

Exhibit J

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City Clerk, Fresno, California
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BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF FRESNO AND PARC WEST DEVELOPMENT, INC.,
PURSUANT TO THE PROVISIONS OF SECTION 65864 ET SEQ.
OF THE GOVERNMENT CODE AND ARTICLE 60 OF CHAPTER
15 OF THE FRESNO MUNICIPAL CODE.

WHEREAS, pursuant to the provisions of Government Code sections 65864, et seq.,
and Article 60 of Chapter 15 of the Fresno Municipal Code, the City of Fresno is authorized to
enter into a development agreement with any person having a legal or equitable interest in real
property for the development of the property; and

WHEREAS, Parc West Development, Inc., a California corporation (Developer) has an
interest in entering into a development agreement to develop the property commonly known as
the "Parc West Project Area" and collectively as the "Project", as more particularly described in
Exhibit A to this ordinance which is attached hereto and incorporated herein by reference
(Subject Property); and

WHEREAS, the entitlements referenced within the Recitals of the proposed Development
Agreement have been filed and approved for that certain real property in the City of Fresno,

1 of 7

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Ordinance No. _____

County of Fresno, State of California, for the Subject Property (the “Parc West Approvals”); and

WHEREAS, the Developer also intends to subsequently file applications for additional subdivision maps for that certain real property in the City of Fresno, County of Fresno, State of California, for the Subject Property (the “Subsequent Maps”); and

WHEREAS, approval of a development agreement as requested by the Developer will allow future development to occur in multiple phases on the ±160 acre Subject Property in accordance with the Parc West Approvals and the Subsequent Maps pursuant to the terms of the Agreement (the “Parc West Project”); and

WHEREAS, City staff and the Developer negotiated a development agreement (inclusive of Exhibits “A” to “D”) that is titled “Development Agreement By and Between the City of Fresno and Parc West Development, Inc., dated June 16, 2022 (“Development Agreement”) that applies only to all phases of the Parc West Project; and

WHEREAS, the City, as Lead Agency, prepared an Addendum to Environmental Impact Report (EIR) SCH No. 2020039061, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164, which states that a lead agency shall prepare an addendum to a previously certified EIR, when some changes or additions are necessary but none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a new EIR have occurred; and

WHEREAS, the Development Agreement does not propose revisions to the project beyond what was analyzed in Environmental Impact Report (EIR) SCH No. 2020039061, and only a minor revision to the project is necessary to include a reference to this Development Agreement; and

WHEREAS, the preparation of an Addendum to Environmental Impact Report (EIR) SCH No. 2020039061 pursuant to CEQA Guidelines Section 15164 is appropriate given that none of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent EIR or Mitigated Negative Declaration have occurred; and new information added is only for the purposes of providing a reference to the Development Agreement, which is a minor addition, in accordance with Section 15164 of the CEQA Guidelines. There is no substantial evidence in the record that adoption of the Development Agreement may have additional significant effects on the environment that were not identified in Environmental Impact Report (EIR) SCH No. 2020039061, and that all applicable mitigation measures of the prior EIR have been applied to the project. In addition, pursuant to Public Resources Code, Section 21157.6(b)(1), Council finds that no substantial changes have occurred with respect to the circumstances under which the prior EIR was adopted; and, that no new information, which was not known and could not have been known at the time that the prior EIR, has become available; and

WHEREAS, the Public Works Department and Department of Public Utilities, in consideration of the Proposed Project, have determined the necessary exactions and improvements necessary for the Project; and

WHEREAS, the Planning Commission of the City of Fresno held a public hearing on the 4th day of May, 2022 to consider the Development Agreement, and recommended approval to the Council of the City of Fresno through Resolution No. 13740; and

WHEREAS, the Council of the City of Fresno, on the 16th day of June, 2022 received the recommendations of the Planning Commission and City staff as specifically detailed in the

Report to the City Council for this Ordinance approving the Development Agreement by and between the City of Fresno and the Developer dated _____.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1: The Council finds in its independent judgment, based upon its review of the entire administrative record, including but not limited to the Staff reports, the oral and documentary evidence submitted to Council and the Planning Commission, that the Development Agreement does not propose revisions to the Project beyond what was analyzed in Environmental Impact Report (EIR) SCH No. 2020039061; that only minor additions are necessary to include a reference to the Development Agreement; that that none of the circumstances set forth in CEQA Guidelines Section 15162 calling for the preparation of a subsequent EIR have occurred; and that an addendum to Environmental Impact Report (EIR) SCH No. 2020039061 prepared pursuant to CEQA Guidelines Section 15164 is appropriate.

SECTION 2. Council finds that the Project is a development for which the Development Agreement is appropriate pursuant to the evidence and findings provided in the Staff Report to Council dated June 16, 2022.

SECTION 3. Council finds, in accordance with Section 65867.5 of the Government Code and Fresno Municipal Code Section 15-6006, and pursuant to the evidence and findings provided in the Staff Report to Council dated June 16, 2022, that:

(a) The Development Agreement is being adopted pursuant to this Ordinance and is subject to referendum.

(b) The provisions of the Development Agreement are consistent with the Fresno General Plan. Further, the Development Agreement is consistent with the purpose of the Development Code to promote growth in an orderly and sustainable

manner, support infill development, and to promote and protect the public health, safety, peace, comfort, and general welfare. Approval of the Development Agreement will: (1) provide certainty to encourage investment in the comprehensive development and planning of the Parc West Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning for the Parc West Project and Area as well as neighboring areas; and (3) fulfill and implement adopted City plans, goals, policies, and objectives.

(c) The Development Agreement will provide substantial public benefit by: (1) providing for the development of unused land; (2) providing increased tax revenues for the City; (3) providing jobs and economic development in the City; (4) providing park, trail, and infrastructure improvements; and, (5) meeting the goals of the Fresno General Plan to create "Complete Neighborhoods" that will reduce vehicle trips and serve all segments of the City.

