the following: Draft and Re-circulated Draft EIRs (May 6, 2010 and August 19, 2010 respectively), comments received on the Draft and Re-circulated Draft EIRs, the responses to those comments, and other information added in compliance with the California Environmental Quality Act (CEQA) (Final EIR, November 2010), which includes the adoption of an appropriate statement of overriding considerations because significant, unavoidable environmental impacts may result from the El Paseo Project.
3. **ADOPT RESOLUTION** approving Plan Amendment Amendment Application No. A-08-11 to amend the 2025 Fresno General Plan, West Area and the Bullard Community Plan for approximately 189.9 acres as follows:
 - a. Light industrial to regional commercial (146.9 acres); medium density to light industrial (25 acres); medium density to neighborhood commercial (8 acres); and medium density to office commercial planned land uses (10 acres).
 - b. Reclassify the segment of Herndon Avenue located between Bryan Avenue and Parkway Drive from the Expressway classification to the Super-arterial classification.
 - c. Eliminate Policy 4.2.4.2 of the Bullard Community Plan which limits retail development to no more than 15 acres at the

intersection of Bryan and Herndon Avenues, Polk and Dante;
and Bullard/Dante.

4. **ADOPT ORDINANCE BILL** approving Rezone Application No. R-08-15 to amend the Official Zone Map to approximately 203.9 acres of property as follows:
 - a. AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) and R-1/UGM (Single Family Residential/Urban Growth Management) to C-3/UGM (Regional Shopping Center/Urban Growth Management) for 74.4 acres; (Phase 1)
 - b. AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-M (Commercial and Light Manufacturing) for 28 total acres; (Phase 2A)
 - c. M-1/UGM (Light Manufacturing/Urban Growth Management) to C-3/UGM (Regional Shopping Center/Urban Growth Management) for 72.5 acres; (Phase 2B)
 - d. AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-M (Commercial and Light Manufacturing) for 25 acres; (Phase 3)
 - e. AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-1/UGM (Neighborhood Shopping Center/Urban Growth Management) for 4 acres. (Phase 4)
5. **ADOPT ORDINANCE BILL** approving the Development Agreement, as proposed by City staff, by and between the City of Fresno and John Allen Company, LLC relating to Phase I only, of the El Paseo project covering approximately 74 acres.

EXECUTIVE SUMMARY

At its December 2, 2010 Council Meeting the City Council commenced its consideration of the El Paseo Project and Staff's Recommendations as set forth above. As stated in the December 2, 2010 Staff Report to the City Council, the applicant, The John Allen Company, LLC., has filed Plan Amendment Application No. A-08-11, Rezone Application No. R-08-15, Conditional Use Permit No. C-08-172, Variance Application No. V-08-016 and Parcel Map No. 2010-20 for properties covering 238 acres hereinafter referred to as the "Project". The Project is anticipated to be developed in five phases and will be developed with an integrated mix of retail commercial, office, hospitality and entertainment uses.

The applicant has also filed an application for Development Agreement between the City of Fresno and John Allen Company, LLC., for development of Phase I of the project which will cover approximately 74.4 acres and entails a maximum of 906,788 square feet of retail commercial uses.

The Plan Amendment, Rezone and Development Agreement applications are before the City Council for its consideration. Plan amendment application is requesting changes in land use designations from the existing light industrial and medium density residential designations to the regional commercial, neighborhood commercial, light industrial and office commercial land use designations as well as the elimination of Policy 4.2.4.2 in the Bullard Community Plan, and an amendment to the General Plan

Circulation Element to reclassify the segment of Herndon Avenue between . The rezoning is seeking a change from the existing AE-5/UGM, R-1/UGM and M-1/UGM zone districts to the C-3/UGM, C-1/UGM and C-M/UGM zone districts. The Development Agreement is proposed for a term of 5-years and establishes certain obligations of the Applicant and the City with regard to Phase 1 of the El Paseo Project, including the required the fees, dedications and public improvements the Applicant is required to install.

The applicant has also filed a conditional use permit, variance application, street vacation request, and vesting parcel map. These entitlements are not being considered by the Council at this time. These specific entitlements are expected to be considered administratively by the Development and Resource Management Department upon successful City Council certification of the Environmental Impact Report (EIR), and approval of the plan amendments and rezone applications together with the proposed Development Agreement.

FISCAL IMPACT OF RECOMMENDATION

There will be no impact to the City's General Fund. The applicant is not seeking any financial assistance from the City in this endeavor.

Affirmative action by the Council will result in deliverance of the review and processing of the applications as is reasonably expected by the applicant/customer. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant/customer has paid to the city a fee for the processing of this application and that fee is, in turn, funding the respective operations of the Development and Resource Management and Public Works Departments.

