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CITY OF ROSEVILLE

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DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF ROSEVILLE,
WALAIRE, INC. AND MERITAGE HOMES RELATIVE TO THE FIDDYMENT 44
PROPERTY

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FILED

JUN 20 2005

CITY OF ROSEVILLE

BY *Jed*

**DEVELOPMENT AGREEMENT
BY AND AMONG THE CITY OF ROSEVILLE,
WALAIRE, INC. AND MERITAGE HOMES
RELATIVE TO THE
FIDDYMENT 44 PROPERTY**

This Development Agreement (the "Agreement") is entered into this 9th day of May, 2005, by and among the CITY OF ROSEVILLE, a municipal corporation (hereinafter "City"), WALAIRE, INC., a California corporation (hereinafter "Landowner"), and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (hereinafter "Developer" or "Meritage Homes") (collectively, hereinafter the "Parties") pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of California.

Recitals

1. **Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864, *et seq.*, of the Government Code (the "Development Agreement Statute"), which authorizes the City of Roseville and an applicant for a development project to enter into a development agreement, establishing certain development rights in the Property which is the subject of the development project application.

2. **Property.** The subject of this Agreement is the development of that certain parcel of land located within the City of Roseville, consisting of approximately 44± acres (the "Fiddymment 44 Property" or "Property") as described in Exhibit "A-1" and shown on Exhibit "A-2," attached hereto and incorporated herein by this reference. Landowner owns the Property in fee and is holding it for investment purposes. Developer is under contract to acquire all of the Property in a single transaction for the purpose of developing a 148 lot single family residential subdivision (the "Project" or "Fiddymment 44 Project"). Developer's right to develop the Property in accordance with the Entitlements as defined in Recital 6 below and the terms of this Agreement including the obligations set forth herein shall not become effective unless and until Developer acquires the Property. Upon conveyance of Landowner's fee interest in the Property to Developer, Landowner shall have no further rights or privileges, and shall be fully released from any further liability or obligation, under this Agreement. Landowner and Developer represent that all persons holding legal or equitable interests in the Property shall be bound by the Agreement.

3. **Hearing.** On January 27, 2005, the City Planning Commission, designated by Roseville Ordinance No. 3014 as the advisory agency for purposes of development agreement review pursuant to Government Code Section 65867, in a duly noticed and conducted public hearing, considered this Agreement and recommended that the City Council approve this Agreement.

4. **Mitigated Negative Declaration.** On March 16, 2005, the City Council ratified the Mitigated Negative Declaration (the "Negative Declaration") for the Project as adequate, complete and in compliance with the California Environmental Quality Act, California Public Resources Code Sections 21000 *et seq.* ("CEQA"). Mitigation measures were suggested in the Negative Declaration and are incorporated to the extent feasible in the Project and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement (the "CEQA Findings").

5. **No Further Environmental Documents.** The City Council has determined that the adoption of this Agreement involves no new impacts not considered in the Negative Declaration; therefore, no further environmental documents relating to the adoption of this Agreement are required.

6. Entitlements. Following consideration and ratification of the Negative Declaration, together with the CEQA Findings, the City Council has approved the following land use entitlements for the Property, which entitlements are the subject of this Agreement:

6.1 The Roseville General Plan, as amended by Resolution No. 05-112, approved March 16, 2005;

6.2 The Rezoning of the Property pursuant to Ordinance No. 4203, adopted on April 6, 2005;

6.3 The Tentative Subdivision Map, as approved on January 27, 2005 by Resolution No. n/a; and

6.4 This Development Agreement, as adopted on April 6, 2005 (the "Enacting Date") by Ordinance No. 4204 (the "Adopting Ordinance") and as effective on May 6, 2005, thirty (30) days following enactment (the "Effective Date").

The approvals described in paragraphs 6.1 through 6.4, inclusive, are referred to herein as the "Entitlements."

7. General Plan. Development of the Property in accordance with this Agreement and the other Entitlements will provide orderly growth and development of the area in accordance with the policies set forth in the General Plan. For purposes of the vesting protection and rights granted by this Agreement, except as otherwise provided herein, the applicable law shall be as set forth in the Entitlements as of the Effective Date of the Adopting Ordinance.

8. Substantial Costs to Developer. Developer has incurred and will incur substantial costs in order to comply with conditions of approval of the Entitlements and to assure development of the Property in accordance with the Entitlements, including the terms of this Agreement.

9. Need for Services and Facilities. Development of the Property will result in a need for municipal services and facilities, which services and facilities will be provided by City to such development subject to the performance of the obligations of Developer and Landowner hereunder.

10. Contribution to Costs of Facilities and Services. Developer agrees to contribute to the costs of such public facilities and services as are required herein to mitigate impacts of the development of the Property on the City, and City agrees to provide such public facilities and services to assure that Developer may proceed with and complete development of the Property in accordance with the terms of this Agreement. City, Developer and Landowner recognize and agree that but for Developer's contributions to mitigate the impacts arising as a result of development entitlements granted pursuant to this Agreement, City would not and could not approve the development of the Property as provided by this Agreement and that, but for City's covenant to provide the facilities and services necessary for development of the Property, Developer would not and could not commit to provide the mitigation as set forth in this Agreement. City's vesting of the right to develop the Property as provided herein is in reliance upon and in consideration of the agreement of Developer to make contributions toward the cost of public improvements as herein provided to mitigate the impacts of development of the Property as such development occurs.

11. Development Agreement Ordinance. City, Developer and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Ordinance of the City of Roseville, Article V, Chapter 19.84 of Ordinance No. 3014 of the Roseville Municipal Code.

12. Consistency with General Plan. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City finds and declares that this Agreement is consistent with the General Plan of the City of Roseville, as amended by Resolution No. 05-112.

AGREEMENT

SECTION 1: GENERAL PROVISIONS

1.1 Incorporation of Recitals. The Preamble, the Recitals and all defined terms set forth in both are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Property Description and Binding Covenants. The Property is that property described in Exhibits "A-1" and "A-2." It is intended and determined the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to the Parties hereto.

1.3 Term.

1.3.1 Commencement; Expiration. The term of this Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement and shall extend for a period of twenty (20) years thereafter, unless said term is terminated, modified or extended by circumstances as set forth in this Agreement or by mutual written consent of the parties hereto. Notwithstanding the commencement of the term set forth herein, the Parties agree that Developer's rights and obligations hereunder shall not become effective unless and until Developer acquires a fee interest in all of the Property. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from the other City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

1.3.2 Automatic Termination Upon Completion and Sale of Residential Unit. This Agreement shall be terminated automatically, without any further action by any party or need to record any additional document, with respect to any single family residential lot within the Property, upon completion of construction and issuance by the City of a final inspection for a dwelling unit upon such residential lot and conveyance of such improved residential lot by Developer to a bona-fide good-faith purchaser thereof. In connection with its issuance of a final inspection for such improved lot, City shall confirm that: (i) the lot is included within the CFD Services District required by Section 3.15, or other financing mechanism acceptable to the City, to the extent required hereby; and (ii) an Affordable Purchase Housing Development Agreement, if required for such parcel pursuant to Section 2.6, has been recorded on the lot. The termination of this Agreement for any such residential lot as provided for in this Section 1.3.2 shall not in any way be construed to terminate or modify any assessment district or Mello Roos Community Facilities District lien affecting such lot at the time of termination.

1.3.3 Termination Upon Developer Request. This Agreement may also be terminated, at the election of the then property owner, with respect to any legally subdivided parcel designated by the Project's zoning for residential use upon recordation of a final residential lot subdivision map for such parcel, by giving written notice to City of an election to terminate the Agreement for such parcel, provided that: (i) the parcel is included within the CFD Services District required by Section 3.15, or other financing mechanism acceptable to the City, to the extent required hereby; and (ii) an Affordable Purchase Housing Development Agreement, if required for such parcel pursuant to Section 2.6, has been recorded on the lot. City shall cause any written notice of termination approved pursuant to this subsection to be recorded against the applicable parcel, at Developer's expense, with the County Recorder within ten (10) days of receipt of such notice.

1.3.4 Substitution of New Development Entity as Developer. Landowner shall have the right, at Landowner's sole discretion, subject only to the reasonable prior written consent of City, to substitute itself or a new development entity as "Developer" under the terms of this Agreement, provided that to qualify as a Developer under the terms of this Agreement, the substitute development entity must either own all of the Property or be under contract to acquire all of the Property. The substitution by Landowner of a new development entity for Meritage Homes or for a successor Developer to Meritage Homes shall require thirty (30) days prior written notice and the consent of the City, such consent not to be unreasonably withheld. In the event Landowner substitutes a new development entity as Developer under the terms of this Agreement, Landowner shall record a Memorandum of

Agreement against the Property whereby the new development entity agrees to assume all of the rights, title, interest, burdens, duties and obligations of Developer under the Development Agreement and to observe and fully perform all of the duties and obligations of Developer under the Development Agreement.

1.4 Amendment of Agreement. This Agreement may be amended from time to time by mutual written consent of City, Landowner (as long as Landowner continues to hold a legal or equitable interest in the Property) and Developer (and/or any successor owner of any portion of the Property, to the extent subject to or affected by the proposed amendment), in accordance with the provisions of the Development Agreement Statute. If the proposed amendment affects less than the entire Property, then such amendment need only be approved by the owner(s) in fee of the portion(s) of the Property that is(are) subject to or affected by such amendment. The parties acknowledge that under the City Zoning Code and applicable rules, regulations and policies of the City, the Planning Director has the discretion to approve minor modifications to approved land use entitlements without the requirement for a public hearing or approval by the City Council. Accordingly, the approval by the Planning Director of any minor modifications to the Entitlements which are consistent with this Agreement shall not constitute nor require an amendment to this Agreement to be effective.

1.5 Recordation. Except when this Agreement is automatically terminated due to the expiration of the Term or the provisions of Sections 1.3.2 or 1.3.3 above, the City shall cause this Agreement, any amendment hereto and any other termination hereof to be recorded, at Landowner's or Developer's expense, as the case may be, with the County Recorder within ten (10) days of the date of this Agreement or such amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

SECTION 2: DEVELOPMENT OF THE PROPERTY

2.1 Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and location of public improvements, and other terms and conditions of development applicable to the Property shall be those set forth in this Agreement and the other Entitlements.

2.2 Vested Entitlements. Subject to the provisions and conditions of this Agreement, City hereby grants a fully vested entitlement and right to develop the Property in accordance with the terms and conditions of this Agreement and the other Entitlements (the "Vested Entitlements"). The Vested Entitlements include the following land uses and approximate acreages for the Project, all as further set forth in Exhibit "B" attached hereto and incorporated herein by reference:

Single Family, Low Density Residential	148 units on 28.9± acres
Private Common Area	7.0± acres
Other Private Areas (Woodcreek East Parcel 1 Access)	.6± acres
Open Space Environmental Preserve	6.1± acres
Other Public Areas (ROW/Landscape Corridors)	1.9± acres
Total	44.5± acres

Such uses shall be developed in accordance with the Entitlements, as such Entitlements provide on the Effective Date of this Agreement. Landowner's and Developer's vested right to proceed with the development of the Property shall be subject to subsequent approvals, provided that any conditions, terms, restrictions and requirements for such subsequent approvals shall not prevent development of the Property for the uses, or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, so long as Landowner or Developer, as the case may be, is not in default under this Agreement.

2.3 [Reserved.]

2.4 Rules, Regulations and Official Policies.

2.4.1 Inconsistency. To the extent any future rules, ordinances, regulations or policies applicable to development of the Property are inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation and dedication of land for public purposes under the Entitlements as provided in this Agreement, the terms of the Entitlements and this Agreement shall prevail, unless the parties mutually agree to amend this Agreement. To the extent any future rules, ordinances, fees, regulations or policies applicable to development of the Property are not inconsistent with the permitted uses, density and intensity of use, rate or timing of construction, maximum building height and size, or provisions for reservation or dedication of land under the Entitlements or under any other terms of this Agreement, such rules, ordinances, fees, regulations or policies shall be applicable.

2.4.2 Application of Changes. This section shall not preclude the application to development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations. To the extent that such changes in City laws, regulations, plans or policies prevent, delay or preclude compliance with one or more provisions of this Agreement, City, Landowner and Developer shall take such action as may be required pursuant to Section 4.1 of this Agreement to comply therewith.

2.4.3 Authority of City. This Section shall not be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements of use which require the exercise of discretion by City or any of its officers or officials, provided that subsequent discretionary actions (i) shall not prevent or delay development of the Property for the uses and to the density and intensity of development as provided by this Agreement and the other Entitlements in effect as of the Effective Date of this Agreement and (ii) shall not be inconsistent with the Vested Entitlements.

2.5 City Fees, Taxes and Assessments.

2.5.1 Processing Fees and Charges. Developer shall pay those processing, inspection and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and for monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

2.5.2 Public Financing Limited to Specific Funding Mechanisms and Fees. This Agreement includes specific provisions requiring the acquisition and construction of certain public infrastructure and facilities as well as the maintenance of certain public improvements and specifying the obligations of the Parties with respect to the establishment of funding mechanisms to support such acquisition, construction and maintenance. Except as explicitly provided herein, Developer shall have no obligation to participate in public financing mechanisms to fund the construction and maintenance of public infrastructure other than the payment of City development fees and usage charges that have been authorized by ordinance as of the Effective Date of this Agreement, as such fees and charges may be adjusted from time to time in accordance with applicable law, or such other fees or charges as may be duly adopted in the future by City from time to time in accordance with applicable law; provided, however, Developer's obligation to pay future City fees is limited to those fees adopted on a City-wide basis or which apply uniformly to all properties within the City of Roseville which are zoned consistent with the Entitlements, or which apply uniformly to all properties which are similarly situated, whether by geographic location, drainage sheds or other distinguishing circumstances. Nothing in this Section shall be construed to limit the right of Landowner or Developer to oppose, protest, challenge or otherwise take issue with any proposal to adjust existing fees or charges or to adopt new fees or charges.