SECTION 4. Council finds that the Development Agreement complies with the Fresno Municipal Code and other applicable ordinances, standards, policies, and regulations of the City of Fresno pursuant to the evidence and findings provided in the Staff Report to Council dated June 16, 2022.

SECTION 5. Council finds that the Development Agreement furthers the public health, safety and welfare and will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the Subject Property, pursuant to the evidence and findings provided in the Staff Report to the City Council dated June 16, 2022.

SECTION 6. The Council finds that the construction of public facilities required in conjunction with the development is adequate to serve the development pursuant to the findings provided in the Staff Report to the City Council dated June 16, 2022.

SECTION 7. Council finds that the Development Agreement provides for clear and substantial public benefit to the City of Fresno and residents pursuant to the evidence and findings provided in the Staff Report to Council dated June 16, 2022.

SECTION 8. Council hereby adopts and approves the Development Agreement by and between the City of Fresno and Parc West Development, Inc. in substantially the same form as that presented to Council in the Staff Report to Council dated June 16, 2022 and authorizes the City Manager and/or his or her designee to finalize and execute the proposed Development Agreement attached hereto as Exhibit B, subject to City Attorney's Office approval as to form, on behalf of the City of Fresno.

SECTION 9. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES:
NOES:
ABSENT:
ABSTAIN:

TODD STERMER, CMC
City Clerk

By _____
Deputy

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

By _____
Talía Kolluri Date
Assistant City Attorney

Attachments: Exhibit A – Description of Subject Property
Exhibit B – Development Agreement

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is made this ____ day of _____, 2022, by and between the CITY OF FRESNO, a municipal corporation, (the "City") and PARC WEST DEVELOPMENT, INC., a California corporation (the "Developer"). City and Developer are hereinafter sometimes collectively referred to as the "Parties" and each may be referred to as a "Party".

RECITALS

A. Pursuant to Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Laws"), the City is authorized to enter into binding development agreements with Persons (as hereinafter defined) having legal or equitable interest in real property for the development of such real property. As a Charter City, the City may not be limited to the Development Agreement Laws to enter into development agreements. Nevertheless, the City has elected to enter this Agreement under the Development Agreement Laws and in accordance with Fresno Municipal Code Sections 15-6001 et seq.

B. The following entitlements have been approved by the City in connection with the intended development of approximately 160 acres in the City bounded generally by North Garfield Avenue on the west, North Grantland Avenue on the east, West Ashlan Avenue alignment on the south, and West Gettysburg Avenue alignment on the north, whose legal description is attached hereto as Exhibit "A" (the "Parc West Project Area") for the development of uses consistent with the Parc West Project Approvals and the Subsequent Maps (as those terms are defined below (the "Parc West Project")):

B(1) Adoption by the City Council of Resolution No. 2021-028, which adopted Plan Amendment Application No. P19-00417, to amend the street layout and trail alignments depicted in Exhibits MT-1 and MT-2 of the City of Fresno General Plan (which are attached hereto as Exhibit "B-1");

B(2) Adoption by the City Council of Ordinance No. 2021-003, which adopted amendments to the conditions of zoning applicable to lands previously zoned as RS-5/UGM/cz and CC/UGM/cz;

B(3) Adoption by the City Council of Resolution No. 2021-340, which adopted Plan Amendment Application No. P19-00417, to amend the planned land use designation of approximately 7.33 acres of lands designated as Community Commercial to Medium Density Residential;

B(4) Adoption by the City Council of Ordinance No. 2021-053, which rezoned approximately 7.33 acres of lands previously designated CC/UGM/cz to RS-5/UGM/cz;

B(5) Approval of Vesting Tentative Tract Map No. 6212/UGM, whose application was determined to be complete pursuant to Section 65943 of the Government Code effective February 05, 2019 ("Map 6212");

B(6) Approval of Vesting Tentative Tract Map No. 6276/UGM, whose application was determined to be complete pursuant to Section 65943 of the Government Code effective May 27, 2020 ("Map 6276");

B(7) Approval of Vesting Tentative Tract Map No. 6350, whose application was determined to be complete pursuant to Section 65943 of the Government Code effective September 7, 2021 ("Map 6350");

B(8) Approval of Vesting Tentative Tract Map 6378, whose application was determined to be complete pursuant to Section 65943 of the Government Code effective January 7, 2022 ("Map 6378"); and,

B(9) Approval of Vesting Tentative Tract Map 6387 whose application was determined to be complete pursuant to Section 65943 of the Government Code effective January 6, 2022 ("Map 6387").

B(10) The Developer also intends to subsequently file applications for additional Subdivision Maps for other portions of the Parc West Project Area consistent with the uses and densities listed on Exhibit "C-1" and depicted on "C-2" (the Vested Uses), and uses that may be otherwise consistent with the Applicable Rule (as that term is defined below) (the "Subsequent Maps").

C. The adoption of the entitlements described in Sections B(1) through B(9) (the "Parc West Project Approvals") were supported by the City Council's certification of Final EIR SCH No. 2020039061 (the "EIR") on January 28, 2021. A notice of determination with respect to the EIR was posted with the Fresno County Clerk on February 04, 2021. The EIR also evaluated the environmental impacts of the plan amendment and rezone described in Section B(3) and B(4) above, and the approval of subsequent subdivision maps described in Section B(9) above.

D. The City has determined that the approval of this Agreement is in furtherance of the implementation of the project evaluated in the EIR and that none of the circumstances described in CEQA Guidelines Section 15162 or 15163 exist that require any further evaluation of the Project pursuant to a Subsequent or Supplement to the EIR. Notwithstanding the above, future discretionary approvals shall require assessment under CEQA.