PROJECT INFORMATION

PROJECT	Plan amendment, rezone encompassing 238 acres for the El Paseo Master Development Plan and Development Agreement for the development and implementation of Phase I of the Marketplace at El Paseo covering 74.4 acres.
APPLICANT	John Allen Company, LLC.
LOCATION	The approximately 238 acre site is bounded generally by Herndon Avenue on the north, Bryan Avenue and Bullard Avenue on the east, Carnegie Avenue to the south, and SR-99 on the west. (Council District 2, Councilmember Borgeas)
SITE SIZE	238 acre

PLANNED LAND USE

- Existing Light Industrial and medium density residential (189.9 acres total)
- Proposed Regional Commercial (146.9 acres), Light Industrial (25 acres),
Office Commercial (10 acres)
Neighborhood Commercial (8 acres)

ZONING

Existing - AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management), R-1/UGM (Single Family Residential/Urban Growth Management) and M-1/UGM (Light Manufacturing/Urban Growth Management)

Proposed - C-3/UGM (Regional Shopping Center/Urban Growth Management) C-M (Commercial and Light Manufacturing and C-1/UGM (Neighborhood Shopping Center/Urban Growth Management)

PLAN DESIGNATION
AND CONSISTENCY

Application requests an amendment to the 2025 Fresno General Plan and Bullard Community Plan from light industrial and medium density residential to regional commercial, light industrial, neighborhood commercial and office commercial; the reclassification of Herndon Avenue from an expressway to a superarterial between North Bryan Avenue and Parkway Drive ; and the elimination of Policy 4.2.4.2 of the Bullard Community Plan which limits retail development to no more than 15 acres at the intersection of Bryan and Herndon Avenues, Polk and Dante; and Bullard/Dante.

The requested rezoning to C-3/UGM (Regional Shopping Center/Urban Growth Management) for 146.9 acres;) to C-M (Commercial and Light Manufacturing) for 53 total acres; and to C-1/UGM (Neighborhood Shopping Center/Urban Growth Management) for 4 acres are consistent with adopted plans and polices of the 2025 Fresno General Plan.

ENVIRONMENTAL
FINDING

Environmental Impact Report (EIR) No. 10141 (SCH 2008011003) was prepared determining that the project would result in significant adverse environmental impacts; some impacts were found to be mitigatable and some were found to be only partially or not mitigatable and therefore, were found to be unavoidable.

PLAN COMMITTEE
RECOMMENDATION

On October 13, 2008, the District 2 Plan and Implementation Committee reviewed the proposed project and recommended the project move forward by a vote of 4 to 2 with 4 members absent.

PLANNING
 COMMISSION
 RECOMMENDATION

The Planning Commission at a special meeting on November 10, 2010, resolved to recommend approval of the El Paseo Project, inclusive of all entitlements by a vote of 6 to 0.

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Medium Density Residential	R-1/UGM and R-2/UGM <i>Single Family Residential and Low Density Multiple Family Residential/Urban Growth Management</i>	Vacant
South	Light Industrial and Freeway 99	M-1/UGM <i>Light Manufacturing/Urban Growth Management</i>	Warehousing and old Fruehauf Plant
East	Medium Density Residential	R-1-/UGM <i>Single Family Residential/Urban Growth Management</i>	Single family residential neighborhoods
West	General Commercial, Light Industrial, and Medium Density Residential	M-1/UGM <i>Light Manufacturing/Urban Growth Management</i>	Fast Food and truck fueling station rural residential homes

BACKGROUND

On December 2, 2010, the Fresno City Council began its consideration of the El Paseo Project. During Council's consideration of the El Paseo Project it heard detailed presentations from City Staff and the Applicant, opened the public hearing on this project and received public comments regarding the El Paseo project and then closed the public hearing on this matter. Thereafter, the Council commenced its deliberation on this project but continued further deliberation to its December 16, 2010 Council Meeting at 4:00 p.m. City Staff published a notice of Council's continued consideration of this matter to in the December 6, 2010 edition of the Fresno Bee.

Response to Objections Raised from Michael Slater Letter dated December 2, 2010

The Council did receive a detailed appeal letter from Mr. Michael Slater, on behalf of Suzanne Lanfranco and Dr. Joginder S. Mathuru, declaring their objection to the Certification of EIR No., 10141 and the

approval of Plan Amendment No A-08-11, rezone Application No. R-08-15 and the Development Agreement between the City of Fresno and the John Allen Company, LLC.

Staff together The Planning Center, its consultants, and project applicant's counsel have broken the lengthy letter into 38 discrete comments. Staff's detailed responses to Mr. Slater's comment letter are set forth in the Memo to the City Council dated December 16, 2010, attached as Exhibit F to this Staff Report.

It is the opinion of staff that the responses to the objections as listed below together with the information contained within the City Council staff report dated December 2, 2010, the Draft EIR dated May 2010, Re-circulated EIR dated August 2010, the Final EIR dated October November 2010, as well as the various technical appendices prepared for the EIR sufficiently address the concerns raised by Mr. Slater's letter.