2.6 The Affordable Housing Program. The City of Roseville's General Plan establishes a "10% Affordable Housing Goal." The legislative intent of the City's 10% Affordable Housing Goal is explicitly described at page X-2 of the General Plan Housing Element:

"The City's Affordable Housing Goal is not intended to be used as an inclusionary zoning program, whereby the property owner would be required to shoulder the entire responsibility of producing the affordable housing. The intent of the 10% Affordable Housing Goal is to ensure City and developer willingness to actively work together to develop housing affordable to low and middle income households."

Developer shall satisfy its obligation to actively work with City to achieve the 10% Affordable Housing Goal through implementation of the Middle, Low and Very Low Income Affordable Housing Programs set forth below in this Section 2.6.

2.6.1 Middle Income Affordable Housing Program. Developer shall reserve, and Landowner shall consent to the reservation of, three (3) single family residential units for participation in the City's middle income affordable purchase housing program. These affordable purchase units shall be made available to middle income households without City subsidy. The term "middle income households" shall mean households earning between eighty-one percent (81%) and one hundred percent (100%) of median income as defined in accordance with the most recent data issued by the United States Department of Housing and Urban Development ("HUD") for the Sacramento Metropolitan Statistical Area ("SMSA"). The reservation of middle income affordable units for which provision is made in this Section 2.6.1 shall be administered in accordance with the terms and conditions of an Affordable Purchase Housing Development Agreement entered into pursuant to Section 2.6.6 below. The foregoing notwithstanding, City agrees that Developer may utilize residential units that will be developed as part of the Longmeadow project, located adjacent to and to the west of the Fiddymnt 44 Project, to satisfy all or a portion of Developer's middle income affordable housing obligation, subject to the mutual written consent of Developer, the developer of the Longmeadow project, and the City's City Manager or the City Manager's designee (the "City Manager").

2.6.2 Low Income Affordable Housing Program. Developer shall reserve, and Landowner shall consent to the reservation of, six (6) single family residential units for participation in the City's low income affordable purchase program. The reservation of six (6) on-site units for participation in the City's low income affordable purchase housing program shall be administered in accordance with the terms and conditions of the Affordable Purchase Housing Development Agreement entered into pursuant to Section 2.6.6 below. Where low income affordable purchase units are reserved on-site, they shall be made available to low income households without City subsidy. The term "low income households" shall mean households earning eighty percent (80%) or less of median income as defined in accordance with the most recent HUD data for the SMSA. The foregoing notwithstanding, City agrees that Developer may utilize residential units that will be developed as part of the Longmeadow project, located adjacent to and to the west of the Fiddymnt 44 Project, to satisfy all or a portion of Developer's low income affordable housing obligation, subject to the mutual written consent of Developer, the developer of the Longmeadow project, and the City Manager.

2.6.3 Very Low Income Affordable Housing Program. Developer shall also make provision for six (6) very low income affordable units through an in lieu payment to the City's affordable housing fund in the amount of \$50,000 for each of the six (6) very low income affordable units, resulting in a total contribution of \$300,000. Such payment shall be generated through a very low income affordable housing fee to be paid by each of the 148 residential units within the Project prior to issuance of a building permit. The very low income affordable housing in lieu fee shall be in the amount of \$2,027 to be paid by each of the 139 market rate residential units within the Project ($\$300,000 \div 148 = \$2,027$). Developer's in lieu very low income affordable housing fee, or any portion thereof, may be advance funded by a Mello Roos Community Facilities District or by Developer, at Developer's sole discretion, with any such advance funding by Developer subject to subsequent reimbursement by the Mello Roos Community Facilities District.

2.6.4 Use of In Lieu Affordable Housing Fund. Where in lieu payments are to be made pursuant to Section 2.6.3 above in satisfaction of the very low income component of Developer's affordable housing obligation, Developer shall work in good faith with the City Manager to identify opportunities for use of the in lieu affordable housing fund revenues. The in lieu revenues may be used for any of the following purposes:

- i. to subsidize the City's low income purchase or rental program;
- ii. to write down the purchase price of the reserved middle income purchase units in the Project to a price that is affordable to low income households; and/or
- iii. to otherwise further the goal of expanding housing affordability for low and very low income households within the City of Roseville.

2.6.5 Affordable Purchase Housing Development Agreement Required. Prior to the approval of the final residential small lot subdivision map for the Project, the Parties shall enter into City's then current form Affordable Purchase Housing Development Agreement as revised to bring such agreement into conformity with the provisions of this Section 2.6. Specific requirements of the Affordable Purchase Housing Development Agreement shall be determined by the Economic and Community Services Director. The Affordable Purchase Housing Development Agreement shall apply to all affordable units to be reserved, in accordance with Sections 2.6.1 and 2.6.2 above, for participation in the City's affordable purchase housing program and shall set forth, among other things, the distribution of the affordable housing units within the subdivision (provided that, with approval of the Housing Manager, affordable units may be moved within the subdivision without requiring amendment to the Affordable Purchase Housing Development Agreement), and Developer's obligations for marketing the affordable units. No City subsidies will be required to provide residential purchase units affordable to middle income and low income households.

The Affordable Purchase Housing Development Agreements shall include specific requirements for marketing of affordable purchase units, inclusion or modification of amenities, exterior materials and finishes, alternate means of satisfying the affordable housing obligations and best efforts requirements.

2.6.6 Effect of New Legislation. Should new state legislation be enacted that mandates that the City, among other local governments in the Sacramento region, implement an affordable housing production standard that differs from the affordable housing obligations set forth in this Agreement, Developer shall be obligated to comply with such mandated standard provided that (i) such standard is implemented City-wide; and (ii) such standard is not applied retroactively to residential units already constructed in the Project.

2.7 Wetlands.

2.7.1 The 404 Permit. Developer is in the process of obtaining from the U.S. Army Corps of Engineers (the "Army Corps") a permit pursuant to Section 404 of the Clean Water Act, 33 C.F.R. § 322.2(f) (the "404 Permit") to fill a portion of the wetlands on the Property in conjunction with development of the Project. The 404 Permit shall be obtained prior to commencement of construction of any improvements on the Property and its terms and conditions shall be consistent with the terms and conditions of this Agreement. It is anticipated that the 404 Permit will require preservation of certain areas within the Property as an environmental preserve (the "Environmental Preserve"). Upon formation of a Homeowners Association (for which provision is made in Section 3.18 below) or establishment of an endowment fee financing mechanism (the "Environmental Endowment") (for which provision is also made in Section 3.18.3 below) with the authority and capacity to assume the costs of maintaining the Environmental Preserve in accordance with the 404 Permit, Developer shall convey to the City and City shall accept the parcel(s) comprising the Environmental Preserve. Prior to the City's acceptance of such parcel(s), all restrictions imposed thereon by the 404 Permit shall be subject to the review of the City, and Developer shall have completed any improvements thereto that are required by the 404 Permit or this Development Agreement.

2.7.2 Monitoring and Reporting. Developer shall be solely responsible for satisfying all monitoring and reporting requirements under the 404 Permit, with the costs of such monitoring and reporting to be funded by the Homeowners Association or Environmental Endowment. Developer does hereby agree to indemnify, defend and hold harmless the City from any and all costs, liabilities or damages for which the City is alleged to be responsible or is held responsible under the 404 Permit arising out of or relating to any failure of Developer to satisfy such monitoring or reporting requirements, excluding any such failure caused by the active negligence of City or any employees, agents or contractors thereof. City acknowledges and agrees that any proposed use of or improvement to the Environmental Preserve shall be subject to the provisions of the 404 Permit.

SECTION 3: DEVELOPER OBLIGATIONS

3.1 Development, Connection and Mitigation Fees. Except as otherwise provided herein, any and all required payments of development, connection or mitigation fees by Developer shall be made at the time and in the amount specified by then applicable City ordinances, either in effect as of the Effective Date of this Agreement subject to adjustment, or as may subsequently be adopted, in accordance with the provisions of Section 2.5.2 above. Wherever this Agreement obligates Developer to design, construct or install any improvements, the cost thereof may be provided by Developer or by a Mello Roos Community Facilities District or other such financing mechanism, subject to and in accordance with the provisions thereof.

3.2 Parks and Open Space. In satisfaction of the City's General Plan Park obligation, Developer shall dedicate acreage to the City's parks program, pay fees in lieu of parkland dedication, and pay the Neighborhood Parks Fee and City-wide Parks Fee for the purpose of funding park improvements, all as set forth in this Section 3.2.

3.2.1 Open Space Dedications and Maintenance. Developer shall dedicate a total of 6.1± acres of open space land to the City to be protected as a permanent Environmental Preserve as provided in Section 2.7.1 above. The dedication of open space acreage is shown as Lot D on Exhibit "B." The open space acreage shall be maintained by the Homeowners Association (the "HOA") established in accordance with Section 3.18 below, with such maintenance obligation to be funded by either the HOA, an alternative private financing mechanism, or an Environmental Endowment, also as provided by Section 3.18. City may, in City's sole discretion, substitute an alternative maintenance program for the strategy described above. City is not hereby obligated to consider or substitute any alternative maintenance program. City's consideration and substitution of any alternative maintenance program shall be at no cost to City. City agrees to accept Lot D subject to such restrictions as may be required by the Army Corps of Engineers and does hereby grant to the HOA a right of entry and encroachment permit for the purpose of maintaining Lot D. The project CC&R's shall contain provisions satisfactory to the City Attorney, relating to the indemnity of the City by the Homeowners Association for any liability arising out of the negligence of the Homeowners Association for failing to adequately maintain Lot D. If the Homeowners Association has failed to provide the maintenance, the City may, after twenty (20) days written notice to the Homeowners Association, at City's sole option, enter onto the Property and perform such maintenance in which case the City may, at its option, recover 150% of its costs of doing so from the Homeowners Association who has failed to commence and to diligently prosecute such maintenance within such twenty (20) day period.

3.2.2 Parkland Dedication. The 148 residential units comprising the Project will generate approximately 376 new residents (148 units x 2.54 persons/unit = 376 new residents). Developer has an obligation to provide nine (9) acres of parkland (consisting of three (3) acres of neighborhood parkland, three (3) acres of City-wide parkland, and three (3) acres of passive parkland) per 1,000 new residents. Accordingly, Developer's parkland dedication obligation shall be in the total amount of 3.39 acres, consisting of 1.13 acres of neighborhood parkland, 1.13 acres of City-wide parkland, and 1.13 acres of passive parkland. Developer shall receive a credit of .61 acres (equal to 10% of the 6.1 acres of public open space to be conveyed to the City pursuant to Section 3.2.1 above) to be applied against Developer's passive parkland dedication obligation of 1.13 acres, resulting in a remaining passive parkland dedication obligation of .52 acres. In lieu of satisfying the remaining passive parkland dedication requirement through the dedication of .52 acres of land, Developer shall install walking trails and a tot lot with the landscape improvements for the Project as shown on the Conceptual Landscape Plan prepared by Borrecco/Kilian and Associates, Inc. and approved by City as part of the Project Entitlements referenced in Recital 6. In lieu of the dedication of 1.13 acres of neighborhood parkland, Developer shall pay a fee of \$1,527 per residential unit, with such fee calculated by multiplying the neighborhood parkland acreage to be funded through the in lieu fee (1.13

acres) by the assumed per acre cost of acquiring neighborhood parkland (\$200,000/acre) and dividing the total by the number of residential units (148) to be developed within the Project (1.13 acres x \$200,000/acre ÷ 148 units = \$1,527/unit). In lieu of the dedication of 1.13 acres of City-wide parkland, Developer shall pay a fee of \$1,527 per residential unit, with such fee calculated by multiplying the City-wide parkland acreage to be funded through the in lieu fee (1.13 acres) by the assumed per acre cost of acquiring City-wide parkland (\$200,000/acre) and dividing the total by the number of residential units (148) to be developed within the Project (1.13 acres x \$200,000/acre ÷ 148 units = \$1,527/unit). The in lieu fees for which provision is made in this Section 3.2.2 shall be paid prior to the issuance of a building permit for each residential unit.

3.2.3 Park Improvement Costs. In addition to the in lieu fees established by Section 3.2.2 above, Developer shall pay for each residential unit to be developed within the Project, a Neighborhood Park Fee and a City-wide Park Fee. These fees shall be used for the purpose of funding the costs of improving the 1.13 acres of neighborhood parkland and 1.13 acres of City-wide parkland for which Developer is responsible. The Neighborhood Park Fee shall be in the amount of \$1,527 per residential unit, with such fee calculated by multiplying the neighborhood parkland acreage (1.13 acres) by the assumed per acre cost of installing neighborhood park improvements (\$200,000/acre) and dividing the total by the number of residential units (148) to be developed within the Project (1.13 acres x \$200,000/acre ÷ 148 units = \$1,527/unit). The City-wide Park Fee shall be in the amount of \$1,153 per residential unit, with such fee calculated based on the current City-wide Park Fee of \$1,674 reduced by a credit of \$521 for satisfying parkland dedication requirements (\$1,674 - \$521 = \$1,153). The Neighborhood Park Fee and City-wide Park Fee for which provision is made in this Section 3.2.3 shall be paid by Developer prior to the issuance of a building permit for each residential unit.

3.2.4 Annual Park Fee Adjustment and Advance Funding. The park fees for which provision is made in Sections 3.2.2 and 3.2.3 above may be adjusted annually on July 1 of each year by the percentage change in the Engineering News Record-Construction Cost Index for the United States, 20 City average (the "CCI") or comparable replacement index and may also be advance funded in whole or in part by the Mello Roos Community Services District or by Developer, at Developer's sole discretion, with any such advance funding by Developer subject to subsequent reimbursement by the Mello Roos Community Facilities District.

3.2.5 Entire Park Land Obligation. The City agrees that the commitments contained herein fully satisfy the Developer's General Plan park obligations for the dedication of neighborhood/community and City-wide parks and open space and for the improvement of such parklands.