E. Developer has filed an application for this Development Agreement in order to: (1) vest the land use and zoning policies pursuant to Section 66498.1 of the Government Code, in accordance with the provisions and Duration of Vested Rights described in Section 4.4 of this Agreement with respect to the Parc West Project Area; and (2) memorialize certain other agreements made between the City and Developer with respect to the Parc West Project. The City and Developer acknowledge the development and construction of the Parc West Project is a large-scale undertaking involving major investments by Developer, with development occurring over a period of years. Certainty that the Parc West Project

can be developed and used in accordance with the Existing City Requirements as of the Adoption Date of this Agreement, will benefit the City and Developer and will provide the Parties certainty with respect to implementation of the policies set forth in the Fresno General Plan (as amended by the Plan Amendment), and the Existing City Requirements.

F. The City has determined this Agreement furthers the public health, safety, and general welfare, and the provisions of this Agreement are consistent with the goals and policies of the Fresno General Plan. For the reasons recited herein, the City and Developer have determined the Parc West Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Parc West Project and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Parc West Project Area. Continued use and development of the Parc West Project Area is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Laws were enacted: (1) Provide for the development of unused land; (2) Provide increased tax revenues for the City; (3) Provide for jobs and economic development in the City; (4) Provide infrastructure improvements; and, (5) Meet the goals of the Fresno General Plan to create "Complete Neighborhoods" that will reduce vehicle trips and serve all segments of the City. It is based upon these benefits to the City that the City is agreeable to proceeding with the approval of this Agreement.

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

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

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

AGREEMENT

ARTICLE 1.

INTERESTS OF DEVELOPER

Section 1.1 Recordation of Agreement. Within ten (10) business days following mutual execution of this Agreement by the City and Developer, the City shall cause this Agreement to be recorded in the official records of Fresno County, California (the "Official Records") with respect to the Parc West Project Area. Following the recordation of this Agreement in the Official Records, the City shall deliver to Developer a conformed copy of this Agreement evidencing the recording information.

Section 1.2 Binding Covenants. The Developer represents it has a legal or equitable interest in the Parc West Project Area and all other persons holding legal title

in the Parc West Project Area are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Parc West Project Area property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties.

ARTICLE 2. TERM OF AGREEMENT

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

"Adoption Date" means the date on which the City Council adopted the ordinance approving this Agreement and authorizing the City Manager to execute this Agreement on behalf of the City. Notwithstanding the foregoing, with respect to development under Map 6212, the Adoption Date is February 05, 2019, with respect to development under Map 6276, the Adoption Date is May 27, 2020, and with respect to development under Map 6350, the Adoption Date is September 07, 2021.

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

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

"State" means the State of California.

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

Section 2.2 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for a period of ten (10) years following the Effective Date; provided that such period shall be extended for any events of Force Majeure pursuant to Section 13.1 and during the pendency of any legal action challenging approval of this Agreement or applications for entitlements described in Sections B(9) and B(10). Any extension based upon an event described in this Section 2.2 shall be granted pursuant to the procedures set forth Section 13.2.

Section 2.3 Effect of Termination. Termination of this Agreement shall not: (a) alter, impair or otherwise affect any City Permits or earned credits for the Parc West Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay Developer from (i) commencing, performing or completing the construction of any buildings or improvements in the Parc West Project or (ii) obtaining any certificates

of occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in the Parc West Project Area, that were authorized pursuant to City Permits for such construction issued by the City prior to the date of Termination. In addition, Termination of this Agreement shall not affect the vesting rights established by any Vesting Tentative Map for development within the Parc West Project Area whose application was complete prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or Existing City Requirements to prevent, stop, or correct any violation of Laws or Existing City Requirements occurring before, during or after construction of the buildings and improvements in the Parc West Project by Developer.

ARTICLE 3. DEVELOPMENT OF THE PROJECT

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

"Applicable Rules" collectively means: (a) the terms and conditions of the Parc West Project Approvals; (b) the terms and conditions of this Agreement; and (c) the Existing City Requirements. In addition, with respect to all Subsequent Maps, such maps shall comply with all applicable requirements of Government Code Section 66473.7.

"City Agency" or "City Department" means any office, board, commission, department, division or agency of the City.

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

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

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

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

"Minimum Park Specifications" means construction of the Neighborhood Park such that it i) contains no less than the following minimum amenities: a tot lot, tables and benches under a permanent shade structure, and trash cans; and ii) is consistent with all requirements of the adopted Parks Master Plan in effect at the time Neighborhood Park plans are submitted to the City; and iii) the Director of Public Works and the PARCS Director have approved the Neighborhood Park plans.

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

"Planning Director" means the Director of the Development and Resources Management Department of the City of Fresno.

"Subdivision Maps" means Vesting Tentative Subdivision Maps, Tentative Subdivision Maps, and Final Subdivision Maps, as those terms are defined in the Subdivision Map Act (Government Code Section 66410 et seq.).

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

Section 3.2 Applicable Rules.

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

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

Section 3.3 Minor Changes.

(a) The Parties acknowledge further planning and development of the Parc West Project may demonstrate refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire that Developer retain a certain degree of flexibility with respect to the details of the development of the Parc West Project and with respect to those items covered in general terms under this Agreement, pursuant to the authorities established by Fresno Municipal Code Section 15-6009-B. Therefore, if and when Developer finds that Minor Changes (as hereinafter defined) are necessary or appropriate, then, upon written request by Developer, the Parties shall, unless otherwise required by Laws, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, which, after execution, shall be attached hereto as addenda and become a part hereof; and may be further changed and amended from time to time as necessary, with approval by the City Manager and the Developer.

(b) The term "Minor Changes" collectively means: (a) minor deviations to the Parc West Approvals that are permitted under the Existing City Requirements and are reasonably approved by the Planning Director; (b) changes or modifications to Map 6212, Map 6276, or 6350 that are implemented by Developer prior to recordation by Developer of a final map with respect to such Maps in the Official Records, and (ii) the changes and modifications are approved by the Planning Director, which approval shall not be unreasonably withheld or denied.