Potential Options Available for Council Action

Aside from the staff recommendation as noted above, the Council, at its discretion may wish to consider alternative actions. Pursuant to the Fresno Municipal Code, the Council can either elect to approve, deny, or modify a plan amendment application or rezone application. In such a scenario the Council must consider and act in the following manner:

1. Approve the Revised Water Study Assessment as set forth in Staff Recommendation No. 1.
2. Certify the EIR No. 10141 as set forth in Staff Recommendation No. 2.
3. Amend, by Council Resolution, the Circulation Element of the 2025 Fresno General Plan to reclassify that section of Herndon Avenue located between Bryan Avenue and Parkway Drive from the Expressway classification to the Superarterial classification. (Included in Plan Amendment Application No. A-08-11.)
4. Amend, by Council Resolution, the Bullard Community Plan to remove Policy No. 4.2.4.2. (Included in Plan Amendment Application No. A-08-11.)

After approval of these items, the Council would need to take the following actions to approve various phases of the project.

The following Council Actions are necessary to permit Phase 1 to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 74.4 acres from light industrial planned land use to regional commercial planned land use for 74.4 acres; (Included in Plan Amendment Application No. A-08-11.)

Rezone 74.4 acres of property located within the project area as described in Rezone Application No. R-08-15 from AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) and R-1/UGM (Single Family Residential/Urban Growth Management) to C-3/UGM (Regional Shopping Center/Urban Growth Management)

Approve the Development Agreement by and between the City of Fresno and the John Allen Company, LLC as set forth in Staff Recommendation No. 5.

The following Council Actions are necessary to permit Phase 2A to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 8 acres within the project area from medium density residential planned land use to light industrial planned land use. (Included in Plan Amendment Application No. A-08-11.)

Rezone 5 acres from AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-M (Commercial and Light Manufacturing), as described in Rezone Application R-08-15.

The following Council Actions are necessary to permit Phase 2B to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 72.5 acres from light Industrial planned land use to regional commercial planned land use as described in Plan Amendment Application A-08-11.

Rezone 72.5 acres within the project area from M-1/UGM (Light Manufacturing/Urban Growth Management) to C-3/UGM (Regional Shopping Center/Urban Growth Management) as described in Rezone Application No. R-08-15.

The following Council Actions are necessary to permit Phase 3 to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 17 acres from medium density residential planned land use to light industrial planned land use as described in Plan Amendment Application A-08-11.

Rezone 25 acres within the project area from AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-M (Commercial and Light Manufacturing) as described in Rezone Application No. R-08-15.

The following Council Actions are necessary to permit Phase 4 to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 8 acres from medium density residential planned land use to neighborhood commercial planned land use as described in Plan Amendment Application A-08-11.

Rezone 4 acres within the project area from AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-1/UGM (Neighborhood Shopping Center/Urban Growth Management) as described in Rezone Application No. R-08-15.

The following Council Actions are necessary to permit Phase 5 to proceed:

Amend the Land Use Element of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan to redesignate 10 acres from medium density residential planned land use to office commercial planned land use as described in Plan Amendment Application A-08-11.

Rezone 4 acres within the project area from AE-5/UGM (Exclusive Agricultural – Five Acres/Urban Growth Management) to C-1/UGM (Neighborhood Shopping Center/Urban Growth Management) as described in Rezone Application No. R-08-15.

Depending upon the Council's final action on this project, it is staff's intent to modify the appropriate resolutions and ordinances with respect to the El Paseo Project to reflect Council's intent which will not require any further Council action.

CONCLUSION / RECOMMENDATION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the 2025 Fresno General Plan, the Bullard Community Plan and the West Area Community Plan; its compatibility with surrounding existing or proposed uses, and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by accompanying Environmental Impact Report No. 10141. Upon consideration of this evaluation, it can be concluded that proposed Plan Amendment Application No. A-08-11, Rezone Application No. R-08-15 and the development proposed by the Development Agreement are appropriate for the project site, subject to the mitigation measures contained in Final Environmental Impact Report No. 10141, the conditions set forth in the Development Agreement and in the entitlements requested for this project.

Attachments:

- Exhibit A – Resolution Approving Water Supply Assessment to implement Staff Recommendation No.1
- Exhibit B Resolution certifying Final Environmental Impact Report (EIR No. 10141), making necessary findings and adopting Statement of Overriding Considerations to implement Staff Recommendation No. 2.
- Exhibit C Resolution Approving Plan Amendment A-08-11
- Exhibit D Ordinance Bill Approving Rezone Application No. R-08-15
- Exhibit E Ordinance Bill Approving Development Agreement between The John Allen Company and the City of Fresno.
- Exhibit F Memo to Council Responding to Comment letter from Michael Slater dated, December 2, 2010.
- Exhibit G Article regarding Fresno County Agricultural Land