3.3 School Fee Agreements. Developer, with the consent of Landowner, has entered into a separate written agreement with the Roseville City School District to mitigate the impacts of development of the Property on elementary schools within the district. Developer also agrees that, prior to City approval of a Final Subdivision Map for the Property, Developer shall enter into the Roseville Joint Union High School District's standard form Mutual Benefit High School Mitigation Agreement for the purpose of mitigating the impacts of development of the Property on high schools within the district. Developer further agrees that the City shall not approve a Final Subdivision Map unless and until such a separate written agreement by and between the Roseville Joint Union High School District and Developer has been executed by both parties and recorded against the Property. City agrees that so long as Developer is not in default of these agreements, City shall not refrain from approving a subdivision map or other such entitlements for the Property or from issuing any building permits for development thereof consistent with the Entitlements on the basis of adverse impacts of such development on school facilities. Developer agrees that a default under either of these school agreements shall also constitute a default under this Agreement with the City.

3.4 Public Utilities Within Rights-of-Way. All public utilities shall be located within the rights-of-way to be granted to City for the roadways within the Property or within public easements granted to City for such purposes. Accordingly, upon approval of the final small lot subdivision map, or demand of the City based upon service needs (which may include needs generated by other nearby development), whichever occurs first, Developer shall grant and convey to City the rights-of-way for any public roadways or public easements that include the area within which such public utilities will be located. If such utilities need to be installed prior to the construction of the applicable street(s), Developer shall grant a temporary public utility easement which shall merge with the rights-of-way or permanent public easements upon completion of the applicable street improvements.

Developer shall also grant and convey to City with each of the foregoing roadway easements a non-exclusive, co-extensive easement for sidewalk/pedestrian egress purposes. Each such easement shall be as depicted in the final small lot subdivision map and shall be located within right-of-way for the adjacent roadway as shown in the final map.

Nothing in this Agreement shall be construed to limit or restrict the right of the City to require the dedication of an easement for utility purposes related to development of any parcel when such requirement would be otherwise consistent with the reasonable exercise of the police powers of the City and is reasonably related to a requirement to serve the parcel or parcels adjacent to the easement.

3.5 Electric.

3.5.1 Streetlights. Concurrently with the construction of the adjacent roadways, Developer agrees to construct, or finance construction of, streetlights within the Property, as directed by the Electric Utility Director. Except as may otherwise be permitted by the Electric Utility Director, no street shall be opened to the public unless and until streetlights have been installed in accordance with applicable requirements of the Electric Department.

3.5.2 Electrical Efficiency. In order to balance conservation efforts with energy supplies, residential air conditioning units shall have a Seasonal Energy Efficiency Ratio (SEER) of two points above minimum as defined by the State of California in Title 24 of the Code of California Regulations and an Energy Efficiency Ratio (EER) of 12 or greater. Commercial air conditioning units of five tons or less (<65,000 BTU/h) shall meet the Consortium for Energy Efficiency (CEE) Tier II specifications. The SEER/EER ratings will be specified on building plans and Title 24 compliance certificates at the time building permits are requested.

3.6 Drainage and Special Grading Improvements. Developer shall provide drainage and special grading improvements as provided in this section.

3.6.1 Master Drainage Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Master Drainage Impact Study for its on-site drainage facilities to the satisfaction of the City Engineer. The Master Drainage Impact Study shall identify the size, location and construction timing of all major drainage facilities proposed for the Property and shall be accompanied by all supporting technical information and calculations.

3.6.2 Other Agency Approval. Prior to issuance of any building permit or grading permit for the Project, Developer shall obtain, at Developer's expense, all permits and agreements as required by other agencies having jurisdiction over drainage, water quality or wetlands issues including, but not limited to, the Regional Water Quality Control Board ("RWQCB"), the U.S. Army Corps of Engineers and the California Department of Fish and Game.

Prior to issuance of an occupancy permit for the Project, Developer shall prepare and process a LOMR(F) with the Federal Emergency Management Agency (FEMA) to remove the pond area out of the regulated flood plain.

Developer shall prepare and implement a Storm Water Pollution and Prevention Plan (SWP3), and shall construct and maintain Best Management Practices (BMPs) as required by law and the SWP3 and as approved by the RWQCB, concurrently with the construction of any improvements. Developer shall obtain a permit from the RWQCB for the General Construction Storm Water Permit Compliance Program, as required by law, prior to the start of any construction, including grading.

3.6.3 Storm Drains. Developer shall construct storm drain mains and laterals in accordance with the Master Drainage Plan and with the City's then current improvement standards and shall provide laterals to serve all residential parcels on the Property. The general design of the storm drain system is shown on Sheet 2 -- "Utility and Grading" of the Tentative Subdivision Map referenced in Recital 6.3 above and incorporated herein as Exhibit B, as such map may be amended. Storm drain laterals shall be constructed to the property line concurrently with the construction of connecting open channels or storm drain mains. Developer may use "cast in place" pipe for storm drains which are 24" in diameter or larger.

3.6.4 Drainage Easements. Where drainage improvements to be owned and maintained by City, are to be constructed by Developer, and are not located within road rights-of-way, as and when Developer installs such drainage improvements, Developer shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such improvements, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.6.5 Special Grading. Grading within the flood plain shall be conducted within the parameters of outside agency approval and guidelines. The developer is wholly responsible to obtain any and all necessary permits and approvals prior to commencement of such work within the flood plain.

With the creation of Parcel "K", the continuation of the access road shall be constructed to the parcel being served. This will include the construction of the creek crossing. The creek crossing will be designed within the parameters of the HEC-RAS study, prepared by Civil Solutions, Tom Plumber, on November 29, 2004, which evaluated a "no net increase" of flood levels within the flood plain. Precautionary upsizing of the 3 culverts will include the installation of 3,54-inch concrete pipes. Concrete winged head walls with concrete pads from the edge of pipe to the end of the headwalls shall be constructed as part of the inlet and outlet head wall structures. Maintenance of the crossing shall become the responsibility of the owner of the serving parcel (APN 017-155-066).

Beyond the outlet, a defined swale shall be constructed to convey storm water to the receiving water with minimal erosion potential. Typical design speeds are in the range of 2-feet/sec. The swale shall be seeded and lined with a geo-fabric that will promote a natural appearance upon the growth and stabilization of the feature.

The extension of the access road across the flood plain can not occur until such time as 1) an access easement has been perfected to the benefit of the City for the purposes of "Emergency Public Access" over and across Parcel K and the remaining access road, and 2) an agreement has been entered into with the City for any incidental maintenance conducted by the City to ensure that the structure maintains free flowing capacity. The Certificate of Completion (CoC) for the subdivision shall not be issued until such time as the crossing is complete to the satisfaction of the City.

3.7 Water System Improvements. Developer shall provide improvements to the potable water system as provided in this section.

3.7.1 Water Study. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Water Study for the on-site water facilities, to the satisfaction of the Environmental Utilities Director. The general design of the water system is shown on Sheet 2 -- "Utility and Grading" of the Tentative Subdivision Map referenced in Recital 6.3 above and incorporated herein as Exhibit B, as such map may be amended. The Water Study shall identify the size and locations of the water lines, pressure reducing stations and flow monitoring stations required to serve the Property, as well as the construction timing of such improvements, and shall be accompanied by all supporting technical information and calculations.

3.7.2 Financing of Water Supply. Developer shall have no obligation to install or pay for the installation of any off-site water storage, treatment or transmission facilities, except through the payment of water connection fees levied and collected by the City at the time of development pursuant to then existing City ordinances and this Agreement. Developer acknowledges that these fees include Developer's fair share reimbursement to North Central Roseville for water line oversizing. The provisions of this Section 3.7.2 notwithstanding, however, City shall not be precluded hereby from imposing on future development within the Property a pro-rata "fair share" special benefit area water connection fee which is specifically developed and adopted to pay for improvements associated with the oversizing of the water transmission system that serves development of the Property, if and when adopted by the City in accordance with the provisions of Section 2.5.2 above.

3.7.3 On-Site Water Lines. Developer shall provide on-site improvements to the water system as shown on Sheet 2 -- "Utility and Grading" of the Tentative Subdivision Map referenced in Recital 6.3 above and incorporated herein as Exhibit B, as such map may be amended. All improvements to be constructed by Developer, including mains, shall be designed and constructed pursuant to the City's then current Improvement Standards. All water system improvements shall be subject to City plan review, construction inspection and final approval. Developer shall pay current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.7.4 Water System Sequencing. Water system improvements to be located within particular roadways shall be installed concurrent with the installation of the corresponding road improvement, if not installed prior thereto.

3.7.5 Public Utility Easements. Where the water improvements to be constructed by Developer are not located within road rights-of-way, as and when Developer installs such water improvements, Developer shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such improvements, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.7.6 Water Softeners. Developer shall not provide any water stubouts for the installation of water softeners.

3.7.7 Water Conservation Measures. Developer and its successors shall implement a water conservation program. The program shall include compliance with the City's Water Efficient Landscape Ordinance. Such water conservation measures shall be disclosed to each purchaser of real property within the Property.

3.7.8 Instant Hot Water Feature. Every residential unit within the Project shall include a recirculating hot water system, or similar technology to provide instantaneous hot water at each hot water faucet.

3.8 Recycled Water. Developer shall provide improvements to the recycled water system as described in this section.

3.8.1 Recycled Water Master Plan. Prior to approval of any improvement plans for any improvements for the Property, Developer shall prepare a Recycled Water master plan for the recycled water facilities to the satisfaction of the Environmental Utilities Director.

Subject to the above, the Recycled Water Master Plan shall include design for the use of recycled water for landscape corridors in the public right-of-way. Developer shall install the necessary improvements to connect the Fiddymnt 44 recycled water service to the City's existing recycled water distribution system. This connection will require the installation of a 6 inch recycled water line across Blue Oaks Boulevard from the northeast corner of the Blue Oaks Boulevard/New Meadow Intersection to a point of connection with the existing recycled water line located in the Blue Oaks Boulevard Right-of-Way abutting the Hewlett Packard property to the south (the "Recycled Water Line Connector"). Developer shall be responsible for 100% of the costs of installing the Recycled Water Line Connector. The Recycled Water Line Connector shall be installed with the Blue Oaks Boulevard

Widening and Signal Improvements described in Section 3.10.4.2. If the developer of the Longmeadow property is constructing the Blue Oaks Boulevard Widening and Signal Improvements and agrees to install the Recycled Water Line Connector in conjunction therewith, Developer shall reimburse the developer of the Longmeadow property for 100% of the actual costs of installing the Recycled Water Line Connector. Such reimbursement shall be due and payable in accordance with the terms of an agreement between Developer and the developer of the Longmeadow property, or in the absence of such an agreement, on the earlier of (i) issuance of a permit for grading, improvement or construction on the benefited property, (ii) recordation of a final parcel or subdivision map for the benefited property or (iii) receipt of funds from an infrastructure financing district that is formed by or includes the benefited property. If developer of the Longmeadow property constructs the Blue Oaks Boulevard Widening and Signal Improvements but does not agree to install the Recycled Water Line Connector in conjunction therewith, City shall provide Developer with a reasonable opportunity to install the Recycled Water Line Connector while the Blue Oaks Boulevard Widening and Signal Improvements are under construction and the Blue Oaks Boulevard pavement has been removed to accommodate the PG&E Gas Line Relocation described in Sections 3.10.3 and 3.10.4.

3.8.2 Recycled Water Improvements. Recycled water improvements shall be designed and constructed pursuant to the adopted City of Roseville Improvement Standards and the City of Roseville Construction Standards. The applicant shall pay all applicable recycled water fees.

3.9 Sewer Improvements. Developer shall provide on-site improvements to the sewer system as described in this Section.

3.9.1 Master Wastewater Plan. Prior to approval of any improvement plans for subdivision improvements for the Property, Developer shall prepare a Wastewater Study for its on-site wastewater facilities, as shown on Sheet 2 -- "Utility and Grading" of the Tentative Subdivision Map referenced in Recital 6.3 above and incorporated herein as Exhibit B, as such map may be amended, to the satisfaction of the Environmental Utilities Director. All sewer improvements shall be consistent with the Regional Wastewater Master Plan. The Wastewater Study shall identify the size of the wastewater lines, pump station and related facilities required to serve the Property, as well as the construction timing of such improvements, and shall be accompanied by all supporting technical information and calculations.

Except for the improvements expressly described in the approved Wastewater Study, Developer shall have no obligation to install or pay for the installation of any off-site treatment or transmission facilities, except through the payment of sewer connection fees levied and collected by City at the time of development pursuant to then existing City ordinances.

3.9.2 Sewer Improvement Standards. Sewer improvements shall be designed and constructed pursuant to City's then current Improvement Standards and shall be subject to City plan review, construction inspection and final approval. Developer shall pay then current plan check and inspection costs as incurred by City for review and inspection of such improvements.

3.9.3 Access to Manholes. All manholes shall be located so that they are accessible by City sewer maintenance vehicles, unless otherwise approved by the Environmental Utilities Director.

3.9.4 Public Utility Easements. Developer shall be solely responsible for obtaining all easements and rights-of-way located outside of the Property that are required for the construction of the improvements identified by the Wastewater Study. City shall provide Developer with any rights-of-entry needed to connect these improvements to the City's existing lines. Where the wastewater improvements to be constructed by Developer are not located within road rights-of-way, as and when Developer installs such wastewater improvements, Developer shall grant and City shall accept a non-exclusive public utility easement for the ownership and maintenance of such improvements, together with access thereto for maintenance purposes only. Easement widths shall be granted in accordance with the City's then current Improvement Standards.

3.9.5 Sequencing of Wastewater Improvements. Wastewater lines to be located within particular roadways shall be installed concurrent with the installation of the corresponding road improvements, if not installed prior thereto.

3.10 Road Improvements. Developer, at Developer's expense, shall provide the following road improvements in the manner and at the time as provided in this section.