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

Section 3.4 Future Discretionary Approvals. Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Developer from applying to the City during the Term of this Agreement for any of the following new approvals with respect to any proposed buildings and improvements in the Parc West Project (collectively, the Future Discretionary Approvals): (a) any new Variance, Development Permit, or Conditional Use Permit that is required under the Existing City Requirements; and (b) any other approval (i) which is not otherwise addressed or set forth in this Agreement and (ii) which the Existing City Requirements mandate must be reviewed and approved by the Planning Commission or City Council. The City shall process, review and approve or disapprove any application for a Future Discretionary Approval filed by Developer in accordance with the City Requirements then in effect. The approval by the City of an application by Developer for a Future Discretionary Approval shall not require an amendment of this Agreement. However, the Developer may apply for the concurrent adoption of an Amendment to this Agreement to provide any Future Discretionary Approvals the benefits of the vesting rights and other arrangements established by this Agreement.

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

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

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

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

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

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

Section 3.6 No Obligation to Develop. Nothing in this Agreement is intended, should be construed nor shall require Developer to proceed with the construction of any

improvements in the Parc West Project Area. The decision to proceed or to forbear or delay in proceeding with the implementation or construction of the Parc West Project or any buildings or improvements on the Parc West Project Area shall be in the sole discretion of Developer and the failure of Developer to proceed with construction of the Parc West Project or any such buildings or improvements on the Parc West Project Area shall not: (a) give rise to any rights of the City to terminate this Agreement; or, (b) constitute an Event of Default (as hereinafter defined) or give rise to any liability, claim for damages or cause of action against Developer.

Section 3.7 Project Timing. The Parties acknowledge that Developer cannot at this time predict when, or the order in which, individual buildings on the Parc West Project Area will be developed. Such decisions with respect to phasing of development of the Parc West Project Area will depend upon a number of circumstances not within the control of Developer, including, without limitation, market conditions and demand for the use or uses of the Parc West Project Area, the condition of capital markets and availability of appropriate financing for the development of the Parc West Project Area (such as construction or interim and permanent loans, and/or equity capital) and other similar factors. In order to accommodate market uncertainties, upon request by Developer, the parties may mutually agree to establish phases for the Parc West Project and the order in which the phases will be developed. Any change in the order and time of the phases once established, must be by mutual written agreement. In connection with each phase, Developer shall be required to comply with the Development Approvals. Notwithstanding any agreement to the contrary, Building Permits will be issued in accordance with the amended conditions of zoning detailed in Ordinance No. 2021-003, and will be as set forth in the Development Approvals for each Approved Tentative Map or Subsequent Maps upon approval.

Section 3.8 Hold on Issuing a Building Permit or Certificate of Occupancy. The City reserves the right to place a hold on the issuance of a Building Permit or Certificate of Occupancy for a building in the Parc West Project in the event the Existing City Requirements or Conditions of Approval with respect to that building have not been completed by Developer or in the interest of preserving health and safety as reasonably determined by the Director.

Section 3.9 Final Map. Pursuant to the requirements of the Subdivision Map Act and the City's Parcel Map Ordinance, if at the time the Developer requests the City approve and record a Final Map for all or some of the parcels delineated in any of the approved Tentative Maps, or any subsequent Subdivision Maps that conform to the uses and densities detailed in Exhibits "C-1" and "C-2", Developer has not complied with the applicable conditions of approval for a Final Map, as reasonably determined by the City Engineer, Developer shall execute a Subdivision Agreement with respect to such property, provided that the Subdivision Agreement shall not impose City Development Fees or Exactions beyond those provided for in Section 5.2 and Section 5.4 below.

Section 3.10 Confirmation of Compliance with Density Standards. For those portions of the Parc West Project Area that are zoned RS-5-UGM/cz, the minimum and

maximum density standards applicable to such zone district may be applied based on the overall density developed with the Parc West Project Area. As a result, individual Subsequent Maps may be approved with densities that are higher or lower than such minimum and maximum density standards, provided that at the time such Subsequent Map is approved as a Final Map, there remains sufficient additional undeveloped property within the RS-5-UGM/cz district that could be feasibility developed at density standards that would assure that the Parc West Project Area, on an overall developed basis, satisfies the applicable density standards.

ARTICLE 4. CITY PERMITS AND SUBSEQUENT MAPS

Section 4.1 Review and Processing of City Permits. Except as otherwise expressly provided in this Agreement, all City Permits required for the construction and development of the Parc West Project and any buildings and improvements therein which comply with the requirements of the Applicable Rules: (a) shall be issued over-the-counter by the Planning Director or the director of the other applicable City Agency having responsibility for the issuance of such City Permits; (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission; and (c) shall not require a public hearing.

Section 4.2 Review and Processing of City Permits for Off-Site Improvements. City Permits required for Off-Site Improvements (as hereinafter defined), including, but not limited to, construction plans for the streets, sidewalks, street lighting, median landscaping, sewer lines, water lines, reclaimed water mains and system and traffic signals, must comply with the requirements of the Applicable Rules; provided the City may impose policies, ordinances and standards in effect at the time the applications for City Permits for the Off-Site Improvements are submitted to the City, if and only if, all of the following conditions are met (i) such policies, ordinances and standards shall not impose any new City Development Fees (as hereinafter defined) or increase the amount of any City Development Fees on the Parc West Project over and above the Required Development Fees (as hereinafter defined), (ii) such policies, ordinances and standards shall not impose any Exaction on the Parc West Project other than the Required Exactions (as hereinafter defined), and (iii) in the reasonable determination of the City Engineer, such policies, ordinances and standards shall not substantially increase the costs to Developer of the construction of the Off-Site Improvements or substantially increase the time required by Developer for the construction of the Off-Site Improvements.

Section 4.3 Review and Processing of Subsequent Maps. Except as otherwise expressly provided in this Agreement, for all Subsequent Maps required for the Parc West Project which comply with the Vested Uses and the requirements of the Applicable Rules, the City shall endeavor to process and schedule final approval of such applications within the following time frames: where the CEQA compliances are based on: (a) the certified EIR or an addendum thereto, ninety (90) days; (b) a subsequent MND or Negative Declaration, sixty (60) days from the date of adoption by the lead agency of the MND or Negative Declaration; and, (c) a subsequent EIR, one hundred eighty (180) days from the

date of certification by the lead agency of the environmental impact report. In addition, provided the Subsequent Map, or any other City Permits are consistent with the Parc West Project Approvals, no further traffic impact studies shall be required as a condition of any such further entitlements. However, the City may impose a requirement that, each Subsequent Map or Development Permit application include a letter detailing the trips generated from the development permitted by such Subsequent Map, and the then existing trips generated by the prior development of Parc West.

Section 4.4 Duration of Vested Rights. Notwithstanding any other provisions in this Agreement, the Parc West Approvals, Subsequent Maps, the City Permits, the Existing City Requirements and the Permitted Rules Revisions that may establish earlier expiration dates for the above items, the Parties mutually acknowledge and agree, consistent with the provisions of California Government Code Sections 66452.6(a) and 65863.9, that the Parc West Approvals, Subsequent Maps, and any City Permits for the Parc West Project will be vested and remain valid and effective throughout the Term. The parties further acknowledge and agree that the Conditions of Approval for the Maps 6212, 6276, 6350, 6378, and 6387 contain overlapping requirements for the completion of specified public improvements outside the property boundaries of such Maps (the "Overlapping Offsite Conditions of Approval"). It is further anticipated that one or more Subsequent Maps may also include such Overlapping Offsite Conditions of Approval. The parties therefore acknowledge and agree that the expenditure of sums specified by Government Code Section 66452.6(a) that relate to such Overlapping Offsite Conditions of Approval shall serve to provide the Developer a right to obtain a further extension of the term of each Map that includes a relevant Overlapping Offsite Condition of Approval, in accordance with the provisions of Government Code Section 66452.6(a), which states that the extensions set forth therein shall not extend a tentative map by more than 10 years from its approval or conditional approval. In addition, Termination of this Agreement shall not affect the vested rights established by any Vesting Tentative Map for development within the Parc West Project Area whose application was complete prior to the date of Termination. Notwithstanding the vesting rights specified above, the Park West Project will be subject to the payment of the Required Development Fees set forth in Section 5.4(b), including but not limited: (i) the right of the City to impose adjustment of such fees consistent with Sections 5.4(b) (ii), (iii) and (iv); (ii) the right of the City to impose increased Development Impact Fees adopted due to an Emergency Ordinance for the preservation of the public health, peace, property and safety; and, (iii) the right of the City to impose the then current fee rates for the Required Fees in effect when applications for Subsequent Maps or Development permits are deemed complete pursuant to Government Code Section 65943. In addition, Termination of this Agreement shall not affect the vested rights established by any Vesting Tentative Map for development within the Parc West Project Area whose application was complete prior to the date of Termination.

ARTICLE 5. EXACTIONS AND CITY DEVELOPMENT FEES

Section 5.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

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

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

"Neighborhood Park" means the two-acre park depicted on MT-2 Revision Trail Layout shown on Exhibit "B-1" and construction consistent with the Minimum Park Specifications.

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

"Open Space Standards" means the Minimum On-Site Open Space standards established in Section 15-3701-J and 12-4.705 of the Fresno Municipal Code, or any subsequent ordinance or State statute addressing comparable standards or requirements.

"Trails/Paseos" means the improvements to be developed as part of the trails adjacent to adjacent Major Streets and the Trails within Developments, as depicted on MT-2 Revision Trail Layout shown on Exhibit "B-1", which expands the trail area from the 22 feet of width that is part of the City standard specifications, to a trail area that will vary between 35 feet of width and 40 feet of width.

Section 5.2 Exactions (Including Off-Site Improvements).

(a) Map Exactions. All of the Exactions that Developer shall be required to perform or caused to be performed in connection with the development, construction, use and occupancy of the portion of the Parc West Project that comprises Tentative Maps 6212, 6276, 6350, and 6378, during the term of the Agreement (collectively, the Required Tract Map Exactions), and the timing requirements for the performance of such Required Tract Map Exactions, are set forth in the amended conditions of zoning detailed in Ordinance No. 2021-003 and Conditions of Approval adopted by the City Council for the approved Tentative Maps, which are incorporated herein by this reference,. Building Permits will be issued in accordance with the amended conditions of zoning detailed in Ordinance No. 2021-003 and will be as set forth in the Development Approvals for the Approved Tentative Maps or Subsequent Maps upon approval.

(b) Other Exactions. All other Exactions that Developer shall be required to perform or caused to be performed in connection with the development, construction, use and occupancy of the Parc West Project Area (beyond Map 6212,6276, 6350 and 6378) during the term of the Agreement (collectively, the “Other Exactions”), and the timing requirements for the performance of such. Other Exactions are set forth in the amended conditions of zoning detailed in Ordinance No. 2021-003, and will be as set forth in the Development Approvals for each Approved Tentative Map or Subsequent Maps upon approval; except, as such amended conditions of zoning or Development Approvals are further modified by this Agreement. As noted above, Building Permits will be issued in accordance with the amended conditions of zoning detailed in Ordinance No. 2021-003 and will be as set forth in the Development Approvals for each Approved Tentative Map or Subsequent Maps upon approval.