3.10.1 Blue Oaks Boulevard Frontage Improvements. Developer shall construct Blue Oaks Boulevard in its ultimate location to provide two westbound lanes, unless such roadway improvements are constructed by the developer of the Longmeadow Property. Developer's obligation for roadway improvements shall include responsibility for curb, gutter, sidewalk, utilities, landscaping adjacent to the development and within one-half the median, streetlights and the first eighteen feet (18') of pavement (including, but not limited to, asphalt, concrete, aggregate base and aggregate sub-base) for that portion of the Blue Oaks Boulevard right-of-way adjacent to the Property (the "Blue Oaks Frontage Improvements"). The Blue Oaks Frontage Improvements shall also include additional pavement widening at the intersection of Blue Oaks Boulevard and New Meadow Drive, located along the Project's western boundary (as shown on the Tentative Subdivision Map referenced in Recital 6.3 above and incorporated herein as Exhibit B, as such map may be amended) to accommodate turn lanes and transitions, drainage facilities, traffic signing and striping, underground portions of traffic signals and signal interconnects in conjunction with joint trench work, a complete signal at the intersection of Blue Oaks and New Meadow, and such additional facilities, provided such widening and additional facilities are reasonably determined necessary by the City Engineer. City shall reimburse developer for 10 feet of pavement on Blue Oaks Boulevard and the design and installation of the signal.

Prior to the approval of any improvement plans for the development of the site, the Developer shall enter into a Deferred Improvement Agreement (DIA) with the City for the cost of ½ of the landscaping of the median within Blue Oaks Boulevard for the length of the project. Proper securities shall be posted in accordance with a standard City DIA.

As to any road improvements to be constructed by Developer hereunder, Developer shall have the responsibility of securing all state and federal permits necessary for such construction.

3.10.2 New Meadow Frontage Improvements. Developer's obligation for roadway improvements includes the responsibility for that portion New Meadow Drive, located on the western edge of the subdivision off of Blue Oaks Boulevard that is located within the right-of-way to be dedicated to the City by Developer in accordance with the provisions of Section 3.10.4 below. Developer's obligation with respect to the New Meadow Frontage Improvements shall also include modifications to the PG&E gas line located within the New Meadow frontage as necessary to accommodate the other New Meadow Frontage Improvements.

3.10.3 PG&E Gas Line Relocation. Developer's obligation for roadway improvements shall also include any necessary relocation of the PG&E gas line to accommodate the signalization of the Blue Oaks Boulevard/New Meadow Drive intersection and the right turn pocket from Blue Oaks Boulevard onto New Meadow Drive. The Developer shall be responsible for 60% of the relocation costs and the City shall be responsible for the remaining 40% of the relocation costs. Any additional realignment of PG&E facilities beyond that required to accommodate the Blue Oaks Boulevard/New Meadow Drive intersection and right turn lane is the sole responsibility of the Developer. Prior to the approval of construction drawings the Developer shall enter into a reimbursement agreement with the City.

3.10.4 Timing, Dedication, and Construction of Road Improvements.

3.10.4.1 Upon recordation of the final small lot subdivision map for the Property, Developer shall dedicate the rights-of-way within the Property required for the improvements described in this Section 3.10, to the extent such improvements are public rather than private streets. In the event the developer of the adjacent Longmeadow property is ready to proceed with construction of the New Meadow Drive Improvements prior to recordation of the final small lot subdivision map for the Property, Developer or Landowner shall, upon demand by City, convey the Public Street right-of-way to the City and shall provide the developer of the adjacent Longmeadow property with a right-of-entry as necessary to accommodate construction of New Meadow Drive.

In the event Developer constructs those required improvements as described in Sections 3.10.1, 3.10.2, and 3.10.3, Developer shall be entitled to reimbursement from the City's Capital Improvement Fund as specified in Sections 3.10.1 and 3.10.3. City shall make payment to Developer for all reimbursable costs within thirty (30) days of issuance of a Notice of Completion for the eligible roadway improvements constructed by Developer. City and Developer acknowledge that construction of the Blue Oaks Boulevard road improvements may also require improvements to the Blue Oaks Boulevard right-of-way along the frontage of the adjacent Longmeadow property that are ultimately the responsibility of the owner of such property (the "Longmeadow Frontage Improvements"). Where the Blue Oaks Boulevard road improvements Developer is required to construct include any portion of the Longmeadow Frontage Improvements, Developer shall be entitled to reimbursement by the owner of the adjacent Longmeadow property for any and all actual costs incurred by Developer for such construction.

In the event Developer constructs New Meadow Drive, such roadway shall be constructed to its ultimate configuration. Developer may enter into a reimbursement agreement from the owner of the adjacent Longmeadow property that is also served by New Meadow Drive for one-half (1/2) the actual costs incurred by Developer in constructing New Meadow Drive. The City will use its best efforts to seek reimbursement with the development of the adjacent parcel.

3.10.4.2 All roadway improvements described in Sections 3.10.1 and 3.10.2 and the relocation of the PG&E gas line described in Section 3.10.3 shall be installed concurrently with the subdivision improvements for the Project, unless such road improvements have already been constructed by the developer of the adjacent Longmeadow Property.

3.10.4.3 In the event the developer of the Longmeadow Property constructs any or all Improvements as described in Sections 3.10.1, and 3.10.3 for which the Developer is responsible, and the City, as part of the Development Agreement Relative to the Longmeadow Property reimburses the developer of the Longmeadow Property for those costs incurred in constructing such improvements, then Developer shall reimburse City for those costs associated with the Developer's responsibility as specified in Sections 3.10.1, and 3.10.3. Such reimbursement by Developer to City shall be due and payable upon completion of the Blue Oaks Boulevard Frontage Improvements by the developer of the Longmeadow Property and acceptance of such improvements by City, and prior to or concurrent with the recordation of the final small lot subdivision map for the Project.

3.10.4.4 In the event the developer of the Longmeadow Property constructs any or all Improvements as described in Sections 3.10.2 for which the Developer is responsible, then Developer shall reimburse the developer of the Longmeadow Property for one-half (1/2) the costs of constructing New Meadow Drive. Such reimbursement by Developer to the developer of the Longmeadow property shall be due and payable on the earlier of (i) issuance of a permit for grading, improvement or construction on the benefited property, (ii) recordation of a final parcel or subdivision map for the benefited property or (iii) receipt of funds from an infrastructure financing district that is formed by or includes the benefited property.

3.10.5 Road Improvement Standards. All public roadway improvements to be installed by Developer shall comply with the City's then current standards for public streets. The rights-of-way required for such road improvements shall be as shown on the Tentative Subdivision Map referenced in Recital 6.3 above, as such map may be amended.

3.10.6 Landscape Setbacks. The landscape setback along the Blue Oaks Boulevard frontage shall be fifty (50) feet in width. The landscape setback along New Meadow Drive shall be approximately twenty-five (25) feet in width and shall include the additional landscape area of the Project entries as shown on the Tentative Subdivision Map referenced in Recital 6.3 above, as such map may be amended. Such setbacks shall be measured generally from back of curb, except along intersections or project entry points where turn lanes, transitions, bus turnouts, and other similar features may encroach into the landscape setback. Such landscape setbacks shall be limited generally to landscaping, streetlights, utilities, sidewalks, soundwalls and related uses; provided that the landscape areas at the Project entries may also include decorative walls or wrought iron style fencing, ornamental lighting, decorative paving, water features, gate elements (including call boxes), monumentation, signage, and other Project entry enhancements. The landscape setbacks shall be included in the road rights-of-way.

3.10.7 Traffic Mitigation Fees. Developer shall pay the then current Traffic Mitigation Fee applicable to the North Industrial Plan Area of the City.

Landowner and Developer acknowledge that the Property is included in the assessment district formed pursuant to the Bizz Johnson Highway Interchange Joint Powers Authority (the "JPA") for the purposes of constructing interchanges along Highway 65 at Galleria Boulevard/Stanford Ranch Road, Pleasant Grove Boulevard, Blue Oaks Boulevard and Sunset Boulevard; the South Placer Regional Transportation Authority (SPARTA) for the purposes of constructing regional transportation improvements; and the Baseline, Fiddymont, and Walerga joint City/County assessment.

Nothing in this Section shall be construed as an agreement to an allocation of assessment or benefit to a particular parcel or parcels or to constitute a waiver of the right of Landowner and Developer to protest an allocation of a particular assessment burden or benefit associated with any updates of the foregoing fee programs.

3.10.8 Light Rail Funding. Landowner and Developer consent to and agree that the Property shall participate on a fair share basis in a city-wide funding mechanism for the purpose of financing the costs of extending a light rail line or capital corridor rail line into the City of Roseville and of operating such a line once in service, if and when such a mechanism is adopted.

3.11 Miscellaneous Public Facilities and Services.

3.11.1 Fire Tax. Developer shall pay the Fire Service Construction Tax set forth at Chapter 4.46 of the Roseville Municipal Code. In the event that the Fire Service Construction Tax is not extended or otherwise discontinued, developer or its successors shall continue through project build out, to pay a fee at issuance of a building permit, equal in amount to the discontinued Fire Construction Tax. Developer hereby consents to and waives any objection to the imposition of such substitute fee.

3.11.2 Fire Station In Lieu Fee. Developer acknowledges that City desires to construct a new fire station in the vicinity of the Property, the Longmeadow Property, and the Hewlett-Packard campus, but has not decided on a location in light of potential future development in the City. To assist the City in financing the acquisition of a fire station site, Developer shall pay a fee in lieu of dedication or reservation of land for a fire station site in the amount of \$2,380 per acre for a total of \$104,720, based on 44 acres, or a per unit fee of \$708, based on 148 units ($\$104,720 \div 148 = \708). Such fee shall be paid prior to the issuance of each building permit for a single family residential unit within the Property. This fee may be advance funded in whole or in part by the Mello Roos Community Facilities District or by Developer, at Developer's sole discretion, with any such advance funding by Developer subject to subsequent reimbursement by the Mello Roos Community Facilities District.

3.11.3 County-Wide Facilities Fee. Developer shall pay the county-wide facilities impact fee adopted by the City, in the amount then being assessed by the City; provided, however, if such impact fee is suspended by the City, or for any reason is no longer in effect, then Developer shall pay such fee in the amount imposed by the County for areas annexing from the County to cities. Such fee shall be paid prior to the issuance of each building permit for a single family residential unit within the Property.

3.11.4 Public Benefit Contribution. Prior to the issuance of each building permit for a single family residential unit within the Property, Developer shall pay \$1,430 per unit to offset a portion of the impact of the Project and to ensure that the Project will benefit current and future residents of Roseville. This payment may be advance funded in whole or in part by the Mello Roos Community Facilities District or by Developer, at Developer's sole discretion, with any such advance funding by Developer subject to subsequent reimbursement by the Mello Roos Community Facilities District. Developer shall not be entitled to any fee credit for payment of this contribution.

3.12 Liens, Encumbrances, Covenants, Conditions and Restrictions. Except as approved by the City or provided for by this Agreement, all property to be conveyed in fee to the City pursuant to this Agreement shall be free of any liens, financial encumbrances, special taxes, special assessments or hazardous materials, provided the City's interest shall be subject to the application of the Project CC&Rs to the extent the conditions, covenants and restrictions thereof implement the provisions of this Agreement with respect to such interest. Developer shall, for each such conveyance, provide to City, at Developer's expense, a current preliminary title report and preliminary site assessment for hazardous materials in a form approved by the City Attorney. Any policy of title insurance required by City shall be at City's expense. Prior to such conveyance of any property by Developer to the City other than the Environmental Preserve, Developer shall be responsible, at Developer's expense, to fill any wetlands located on the applicable property to be conveyed in accordance with the terms and conditions of the 404 Permit, to be obtained pursuant to Section 2.7.1 above.

3.13 Negative Declaration Mitigation Measures. Notwithstanding any other provision in this Agreement to the contrary, as and when Developer elects to develop the Property, Developer shall be bound by, and shall perform, all mitigation measures contained in the Negative Declaration related to such development which are adopted by the City and are identified in the mitigation monitoring plan as being a responsibility of Developer.

3.14 Waiver. In consideration of the benefits received pursuant to this Agreement, Landowner and Developer, on behalf of themselves and their heirs, successors in interests and assigns, waive any and all causes of action which they might have under the ordinances of the City of Roseville or the laws of the State of California or the United States with regard to any otherwise uncompensated or undercompensated conveyance or dedication of land or easements over the Property or improvements that are specifically provided for in this Agreement. This waiver shall not apply to any conveyances or dedications of land or easements that are not specifically contained in this Agreement and are subsequently desired by the City.

3.15 Community Facilities District and Financing.

3.15.1 Community Facilities District.

3.15.1.1 City and Developer agree that, if requested by Developer, with the consent of Landowner, the Parties will use their best efforts to cause to be formed for the purpose of financing the acquisition or construction of certain improvements or facilities to be determined by the City and Developer as generally described in Exhibit "C," attached hereto and incorporated herein by reference (the "CFD Improvements").

3.15.1.2 City and Developer agree that, with the consent of Landowner and to the extent permitted by law, City shall use its best efforts to cause bonds to be issued, in amounts sufficient to effect the purposes of this section. Developer shall be allocated Developer's share of infrastructure costs and shall be assessed special taxes in a fair and proportionate manner.

3.15.1.3 Nothing in this section shall be construed to preclude the payment by Developer of a cash amount equivalent to Developer's proportionate share of costs for the CFD Improvements, or any portion thereof, prior to the issuance of bonds.

3.15.1.4 Concurrent with the formation of the CFD, Developer and City shall enter into a shortfall agreement, in form and substance acceptable to City, whereby Developer shall covenant to finance its fair share of the costs of the CFD Improvements, to the extent that the bonds issued by the CFD do not provide sufficient funding for the completion of such Improvements.

3.15.1.5 Nothing herein shall be construed to limit Developer's option to install the CFD Improvements through the use of private financing.