(c) No Further Exactions. No Off-Site Improvements or other Exactions shall be imposed by the City in connection with the development, construction, use and occupancy of the portion of the Parc West Project not encompassed by Maps 6212, 6276 6350, or 6378, except pursuant to the application of the Other Exactions. Or pursuant to other exactions or the rules for Future Discretionary approvals as provided is section 3.4

(d) Neighborhood Park Development and Dedication. Not later than 12 months following the issuance of the last certificate of occupancy for the first 240 units to be completed within the Parc West Project Area the Developer shall complete improvements to the Neighborhood Park and improvements to the internal Trails within Developments (as depicted and defined on Exhibit A to City Council Resolution No. 2021-028, which do not include the trail areas adjacent to Grantland Avenue and the Collector Loop Street) and dedicate the Neighborhood Park, the Trails within Developments, and respective improvements to the City. Developer’s entitlements for credits and reimbursements for such dedication and improvements is detailed in Section 5.6 below. The Neighborhood Park shall meet or exceed the Minimum Neighborhood Park Specifications and the proposed Neighborhood Park plans shall be subject to approval by both the Director of Public Works and the PARCS Director.

(e) Off-Site Acquisition. City acknowledges and agrees that, in accordance with Government Code Section 66462.5. in the event the performance by Developer of any off-site improvements listed as a Required Tract Map Exaction or an Other Exaction (collectively, the Off-Site Improvements) requires construction or installation on land in which neither the City or Developer has sufficient legal title or interest to allow such construction or installation to be performed, then: (a) City shall acquire the necessary Required ROW (as hereinafter defined) in accordance with the provisions of this Subsection of this Agreement at the sole cost of Developer and, upon such acquisition, the City shall make such Required ROW available to Developer for the construction and installation of such Off-Site Improvements; and (b) provided that Developer performs its obligations under this Subsection, Developer shall not be required to construct or install such Off-Site Improvements until (i) City acquires title or interest in such Required ROW sufficient to allow such construction or installation to be performed, and (ii) City promptly makes such Required ROW available to Developer for the

construction and improvement of such Off-Site Improvements. The City shall neither postpone nor refuse approval of a Final Map for any of the Approved Tentative Maps, or , or a Final Map for any Subsequent Tentative Maps (a "Final Map"), because Developer has failed to construct or install any or all of the Off-Site Improvements if neither Developer nor City has sufficient title or interest in the Required ROW to permit such Off-Site Improvements to be constructed or installed so long as Developer has provided the improvement security required by the Subdivision Agreement for the such Final Map, as determined by the City Engineer, to ensure improvements are constructed once the right-of-way is acquired. Building Permits will be issued in accordance with the amended conditions of zoning detailed in Ordinance No. 2021-003 and will be as set forth in the Development Approvals for the Approved Tentative Maps or Subsequent Maps upon approval; except, as such amended conditions of zoning or Development Approvals are further modified by this Agreement. The term "Required ROW" means all land located outside of the Parc West Project Area that (i) is not owned by the City, any City Agency or Developer as of the Adoption Date of this Agreement, and (ii) is necessary for the construction or installation of any Off-Site Improvements pursuant to this Agreement. Required ROW may take the form of easement areas, rights-of-way and other land interests.

(i) In the event Developer is unable to acquire right of way necessary to satisfy the applicable conditions of zoning or conditions of approval despite good faith efforts, and if the City also fails to acquire the necessary right of way through all legally available means, then City will consider a revision to the conditions of zoning detailed in Ordinance No. 2012-003; the Development Approvals for the Approved Tentative Maps or Subsequent Maps upon approval; and the mitigation measures required by Final EIR SCH No. 2020039061, in accordance with standard City procedures without unreasonable delay.

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

(g) Completion and Acceptance of Public Facilities. The City's final written acceptance of any On-Site and Off-Site Improvements to be offered for dedication to the City and to be maintained by City thereafter will constitute a finding that the improvements comply with the plans and specifications required above. Individual On-Site Improvements and Off-Site Improvements may be separately bonded by Developer. The City may not unreasonably condition, delay or withhold acceptance of Off-Site Improvements based upon the completion of On-Site Improvements. The determination

of when certain On-Site and Off-Site Improvements need to be completed with a particular phase, Developer shall provide separate engineered drawings for the improvements to be completed during the particular phase and may obtain separate improvement security of the On-Site and Off-Site Improvements for each phase. To the extent that phasing of certain On-Site and Off-Site Improvements have already been agreed to by the City and Developer, as included in the Development Approvals, that phasing scheme shall govern. On-Site Improvements and Off-Site Improvements to be dedicated as public facilities shall be owned by the City upon their completion and acceptance.

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

(i) Transfer of Off-Site Improvements. Upon completion by Developer of any Off-Site Improvements and upon City's acceptance of the work performed, the Off-Site Improvements shall be conveyed and transferred by Developer to the City, and the City shall accept the Off-Site Improvements and thereafter assume responsibility for the ownership, operation, repair, and maintenance thereof.

Section 5.3 Satisfaction of Open Space Standards. The acreage associated with the Neighborhood Park and the Trails/Paseos (other than the trail areas adjacent to Grantland Avenue and the Collector Loop Street) shall be applied against any Open Space Standards applicable to the Parc West Project.

Section 5.4 City Development Fees.

(a) In General. All of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Parc West Project (collectively, the Required Development Fees), and the timing requirements for the payment of such Required Development Fees, are determined as set forth below and pursuant to Section 5.4(b).

(b) Development Fee Limitations.

(i) During the period of vested rights established by Section 4.4, (i) the types of Required Development Fees that Developer shall be required to pay are limited to fees imposed for the types of improvements and mitigations adopted pursuant to existing City Ordinance, and which are generally detailed on Exhibits “D-1” and “D-2”; (ii) for Map 6212 and Map 6276, the amount of such Required Development Fees shall be as set forth in Exhibit “D-1”; (iii) for Maps 6350, 6378 and 6387, the amount of such Required Development Fees shall be as generally set forth in Exhibit “D-2”, during the term of such Subdivision Maps; and, (iv) for all Subsequent Maps and Development Permits, the fee rates for the Required Development Fees shall be those adopted pursuant to existing City Ordinance in effect when applications for the respective Subsequent Maps or Development Permits are determined complete pursuant to Section 65943 of the Government Code.

(ii) Without limiting the generality of the foregoing, each Subdivision Map shall be vested, for the greater of the term of such map or the term of the Agreement, with the right to pay the fee rates for the Required Development Fees during such term. Required Development Fees will be adjusted on July 1st of each year based on the 20-City Construction Cost Index as reported in Engineering News Record for the 12-month period ending in May of the year of the adjustment. Developer shall pay any Development Impact Fees that are increased due to an Emergency Ordinance for immediate preservation of the public health, peace, property and safety.

(iii) Notwithstanding the foregoing, if the City adopts new nexus studies to support impact fees to fund public facilities of the type that are presently funded by the Required Development Fees described in Schedules D-1 and D-2, and if the principal change of the impact fee methodology for such fees is to adopt a square footage standard described in amendments to Government Code Section 66016.5(a)(5)(A) adopted pursuant to Chapter 347 Statutes of 2021 (AB 602), then with respect to Maps 6212, 6276, 6350, 6378, 6387 and all Subsequent Maps, the impact fees revised pursuant to such square footage methodology shall apply to the developments conducted pursuant to such Subdivision Maps from and after the expiration of the vesting period applicable to such Subdivision Map described in Government Code Section 66498.1, or after expiration of such longer vesting period that may apply to such Subdivision Map pursuant to other existing or subsequently adopted California statutes or local City Ordinances or Resolutions.

(iv) Except for the Required Development Fees (and updates to such Required Development Fees as described in this Subsection 5.4(b)), no City Development Fees shall be imposed by the City or any City Department in connection with: (a) the development, construction, use or occupancy of the Parc West Project; or (b) any application filed for any City Permit for the development, construction, use or occupancy of the Parc West Project. In addition, in consideration of the requirement to develop the Neighborhood Park Amenities, payment of Quimby Act in-lieu fees or Park Facility Impact Fees shall be subject to the application of the Park Fee Credits described in Section 5.5 below. In addition, no further dedication of lands for park or recreation

purposes shall be imposed upon the development, construction, use or occupancy of the Parc West Project.

(c) Deferral of Specified Development Fees. In consideration of the requirement to dedicate lands and develop the Neighborhood Park no further dedication of lands for park or recreation purposes shall be imposed upon the development, construction, use or occupancy of the Parc West Project.

(d) Fee Accountings.

(i) Relevant Reimbursement Sources. “Relevant Reimbursement Sources” means, with respect to each of the Required Development Fees, both the Parc West Project Area Impact Fee Accounts and the Citywide Impact Fee Reimbursement Accounts defined below.

(ii) Separate Parc West Project Area Reimbursement Fee Accounts. To facilitate the reimbursement payments and fee credit accountings required under Section 5.5 through Section 5.9, the City shall establish separate accounting funds that reflect the amount of Quimby Parkland Dedication Fees, Park Facility Impact Fees, New Growth Area Major Street Impact Fees, Regional Street Impact Fees, and Traffic Signal Impact Mitigation Fees (collectively, the “Parc West Reimbursement Account”), paid by development within the Parc West Project Area, so that prompt payments of required reimbursements and application of the relevant fee credits can be administered (the “Parc West Project Area Impact Fee Accounts”).

(iii) Right and Priority to Receive Fee Reimbursements from the Citywide Impact Fee Reimbursement Accounts. In each instance where the Developer is entitled to a payment of Reimbursement Fees under Sections 5.5 through 5.10 below, if at the time that the right of reimbursement arises there are not sufficient funds in the relevant Parc West Project Area Impact Fee Account to fully fund such reimbursement payment, then in addition to the rights otherwise specifically stated in Sections 5.5 through 5.10 below, Developer shall further be entitled to obtain reimbursements from the relevant impact fee accounts otherwise administered by the City associated with the improvement that generated such reimbursement right (the “Citywide Impact Fee Reimbursement Accounts”), with the priority of such reimbursement entitlement based on the City’s standard reimbursement practices for such Citywide Impact Fee Reimbursement Accounts. Nothing in this Agreement shall grant Developer the right to reimbursement earlier than what would be established under standard City practices. Any payments received by Developer from the Citywide Impact Fee Reimbursement Accounts shall serve to reduce the amounts otherwise available for reimbursement from the Parc West Reimbursement Account, on a dollar-for-dollar basis. In addition, any payments received by the Developer from the relevant Parc West Reimbursement Account shall serve to reduce the amounts otherwise available for reimbursement from the Citywide Reimbursement Account, on a dollar-for-dollar basis. Notwithstanding the foregoing, the parties acknowledge and agree that it is a standard City practice to provide a developer a right to use fee credits in lieu of the payment of applicable Required Development Fees,

where such developer has secured the completion of improvements associated with the relevant fee program in a manner specified in Fresno Municipal Code Section 15-3806.

(e) Non-City Fees. Notwithstanding the provisions of Section 5.4(a), Developer shall be responsible for paying: (a) any fees Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law; and (b) any fees the City is legally required to collect for other State or Federal agencies pursuant to (i) State or Federal law or (ii) any City agreement or City ordinance the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

Section 5.5 Water Supply Well Reimbursements and Credits. Reference is made to items 4, 5, and 7, under the heading “Water Requirements”, in the November 20, 2020 Memorandums from the Department of Public Utilities, referenced in the Conditions of Approval for Map 6212 and Map 6276, and items 5,6 and 8, under the heading “Water Requirements” in the September 23, 2021 Memorandum from the Department of Public Utilities, referenced in the Conditions of Approval for Map 6350, which relate to the requirement to construct and dedicate water supply wells, wellhead treatment facilities, water main extension (the “Well Development Improvements”), and dedication of the water supply well site (the “Well Site Dedication”). Notwithstanding provisions within the Conditions of Approval noted above, a water supply well shall be dedicated and constructed to the satisfaction of the Director of Public Utilities prior to the issuance of more than 200 building permits for development, and such requirements may be satisfied pursuant to the provisions of this Development Agreement.