3.16 Completion of Improvements. City generally requires that all improvements necessary to service new development be substantially completed prior to issuance of building permits (except model home permits as may be provided by the City's Subdivision Ordinance). However, the parties hereto acknowledge that all of the CFD Improvements associated with the development of the Property may not need to be completed to adequately service portions of the Property as such development occurs. Therefore, as and when portions of the Property are developed, all CFD Improvements required to service such portion of the Property in accordance with the Entitlements (e.g., pursuant to specific tentative map conditions or other land use approvals) shall be completed prior to issuance of any building permits within such portion of the Property (except permits for model homes, which may be issued sooner in accordance with the City's Subdivision Ordinance). Provided, however, the City Engineer may approve the issuance of building permits and occupancy permits prior to completion of all such CFD Improvements if the improvements necessary to provide adequate service to the portion of the Property being developed are substantially complete to the satisfaction of the City Engineer.

All utilities to be installed by Developer pursuant to Sections 3.6, 3.7 and 3.8 will be subject to the review and approval of the City Environmental Utilities Department. In connection therewith, Developer shall be responsible for coordinating the alignment of all such planned and future utilities within the applicable rights-of-way to the satisfaction of the City Environmental Utilities Department.

3.17 CFD Services District.

3.17.1 Formation.

3.17.1.1 Consent, Waiver and Special Benefit. No residential building permit, excluding permits for model homes, shall be issued until the Property has been included in a CFD Services District or an alternative financing mechanism (such as a Homeowners Association with the authority to assess the homeowners and/or an Environmental Endowment as further described below) has been created for the purpose of funding the maintenance obligations described in Section 3.17.2 (the "Maintenance Obligations"). Developer consents to and shall support the inclusion of the Property in a CFD Services District or other such financing mechanism as necessary to fund the Maintenance Obligations and further consent to the levy of such special taxes as may be required for this purpose. For purposes of Article XIID of the California Constitution, Developer acknowledges hereby that all the services described herein to be provided by the CFD Services District will provide a "special benefit" to the Property as defined by said Article and that the foregoing support and consent shall apply as to any claim that any portion of the services supported by the special tax does not provide special benefit to the Property. The CFD Services District shall include the following:

A. Assessment for Storm Water Management which shall be initially assessed at \$18 per dwelling unit annually.

B. Assessment for Emergency Services (and at the discretion of the City Council for Public Transit Services), which shall be initially assessed at \$285 per dwelling unit equivalent.

3.17.1.2 Public Parcel Exclusion. Developer expressly agrees that Parcels conveyed or to be conveyed to the City of Roseville shall be excluded from any assessment to be imposed by the CFD Services District.

3.17.2 Obligations. The CFD Services District and/or alternative financing mechanism, as described in Section 3.17.1.1, shall:

3.17.2.1 fund the maintenance of the landscape setback on the northern side of Blue Oaks Boulevard and on the eastern side of the Public Street, including any entry monumentation and signage, soundwalls, masonry walls or fences, and pedestrian and/or bicycle pathways located therein as well as the performance of autumn leaf cleanup;

3.17.2.2 fund one-half the costs of maintaining the median within the Public Street;

3.17.2.3 fund the maintenance of the public use easements including any pedestrian and/or bicycle pathways located within such public easements;

3.17.2.4 fund the maintenance of any bus shelters located within the Property, to the extent the City does not obtain alternative financing for such maintenance (e.g., through leasing these shelters for advertising);

3.17.2.5 fund the maintenance of all public water quality structural controls and drainage swales constructed between storm drain outfalls and receiving waters; and

3.17.2.6 fund any costs the City is entitled to recover from the Homeowners Association pursuant to Section 3.2.1 above for maintenance of the Environmental Preserve performed by the City as a result of a failure by the HOA to diligently prosecute such maintenance and to pay such costs within thirty (30) days of written demand.

3.17.3 Encroachment Permits, Landscape Maintenance Easements. Developer and City agree to grant encroachment permit(s) or maintenance easements to the Services District, the Homeowners Association, Developer or City or their respective agents, employees, successors, and assigns for the purpose of entry into the private common areas, public easements or City property (including streets and rights-of-way) to perform the maintenance obligations described herein.

3.18 Homeowners Association.

3.18.1 Formation. Developer shall establish a Homeowners Association, or alternative private financing mechanism, for the purpose of funding the maintenance obligations described in Section 3.18.2.

3.18.2 Obligations. The HOA and/or alternative private financing mechanism, as described in Section 1.18.1 shall:

3.18.2.1 fund the maintenance of the private use common areas including any entry monumentation and signage, soundwalls and/or fences, and pedestrian and/or bicycle pathways located within such common areas;

3.18.2.2 fund the maintenance of all the private roadways located within the Property, including, where applicable, the sidewalks that are appurtenant thereto; and

3.18.2.3 fund the operation and management of the Environmental Preserve, including trash and debris collection, annual weed abatement, and other maintenance activities as well as the environmental reporting and mitigation monitoring and the annual review thereof, as required by the mitigation monitoring plan prepared for the Project and referenced in the Negative Declaration.

4.2 Credits and Reimbursements. Developer may, pursuant to this Agreement, be financing construction of certain improvements which would otherwise be paid for by the City or other parties and which serve other properties or which would be financed by existing City fees. City and Developer agree that, in consideration of the financing of such improvements by Developer, and only where this Agreement explicitly so provides, Developer shall be entitled to credits and reimbursement as follows:

4.2.1 Participation/Reimbursement By City. The parties agree that Developer shall not be entitled to any reimbursement from the City for the construction of any public improvements required by this Agreement unless explicitly provided by this Agreement.

4.2.2 Reimbursement by Third Parties. In the case of public road improvements which abut property or traverse through property owned by third persons, including New Meadow Drive on the western edge of the Property to be shared with the Longmeadow property, and other public improvements which are oversized to benefit property owned by third persons, Developer shall be entitled to receive a reimbursement from the benefited property's owner (and not the City) in an amount equal to the benefited property's pro rata share of the costs of the oversized improvements. Unless otherwise specified in this Agreement, a benefited property's pro rata share of costs shall be calculated based on the proportionate benefit derived by the property from the oversized improvement. Reimbursement may be provided directly from the owner of the property benefiting from such improvements or from a community facilities district or any other infrastructure financing district if such a district is formed by or includes such properties and includes monies for the construction of said improvements.

City shall use its best efforts, to the extent City has the authority to do so, to impose the obligation to pay reimbursements for which provision is made in this Section 4.2.2, as a condition of development of the benefited property, at the time the owner of the benefited property requests a discretionary approval or other land use entitlement from City. Such reimbursement shall be due and payable on the earlier of (i) issuance of a permit for grading, improvement or construction on the benefited property, (ii) recordation of a final parcel or subdivision map for the benefited property or (iii) receipt of funds from an infrastructure financing district that is formed by or includes the benefited property. City's obligation to impose such conditions and collect such reimbursements shall terminate upon any termination of this Agreement.

4.2.3 Reimbursable Hard Costs. The "hard costs" of construction to be reimbursed to Developer by the City or a third party or to be paid by Developer to any third party in accordance with the terms of this Agreement shall consist of the identifiable and commercially reasonable costs of the design, engineering and construction as actually incurred by Developer or such third party for the reimbursable work.

4.2.4 Increased Amount of Reimbursements. In each case in which this Agreement provides that Developer is entitled to receive reimbursement for improvements from third parties or is required to pay reimbursement to third parties, Developer shall be entitled to receive the reimbursement amount, increased according to the Construction Cost Index from the date that Developer incurred the reimbursable cost to the date of reimbursement.

4.2.5 Term for Credits and Reimbursements. If not otherwise terminated by the terms of this Agreement, City's obligation to provide any credits or to pay any reimbursements to Developer that accrue hereunder shall terminate twenty (20) years after the effective date of this Agreement.

4.2.6 Not a Limitation. Nothing in the foregoing Section 4.2 shall be construed to limit Developer from receiving, in consideration of the improvements to be constructed by Developer hereunder, any other credits or reimbursements from City otherwise provided under then existing City policy, rule, regulation or ordinance.

4.3 Applications for Permits and Entitlements.

4.3.1 Action by City. City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Entitlements and this Agreement, and shall act upon such applications in a timely manner.

4.3.2 Maps and Permits. Provided that the Services District has been or will at the time of the requested final approval be formed and authorized to levy the special tax against the applicable portion of the Property in accordance with Section 3.15 hereof, and further provided that Landowner or Developer is not in default under this Agreement, City shall not refrain from approving the final residential lot subdivision map nor shall it cease to issue building permits, certificates of occupancy or final inspections for development of the Property that is consistent with the Entitlements. The acceptance, review and approval of any application for a final residential lot subdivision map or building permit may be conditioned upon the submission of a petition to form the Services District or annex the Property into the Services District, as applicable. Prior to such formation and/or annexation, City shall accept, for review, processing and approval, consistent with the Entitlements, an application for a tentative residential lot subdivision map.

City acknowledges that under Government Code Section 66452.6, the term of a tentative subdivision map will be automatically extended for a period of time where a subdivider is obligated to install certain improvements located outside the boundaries of the subdivision. In determining the term of any tentative subdivision map approved by the City for the Property and without limiting the effect of any other provisions of the Government Code dealing with map extensions, the City agrees that the CFD Improvements described hereunder shall be treated as such off-site improvements for purposes of applying Section 66452.6 of the Government Code.

4.3.3 Personnel. Nothing in this Agreement shall be construed to require City to hire or retain personnel for the purposes of evaluating, processing or reviewing applications for permits, maps or other entitlements or for the design, engineering or construction of public facilities in excess of those for which provision is made in the normal and customary budgeting process or fee schedules of City.

4.4 Subdivision Map Act Waiver. Notwithstanding any other provision of this Agreement, or of Sections 66452.1, 66452.2, 66456.2 and 66458, of the Government Code (or any successor or replacement statute), Landowner and Developer expressly waive the time limits for review and approval by City of a tentative subdivision map to the extent that such period does not exceed one hundred fifty (150) days beyond the time otherwise provided by law, unless Landowner and Developer and City mutually agree to another time limit.

4.5 Limited Waiver of Protest Rights. In conjunction with any proceedings creating an assessment district or other applicable financing mechanism for which provision is made in this Agreement, Developer waives herewith any right to protest which it may have under Section 2825 of the Streets and Highways Code to the extent that such protest would arise under Section 2825(a) through 2825(f) and Section 2825(h); but expressly retains the right of protest with respect to Section 2825(g).

4.6 Moratorium, Quotas, Restrictions or Other Growth Limitations. Subject to applicable law relating to the vesting provisions of development agreements, Landowner and Developer and City intend that, except as otherwise provided herein, this Agreement shall vest the Entitlements against subsequent City resolutions, ordinances, initiatives and referenda that directly or indirectly limit the rate, timing, or sequencing of development, or prevent or conflict with the permitted uses, density and intensity of uses as set forth in the Entitlements. Landowner and Developer shall, to the extent allowed by the laws pertaining to development agreements, be subject to any growth limitation ordinance, resolution, rule, regulation or policy which is adopted on a uniformly applied, City-wide or area-wide basis and directly concerns a public health or safety issue, in which case City shall treat Landowner and Developer in a uniform, equitable and proportionate manner with all properties, public and private, which are impacted by that public health or safety issue. By way of example only, an ordinance which precluded the issuance of a building permit because City had inadequate sewage treatment capacity to meet the demand therefor (either City-wide or in a designated sub-area of the City) would directly concern a public health issue under the terms of this paragraph and would support a denial of a building permit within the Property, so long as City was also

denying City-wide or area-wide all other requests for building permits which require sewage treatment capacity, however, an attempt to limit the issuance of building permits because of a general increase in traffic congestion levels in the City would not directly concern a public health or safety issue under the terms of this paragraph.

4.7 Essence of Agreement. The foregoing Sections 2, 3 and 4 are of the essence of this Agreement.

SECTION 5: DEFAULT, REMEDIES, TERMINATION

5.1 General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provisions of this Agreement shall constitute a default. In the event of alleged default or breach of any term or condition of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings.

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

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

Evidence of default may also arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of default of this Agreement as set forth in this section, specifying in said notice the alleged nature of the default, and potential actions to cure said default and shall specify a reasonable period of time in which such default is to be cured. If the alleged default is not cured within thirty (30) days or within such longer period specified in the notice, or if the defaulting party waives its right to cure such alleged default, the other party may terminate this Agreement.

No building permit shall be issued or building permit application accepted for any structure on the Property if the permit applicant owns and controls any property subject to this Agreement, and if such applicant or entity or person controlling such applicant is in default of the terms of this Agreement.

5.2 Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Landowner and Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code and the monitoring of mitigation in accordance with Section 21081.6 of the Public Resources Code of the State of California. Notice of such annual review shall include the statement that any review of obligations of Landowner and Developer as set forth in this Agreement may result in termination of this Agreement. A finding by City of good faith compliance by Landowner and Developer with the terms of the Agreement shall be conclusive with respect to the performance of Landowner and Developer during the period preceding the review. Landowner and Developer shall be responsible for the cost reasonably and directly incurred by the City to conduct such annual review, the payment of which shall be due within thirty (30) days after conclusion of the review and receipt from the City of the bill for such costs.

Upon not less than thirty (30) days written notice by the Planning Director of City, Landowner and Developer shall provide such information as may be reasonably requested and deemed to be required by the Planning Director in order to ascertain compliance with this Agreement.

In the same manner prescribed in Section 10, the City shall deposit in the mail to Landowner and Developer a copy of all staff reports and related exhibits concerning contract performance and, to the extent practical, at least ten (10) calendar days prior to any such periodic review. Landowner shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or if the matter is referred to the Planning Commission before said Commission.

If City takes no action within thirty (30) days following the hearing required under Roseville Municipal Code Section 19.94.080, or any successor thereof or amendment thereto, Landowner and Developer shall be deemed to have complied in good faith with the provisions of the Agreement.

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

5.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation; provided, however, the sole remedy of City for any default of this Agreement by Landowner and Developer shall be to terminate this Agreement and the vesting of the Entitlements hereunder and to cease approving requests for development of the Property. All legal actions shall be initiated in the Superior Court of the County of Placer, State of California, or in the Federal District Court in the Eastern District of California.

5.5 Effect of Termination. If this Agreement is terminated following any event of default by Landowner and Developer or for any other reason, such termination shall not affect the validity of any building or improvement within the Property which is completed as of the date of termination, provided that such building or improvement has been constructed pursuant to a building permit issued by the City. Furthermore, no termination of this Agreement shall prevent Landowner and Developer from completing and occupying any building or other improvement authorized pursuant to a valid building permit previously issued by the City that is under construction at the time of termination, provided that any such building or improvement is completed in accordance with said building permit in effect at the time of such termination.

5.6 Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party for breach of this Agreement or to enforce any provisions herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

SECTION 6: HOLD HARMLESS AGREEMENT

Landowner and Developer and its successors-in-interest and assigns, hereby agrees to, and shall defend and hold City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from the operations of Landowner or Developer, or of Landowner's or Developer's contractors, subcontractors, agents, or employees under this Agreement, whether such operations be by Landowner or Developer, or by any of Landowner's or Developer's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Landowner or Developer or Landowner's or Developer's contractors or subcontractors, unless such damage or claim arises from the negligence or willful misconduct of City. The foregoing indemnity obligation of Landowner or Developer shall not apply to any liability for damage or claims for damage with respect to any damage to or use of any public improvements after the completion and acceptance thereof by City. In addition to the foregoing indemnity obligation, Landowner and Developer agree to and shall defend, indemnify and hold City, its elective and appointive boards, commissions,

officers, agents and employees harmless from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement, exclusive of any such actions brought by Landowner or Developer, their successors-in-interests or assigns. City acknowledges hereby that the foregoing liability of Landowner and Developer shall be limited to their interest in the Property and that neither Landowner nor Developer nor any of their partners, officers, shareholders, employees or agents shall have any personal liability therefor.

SECTION 7: PROJECT AS A PRIVATE UNDERTAKING

It is specifically understood and agreed by and between the parties hereto that the subject project is a private development. No partnership, joint venture or other association of any kind is formed by this Agreement.

SECTION 8: COOPERATION IN THE EVENT OF LEGAL CHALLENGE

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

SECTION 9: GENERAL

9.1 Enforceability. The City agrees that unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Adopting Ordinance, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building regulation adopted by City, or by initiative or referendum, which changes, alters or amends the rules, regulations and policies applicable to the development of the Property at the time of approval of this Agreement, as provided by Government Code Section 65866.

9.2 City Finding. The City has found and determined that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

9.3 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Landowner and Developer and the City and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

9.4 Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a party hereto of an essential benefit of its bargain hereunder, then such party so deprived shall have the option to terminate this entire Agreement from and after such determination.

9.5 Construction. This Agreement shall be subject to and construed in accordance and harmony with the Roseville Municipal Code, as it may be amended, provided that such amendments are not inconsistent with and do not otherwise affect the Vested Rights granted to the parties by this Agreement.

9.6 Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the

requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Landowner or Developer.

SECTION 10: NOTICES

All notices required by this Agreement, the enabling legislation, or the procedure adopted pursuant to Government Code Section 65865, shall be in writing and delivered in person or sent by certified mail, postage prepaid.

Notice required to be given to the City shall be addressed as follows:

Planning Director
City of Roseville
311 Vernon Street
Roseville, CA 95678

Notice required to be given to the Landowner shall be addressed as follows:

Attn: John W. Fiddymont
Walaire, Inc.
3017 Douglas Boulevard, Suite 150
Roseville, CA 95661

With copies to:

Attn: Stephen Thurtle
ST Management
2220 Douglas Boulevard, Suite 290
Roseville, CA 95661

Attn: Douglas M. Hodell
Boutin Dentino Gibson Digiusto Hodell Inc.
555 Capitol Mall, Suite 1500
Sacramento, CA 95814

Notice required to be given to the Developer shall be addressed as follows:

Attn: Hilde Chan
Meritage Homes of California, Inc.
1800 Sutter Street, Suite 500
Concord, CA 94520

Either party may change the address stated herein by giving notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

SECTION 11: ASSIGNMENT

From and after recordation of this Agreement against the Property, Landowner and Developer shall have the full right to assign this Agreement as to the Property, or any portion thereof, in connection with any sale, transfer or conveyance thereof, and upon the express written assignment by Landowner or Developer and assumption by the assignee of such assignment in the form attached hereto as Exhibit "D-1/D-2" and the conveyance of Landowner's or Developer's interest in the Property related thereto, Landowner or Developer shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Landowner/Developer," with all rights and obligations related thereto, with respect to such conveyed property. Prior to recordation of this Agreement, any proposed assignment of this Agreement by Landowner or Developer shall be subject to the prior written consent of the City Manager on behalf of the City and the form of such assignment shall be subject to the approval of the City Attorney, neither of which shall be unreasonably withheld.

SECTION 12: MORTGAGEE PROTECTION -- RIGHTS OF CURE

12.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in-lieu-of foreclosure or otherwise.

12.2 Mortgagee Obligations. City, upon receipt of a written request therefore from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of Developer under this Agreement, provided that all defaults by Developer hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee shall comply with all of the provisions of this Agreement.

12.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to Developer and specifying the address for service thereof, City shall endeavor to deliver to the Mortgagee, concurrently with service thereof to Developer, all notices given to Developer describing all claims by the City that Developer has defaulted hereunder. If City determines Developer is not in compliance with this Agreement, City also shall endeavor to serve notice of noncompliance on the Mortgagee concurrently with service on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the condition of default claimed, or the areas of noncompliance set forth in City's notice.

SECTION 13: FORM OF AGREEMENT, EXHIBITS

This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement consists of thirty (30) pages and four (4) exhibits, which constitute the entire understanding and agreement of the parties.

30

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. 4204, adopted by the Council of the City of Roseville on the 4th day of April, 2005, and Landowner and Developer have caused this Agreement to be executed.

CITY OF ROSEVILLE,
a municipal corporation

By: W. Craig Robinson
W. Craig Robinson
City Manager

ATTEST:

By: Sonia Orozco
Sonia Orozco
City Clerk

APPROVED AS TO FORM:

By: Mark J. Doane
Mark J. Doane
City Attorney

APPROVED AS TO SUBSTANCE:

By: Paul Richardson
Paul Richardson
Planning Director

LANDOWNER:

WALAIRE, INC., a California corporation

By: John W. Fiddymont
John W. Fiddymont, its President

DEVELOPER:

MERITAGE HOMES OF CALIFORNIA, INC.,
a California corporation

By: See Attached

Its: _____

IN WITNESS WHEREOF, the City of Roseville, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. _____, adopted by the Council of the City of Roseville on the ____ day of _____, 2005, and Landowner and Developer have caused this Agreement to be executed.

CITY OF ROSEVILLE,
a municipal corporation

LANDOWNER:

WALAIRE, INC., a California corporation

By: _____
W. Craig Robinson
City Manager

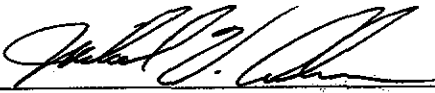
By: _____
John W. Fiddymment, its President

ATTEST:

DEVELOPER:

MERITAGE HOMES OF CALIFORNIA, INC.,
a California corporation

By: _____
Sonia Orozco
City Clerk

By:  _____
Its: **MICHAEL V. ANDERSON**
VICE PRESIDENT

APPROVED AS TO FORM:

By: _____
Mark J. Doane
City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
Paul Richardson
Planning Director

STATE OF CALIFORNIA)
 : ss.
COUNTY OF PLACER)

On this 9th day of May in the year of 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared W. Craig Robinson, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Helen Dreyer
Notary Public in and for said State



THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AS FOLLOWS:

Title or Type of Document: Development Agreement by and Among the City of Roseville, Waltaire, Inc. and Meritage Homes Relative to the Fiddymont 44 Property

Date of Document: May 9, 2005

Acknowledgment – All Purpose

STATE OF CALIFORNIA

COUNTY OF PLACER

} ss.

On MARCH 28, 2005, before me, LINDA L. BROWN, Notary Public, personally appeared John W. Fiddymont personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Linda L. Brown



WALAIRE, INC., A CALIFORNIA CORPORATION

SECRETARY CERTIFICATE

The undersigned, as Secretary of the Corporation, certifies that the following resolutions were duly adopted and approved by the Board of Directors of Walaire, Inc., a California corporation ("the Corporation"), at a special meeting of the Board of Directors held at the offices of the Corporation on March 15, 2001:

RESOLVED, that the officers of the Corporation, acting on behalf of the Corporation, be and hereby are authorized to market and sell the property known as 44 Acre Parcel, Blue Oaks Boulevard, Roseville, California, and to enter into such agreements as are deemed necessary and appropriate to the listing, marketing, sale and disposition of such property.

RESOLVED, that the President of the Corporation shall have the power and authority to negotiate the sale of such property on behalf of the Corporation and sell and dispose of such property for a price and on terms determined by the President in the President's discretion.

RESOLVED, that the President of the Corporation be, and hereby is, authorized and empowered to sign agreements, deeds, mortgages, bonds, notes, leases, contracts, certifications and other instruments and documents in connection with the marketing and sale of such property, in the name of and on behalf of the Corporation, and that the President's signature alone is binding on the Corporation as the act and deed of the Corporation.

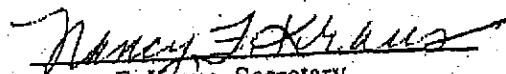
RESOLVED, that any and all actions taken by the President of the Corporation prior to the date of the foregoing resolutions that are within the authority conferred by such resolutions, are hereby ratified, confirmed and approved as the acts and deeds of the Corporation.

RESOLVED, that the officers of the Corporation be, and each hereby is, authorized and directed to do and perform any and all such acts, including execution of any and all documents and certificates, as said officers shall deem necessary or advisable, to carry out the purposes of the foregoing resolutions.

RESOLVED, that any and all actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby, are hereby ratified, confirmed and approved as the acts and deeds of the Corporation.

The undersigned hereby certifies that the foregoing resolutions are in full force and effect and have not been rescinded or modified.

Date: 2/24/04


Nancy F. Kraus, Secretary

Walaire, Inc.,
Special Meeting March 15, 2001
Secretary Certificate
Page 1 of 1

STATE OF CALIFORNIA

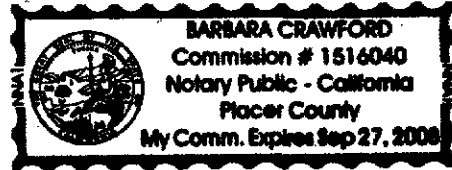
COUNTY OF Placer

} ss.

On March 23, 2005, before me Barbara Crawford, Notary Public, personally appeared Michael V. Anderson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Barbara Crawford



CERTIFIED COPY OF CORPORATE

RESOLUTION

The undersigned Secretary of Meritage Homes of Northern California, Inc. an Arizona corporation (the "Corporation"), hereby certifies that the directors of the Corporation adopted the following resolution in a regular meeting of the Board of Directors on September 27, 1999.

RESOLVED that the Board of Directors hereby appoints Mike V. Anderson as Vice President - Sacramento Division Manager and authorizes him to execute documents necessary to close homes to third party homebuyers, purchase lots in accordance with an existing rolling option agreement on which to build homes and enter into construction contracts with subcontractors and vendors to build single family homes.

IN WITNESS WHEREOF, the undersigned has set his hand this 27th day of September 1999.


Larry W. Saay
Secretary

**CERTIFICATE OF AMENDMENT
OF ARTICLES OF INCORPORATION**

The undersigned certify that:

1. They are the president and the secretary, respectively, of Meritage Homes of Northern California, Inc., a California corporation.

2. Article First of the Articles of Incorporation of this corporation is amended in its entirety to read as follows:

"FIRST: The name of the corporation is Meritage Homes of California, Inc."

3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902, California Corporations Code. The total number of outstanding shares of the corporation is 1,000. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: March 1, 2004


Steven F. Hilton, President

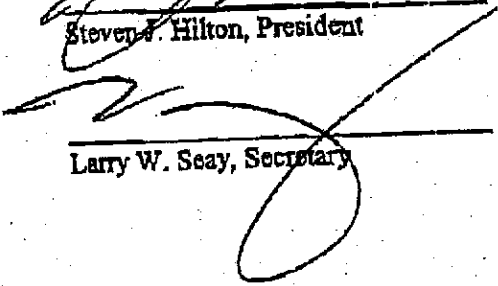

Larry W. Seay, Secretary

Exhibit A

**AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
MERITAGE HOMES OF NORTHERN CALIFORNIA, INC.**

Article First is amended in its entirety to read as follows:

"FIRST: The name of the corporation is Meritage Homes of California, Inc."

EXHIBIT
"A-1"
LEGAL DESCRIPTION
FOR PARCEL 4, 20 PM 126

All that certain real property being Parcel 4 of that Parcel Map filed for Record in Book "20" of Parcel Maps at Page 126 of the Records of Placer County situate in a portion of Section 17, Township 11 North, Range 6 East, Mount Diablo Meridian, City of Roseville, County of Placer, State of California and being more particularly described as follows:

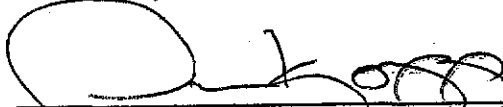
Beginning at the Southwest Corner of said Lot 4; thence from the **TRUE POINT OF BEGINNING** North 00°05'27" East, a distance of 2,172.18 feet; thence South 75°08'54" East, a distance of 398.57 feet; thence South 56°15'21" East, a distance of 634.00 feet; thence South 09°51'48" East, a distance of 525.00 feet; thence South 00°01'16" West, a distance of 1,179.77 feet; thence South 88°48'48" West, a distance of 1,005.60 feet to the POINT OF BEGINNING.

Containing 44.53 acres, more or less.

See Exhibit A-2 attached hereto and made a part hereof.

END OF DESCRIPTION.

DESCRIPTION PREPARED BY:
MACKAY & SOMPS CIVIL ENGINEERS, INC.
 1552 Eureka Road, Suite 100
 Roseville, California 95661-2944

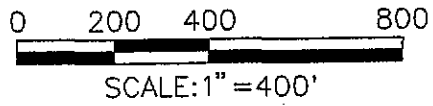
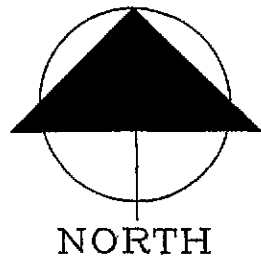
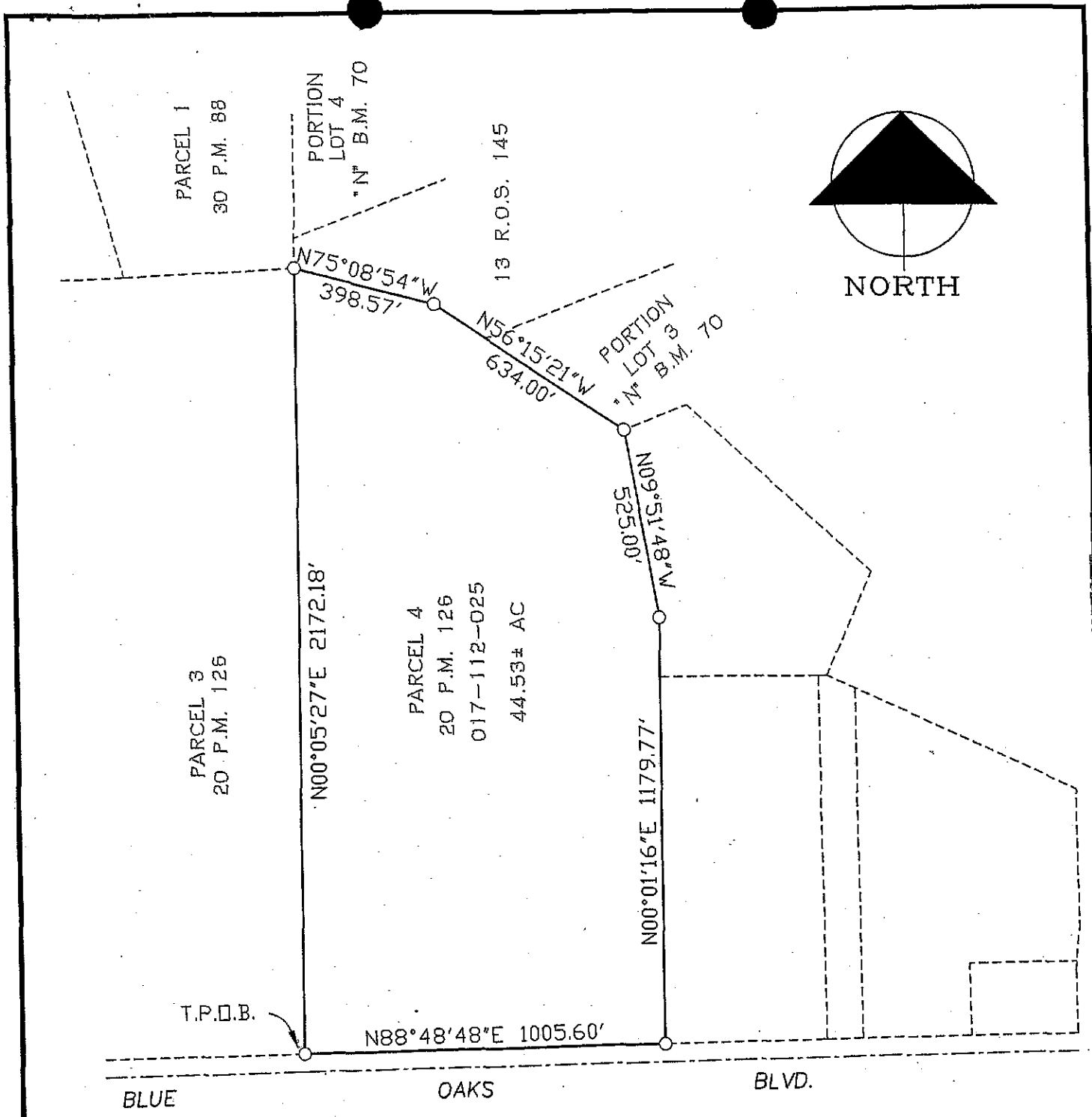


David W. Kopp, P.L.S. 4533
 License Exp. Date: 12-31-06

Date: 1/25/2005



APN 017-112-025



This exhibit is for graphic purposes only. Any errors or omissions on this exhibit shall not affect the deed description.

EXHIBIT "A-2"
 PLAT
 PARCEL 4, 20PM126
 ROSEVILLE, CA

MACKAY & SOMPS
 CIVIL ENGINEERS, INC.
 CIVIL ENGINEERING • LAND PLANNING • LAND SURVEYING
 ROSEVILLE, CALIFORNIA

dwk	1"=400'	08/25/03	18237-00
DRAWN BY	SCALE	DATE	JOB NO.

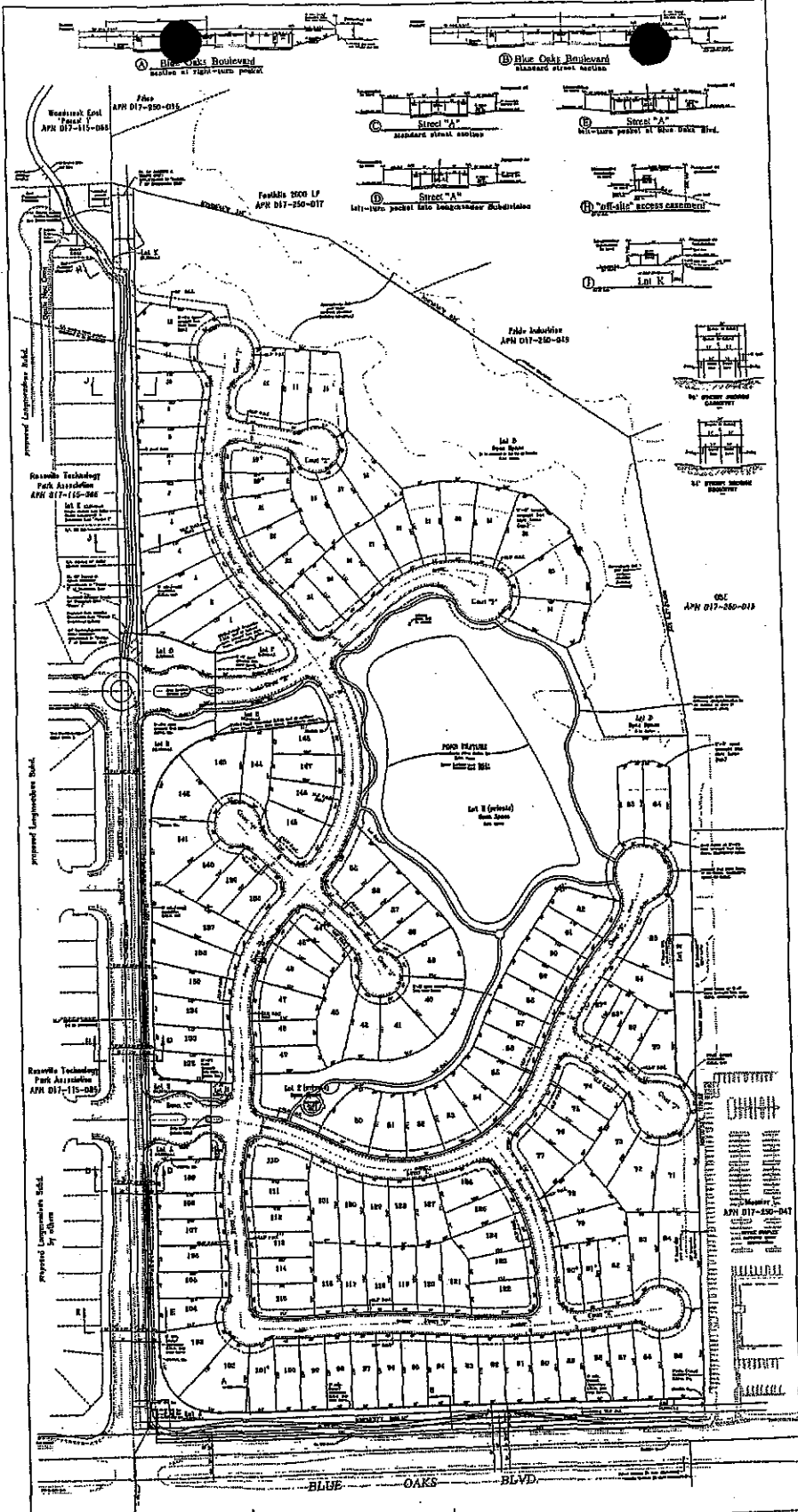
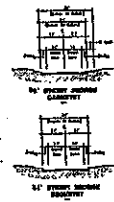
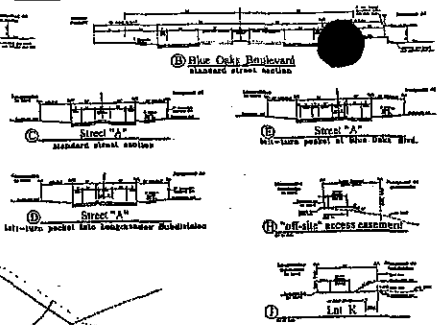


EXHIBIT "B"
 Fiddlyment 44
 Tentative
 Subdivision
 Map



TENTATIVE MAP INFORMATION

APN	APN 017-250-015
Scale	As Shown
North Arrow	As Shown
Projection	NAD 83
Author	HEWLETT PACKARD
Date	18 P.M. 138
Sheet	1 of 3

HEWLETT PACKARD
 18 P.M. 138

COVER SHEET
TENTATIVE MAP
FIDDLYMENT 44

HEWLETT PACKARD
 18 P.M. 138

NOTES

1. This map is a tentative subdivision map and is not to be used for any other purpose.
2. The boundaries shown on this map are based on the information provided to the author.
3. The area shown on this map is not to be used for any other purpose.
4. The area shown on this map is not to be used for any other purpose.
5. The area shown on this map is not to be used for any other purpose.



EXHIBIT "B"

Fiddymment 44
Tentative
Subdivision
Map

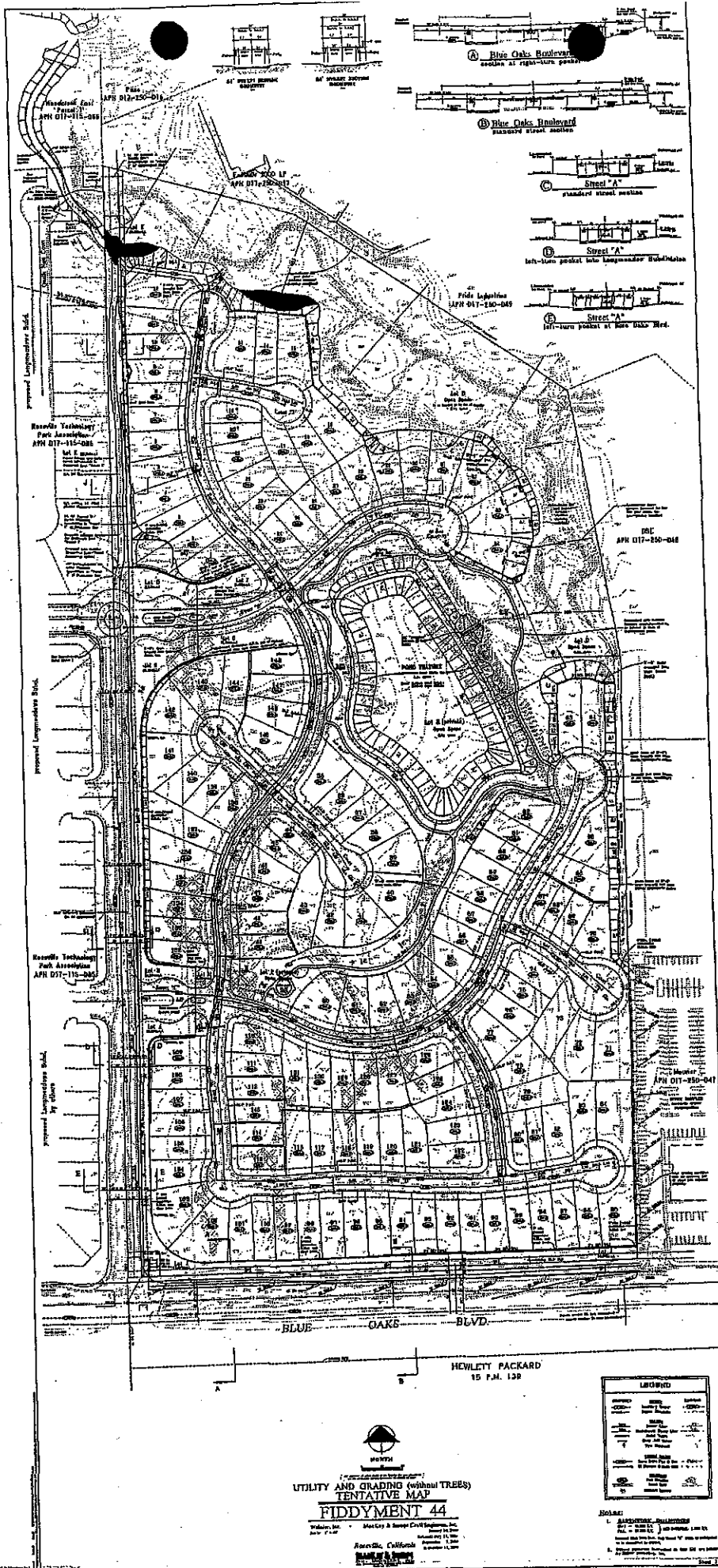
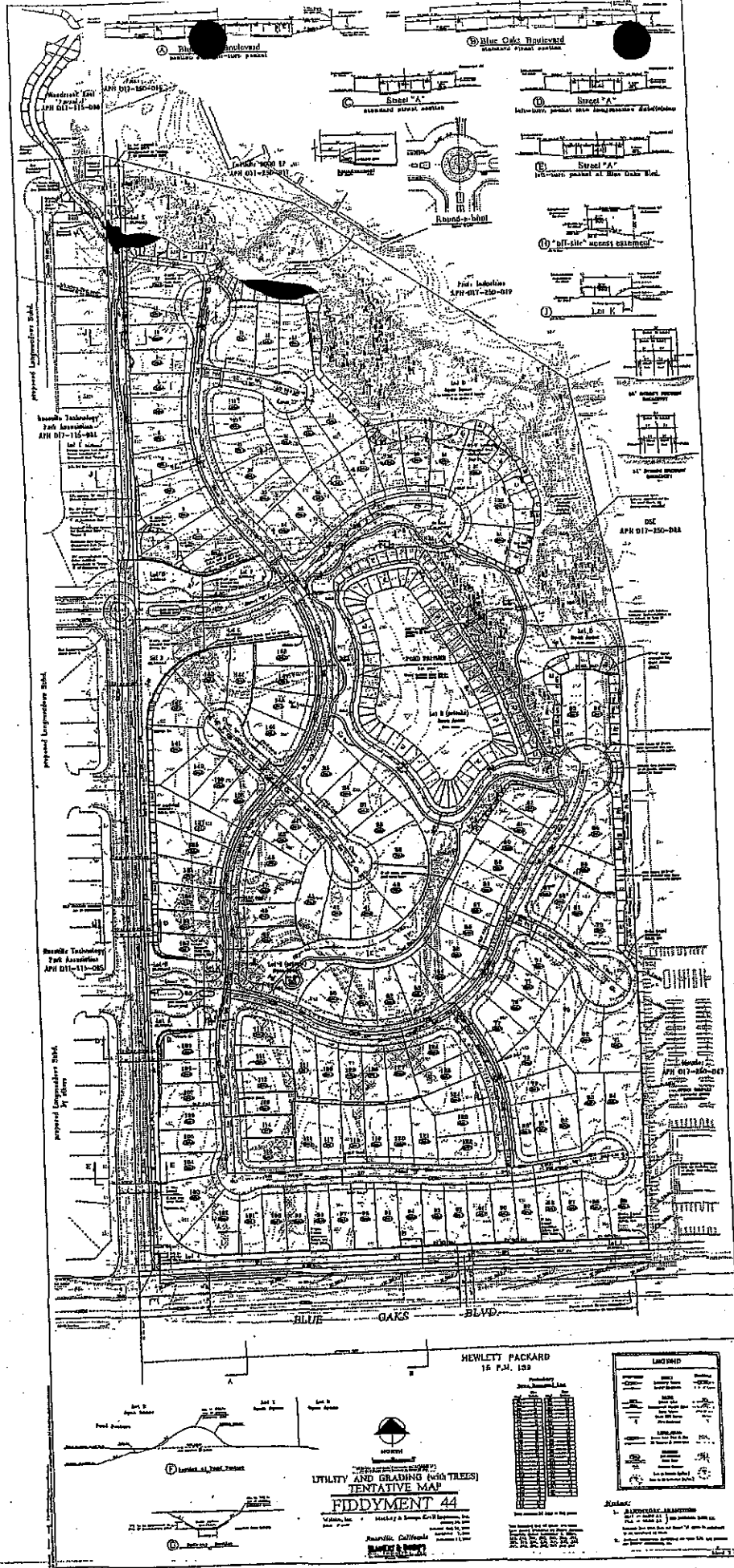
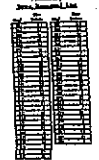


EXHIBIT "B"

Fiddymment 44
Tentative
Subdivision
Map



UTILITY AND GRADING (with TREES)
TENTATIVE MAP
FIDDYMENT 44



LEGEND	
[Symbol]	Proposed Right-of-Way
[Symbol]	Proposed Street
[Symbol]	Proposed Alley
[Symbol]	Proposed Easement
[Symbol]	Proposed Utility Line
[Symbol]	Proposed Grading
[Symbol]	Proposed Tree
[Symbol]	Proposed Building Footprint
[Symbol]	Proposed Parking Space
[Symbol]	Proposed Driveway
[Symbol]	Proposed Fencing
[Symbol]	Proposed Survey Boundary
[Symbol]	Proposed Easement Boundary
[Symbol]	Proposed Right-of-Way Boundary

EXHIBIT "C"

Fiddymment 44
Community Facilities District No. 1
City of Roseville, California

LIST OF AUTHORIZED FACILITIES

Authorized facilities that may be funded through Fiddymment 44 CFD No. 1 include the following public improvements:

Transportation Improvements

Authorized facilities include the following transportation-related improvements:

- New Meadow Drive construction;
- Improvements to Blue Oaks Boulevard; and
- Other public roadway improvements designed to meet the needs of development within Fiddymment 44 CFD No. 1.

Eligible roadway improvements include, but may not be limited to: purchase of right of way; roadway design; project management; bridge crossings; clearing and grubbing; grading and paving; joint trenches and underground utilities (including electric improvements and reimbursements to City for costs of underground electrical improvements installed by City); gas line relocation; curbs, gutters and sidewalks; medians; street lights (including reimbursements to the City) and signalization; bus turnouts; signs and striping; erosion control; median and parkway landscaping; entry features and monumentation; soundwalls; and other improvements related thereto.

Water System Improvements

Authorized facilities include any and all water facilities designed to meet the needs of development within Fiddymment 44 CFD No. 1. These facilities include, but may not be limited to: water distribution facilities including waterlines and appurtenances, gate valves, pressure reducing stations, flow meters, fire hydrants, and other improvements related thereto.

Recycled Water System Improvements

Authorized facilities include any and all recycled water system facilities designed to meet the needs of development within Fiddymment 44 CFD No. 1. These facilities include, but may not be limited to: recycled water distribution facilities including pipelines and appurtenances, gate valves, flow meters, booster pump pressurization system, and other improvements related thereto.

Drainage System Improvements

Authorized facilities include any and all drainage and storm drain improvements designed to meet the needs of development within Fiddymment 44 CFD No. 1. These facilities include, but may not be limited to: pipelines and appurtenances, temporary drainage facilities, detention/retention basins, culvert crossings (including headwalls and pads), constructed swales, drainage pretreatment facilities, and other improvements related thereto.

Wastewater System Improvements

Authorized facilities include any and all wastewater facilities designed to meet the needs of development within Fiddymment 44 CFD No. 1. These facilities include, but may not be limited to: pipeline and appurtenances, manholes, tie-ins to existing main line, and other improvements related thereto.

Environmental Mitigation

Authorized facilities include environmental mitigation related to any of the other authorized facilities including measures to mitigate impacts on wetlands and oak trees resulting from installation of other authorized facilities.

Public Improvement Related Fees

Authorized facility funding by the Fiddymment 44 CFD No. 1 also includes fees collected by the City for the purpose of funding public facilities which serve the Fiddymment 44 Project. These fees include, but may not be limited to: traffic mitigation fees (including fees for regional transportation improvements established by the Bizz Johnson Highway Interchange JPA; the South Placer Regional Transportation Authority; and the Baseline, Fiddymment and Walerga Joint City/County Authority); the fee in-lieu of Fire Service Construction Tax; the fire station in-lieu fee; the affordable housing in-lieu fee; sewer and water connection fees; neighborhood and city-wide park fees; in-lieu parkland and open space dedication fees; the public benefit contribution; and the county-wide facilities fees.

Other Public Improvements Serving the Fiddymment 44 Project

Authorized facilities include reimbursements to the City or third party landowners for costs incurred in constructing public improvements serving the needs of the Fiddymment 44 Project, including Blue Oaks Boulevard and New Meadow Drive.

Other Expenses

In addition to the above facilities, other incidental expenses as authorized by the Mello-Roos Community Facilities Act of 1982, including, but not limited to, the cost of planning and designing the facilities (including the costs of environmental evaluation and environmental remediation); engineering and surveying; construction staking; utility relocation and demolition costs incidental to the construction of the public facilities; costs of project/construction management; costs (including the costs of legal services) associated with the creation of the Mello-Roos CFD; issuance of bonds; determination of the amount of taxes, collection of taxes; payment of taxes; or costs otherwise incurred in order to carry out the authorized purposes of the CFD; reimbursements to other areas for infrastructure facilities serving the Fiddymont 44 Project; and any other expenses incidental to the formation and implementation of the District and to the construction, completion, inspection and acquisition of the authorized facilities.

EXHIBIT "D-1"

When recorded, return to:

Attn:

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO FIDDYMENT 44 DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this ____ day of _____, 200__, by and between MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (hereinafter "Developer"), and _____, a _____ (hereinafter "Assignee").

RECITALS

A. On _____, 200__, the City of Roseville and Developer entered into that certain agreement entitled Development Agreement By and Among the City of Roseville, Walaire, Inc. and Meritage Homes Relative to the Fiddymment 44 Property (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Placer County on _____, 200__, as Instrument No. 200__ - _____.

B. Assignee intends to acquire a portion of the Subject Property, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

C. Developer desires to assign and Assignee desires to assume all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Developer and Assignee hereby agree as follows:

1. Developer hereby assigns, effective as of Assignee's acquisition of the Assigned Parcel, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. Developer retains all the rights,

title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Developer as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

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

4. The Notice Address described in Section 10 of the Development Agreement for the Assignee with respect to the Assigned Parcel shall be:

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

DEVELOPER:

MERITAGE HOMES OF CALIFORNIA, INC.,
a California corporation

By: _____
Print Name: _____
Title: _____

ASSIGNEE:

By: _____
Print Name: _____
Title: _____

EXHIBIT "D-2"

When recorded, return to:

Attn:

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO FIDDYMENT 44 DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "Agreement") is entered into this _____ day of _____, 200__, by and between WALAIRE, INC., a California corporation (hereinafter "Landowner"), and _____, a _____ (hereinafter "Assignee").

RECITALS

A. On _____, 200__, the City of Roseville and Landowner entered into that certain agreement entitled Development Agreement By and Among the City of Roseville, Walairé, Inc. and Meritage Homes Relative to the Fiddymment 44 Property (hereinafter the "Development Agreement"). Pursuant to the Development Agreement, Landowner agreed that certain property more particularly described in the Development Agreement (hereinafter, the "Subject Property") would be developed subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of Placer County on _____, 200__, as Instrument No. 200__ - _____.

B. Landowner intends to convey a portion of the Subject Property to Assignee, commonly referred to as Parcel _____, and more particularly identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

C. Landowner desires to assign and Assignee desires to assume all of Landowner's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Landowner and Assignee hereby agree as follows:

1. Landowner hereby assigns, effective as of Landowner's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel. Landowner retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Landowner.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Landowner under the Development Agreement with respect to the Assigned Parcel, and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Landowner as the "Landowner" under the Development Agreement with respect to the Assigned Parcel.

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

4. The Notice Address described in Section 10 of the Development Agreement for the Assignee with respect to the Assigned Parcel shall be:

Attn: _____

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written. This Agreement may be signed in identical counterparts.

LANDOWNER:

WALAIRE, INC.,
a California corporation

By: _____
Print Name: _____
Title: _____

ASSIGNEE:

By: _____
Print Name: _____
Title: _____

ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE
ADOPTING A DEVELOPMENT AGREEMENT REGARDING THE NORTH INDUSTRIAL
PLANNING AREA (1470 BLUE OAKS BOULEVARD),
AND AUTHORIZING THE CITY MANAGER TO
EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. In accordance with Chapter 19.84 of Title 19 of the Roseville Municipal Code (the Zoning Ordinance) of the City of Roseville, the City Council has received the recommendation of the Planning Commission that the City of Roseville enter into a Development Agreement with Walaire, Inc. and Meritage Homes.

SECTION 2. The Council of the City of Roseville has reviewed the findings of the Planning Commission recommending approval of the Development Agreement, and makes the following findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Roseville General Plan and the North Industrial Planning Area – 1470 Blue Oaks Boulevard;
2. The Development Agreement is consistent with the City of Roseville Zoning Ordinance and Zoning Map;
3. The Development Agreement is in conformance with the public health, safety and welfare;
4. The Development Agreement will not adversely affect the orderly development of the property or the preservation of property values; and
5. The Development Agreement will provide sufficient benefit to the City to justify entering into said Agreement;

SECTION 3. The Development Agreement by and between Walaire, Inc., Meritage Homes and the City of Roseville, a copy of which is on file in the City Clerk's Department and incorporated herein by reference, is hereby approved and the City Manager is authorized to execute it on behalf of the City of Roseville.

SECTION 4. The City Clerk is directed to record the executed Development Agreement within ten (10) days of the execution of the agreement by the City Manager with the County Recorder's office of the County of Placer.

SECTION 5. This ordinance shall be effective at the expiration of thirty (30) days from the date of its adoption.

SECTION 6. The City Clerk is hereby directed to cause this ordinance to be published in full at least once within fourteen (14) days after it is adopted in a newspaper of general circulation in the City, or shall within fourteen (14) days after its adoption cause this ordinance to be posted in full in at least three public places in the City and enter in the Ordinance Book a certificate stating the time and place of said publication by posting.

PASSED AND ADOPTED by the Council of the City of Roseville this 6th day of April, 2005, by the following vote on roll call:

AYES COUNCILMEMBERS: Allard, Roccucci, Gray, Rockholm, Garbolino

NOES COUNCILMEMBERS: None

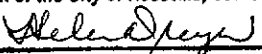
ABSENT COUNCILMEMBERS: None


MAYOR

ATTEST: .


City Clerk

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST:
City Clerk of the City of Roseville, California

DEPUTY CLERK

53