(a) Well Site Dedication Reimbursement. In consideration of the Well Site Dedication, Developer shall be provided a right of reimbursement from the Citywide Water Capacity Fee equal to the fair market value of such real property. Payment will be not later than sixty (60) days after such Well Site Dedication and completion of construction. The City warrants and represents that as of the Effective Date of this Agreement, there are sufficient funds to fully and promptly fund the reasonably anticipated costs of such reimbursement obligation. The fair market value of the well site shall be established by a current appraisal prepared by an MAI certified appraiser, which shall be submitted to and approved by the City (which approval shall not be unreasonably withheld or conditioned). In addition to reimbursement rights, Developer shall have a right to receive the fair market value of the real property as a credit against any further liabilities for payment of Water Capacity Fees for developments within Parc West Project, with the right to assign some or all of such credits to other developers for development within the Parc West Project.

(b) Well Development Reimbursement.

(i) “Well Development Improvement Securities” means securities that may be submitted by the Developer to the City, consistent with those specified in Fresno Municipal Code Section 15-3806, to secure construction of the Well Development Improvements. The amount of the Well Development Improvement

Securities shall be based on a City approved Engineer's Estimate of the cost of completing the Well Development Improvements.

(ii) When the Well Development Improvements have been accepted by the City, the Developer shall be provided a right of reimbursement from a combination of the Citywide Water Capacity Fee Account and Urban Growth Management Water System Funds - Water Area 301-S equal to the total construction cost of the Well Development, as verified by submittal of contractor's invoices supplied to the Director of Public Utilities, as more fully detailed below. Developer shall maintain written documentation evidencing the Eligible Construction Costs incurred in constructing of the Well Development Improvements for submittal to the City at the time Developer seeks reimbursement for the eligible costs of constructing the Improvement. Within 60 days of the City's acceptance of the Well Development Improvements, Developer shall submit to Department of Public Utilities - Water Division all documentation evidencing the Eligible Costs of constructing the Well Development Improvements. Developer's failure to provide the necessary documentation evidencing certain Eligible Construction Costs may result in the City not reimbursing the Developer for those otherwise Eligible Construction Costs. "Eligible Costs" or "Eligible Construction Costs" means those activities described in the City approved Engineer's Estimate of the cost of completing the Well Development Improvements. Acceptable documentation of Eligible Construction Costs includes invoices for construction materials used to construct the Well Development Improvement and invoices from contractors clearly identifying the labor and materials expended to construct the Well Development Improvement. Invoicing must clearly identify each specific line item as presented in the City approved Engineer's Estimate for which a reimbursement is being claimed, and a copy of proof of payment.

(iii) Payment will be not later than sixty (60) days after Developer has submitted the materials required to obtain reimbursement of the Eligible Construction Costs, providing there are adequate funds in the UGM 301-S and/or Citywide Water Capacity Fee Accounts. The City warrants and represents that as of the Effective Date of this Agreement, there are sufficient funds to fully and promptly fund the reasonably anticipated costs of such reimbursement obligation.

(iv) Provided the Well Site Dedication has been completed, upon the posting of the required Well Development Improvement Securities, Developer shall have a right to receive a credit against any further liabilities for payment of Water Capacity Fees for developments within Parc West Project, up to the amount of the Eligible Construction Costs (which amount will be adjusted upon the City's final approval of the Developer's reimbursement submittals), with the right to assign such credits to other developers within the Parc West Project. Developer shall not have a right to apply Well Development Fee Credits to any fee imposition outside the Parc West project boundaries. In addition, the posting of the required Well Development Improvement Securities shall satisfy the requirements of Maps 6212, 6276, 6350, and 6378, to complete the Well Development Improvements.

Section 5.6 Park Fee Reimbursements and Credits.

(a) Quimby Fee Reimbursements and Credits. In consideration of the dedication of the Neighborhood Park, upon the date of dedication of the lands that comprise the Neighborhood Park, Developer shall be provided a right of reimbursement from the Relevant Parc West Reimbursement Account (Quimby) equal to Three Hundred Twenty Nine Thousand Eighty Eight Dollars (\$329,088.00). Payment will be not later than one hundred twenty (120) days after Park Site Dedication providing there are adequate funds in the relevant Parc West Reimbursement Account. The Neighborhood Park Quimby Fee Credits are based on a valuation of such land at One Hundred Thirty-Seven Thousand Eight Hundred Ninety Three Dollars (\$165,000.00) per acre, as assumed in the 2016 Park Impact Fee Nexus Study previously adopted by the City of Fresno and adjusted annually by the Construction Cost Index. In addition to reimbursement rights, Developer shall have a right to apply the Neighborhood Park Quimby Fee Credits as a credit against any further liabilities for payment of all Quimby Parkland Dedication Fees for development within Parc West Project, with the right to with the right to assign some or all of such credits to other developers for development within the Parc West Project. Developer shall further be entitled to receive future payments of from the Relevant Citywide Reimbursement Account on an annual basis.

(b) Park Facility Impact Fee Credit.

(i) “Park Facility Improvement Securities” means securities that may be submitted by the Developer to the City, consistent with those specified in Fresno Municipal Code Section 15-3806, to secure construction of improvements to be developed, in phases, within the Neighborhood Park and/or within the Trails and Paseos (the “Park Amenities”). The amount of the Park Facility Improvement Securities shall be based on a City approved Engineer’s Estimate of the cost of completing the relevant phase of Park Amenities (the “Engineers Estimate”).

(ii) If the Developer submits any Park Facility Improvement Securities, it shall then be provided a credit against payment of Park Facility Impact Fees equal to the amount of the approved Engineer’s Estimate (the “Park Facility Fee Credits”).

(iii) When a relevant phase of completed Park Amenities has been accepted by City, the Developer shall be provided with a right of reimbursement from the Relevant Parc West Reimbursement Accounts. The amount of the reimbursements and or Park Facility Impact Fee Credits will be based on the construction cost as verified by submittal of contractor’s invoices supplied to the City Engineer. The maximum Park Facility Impact Fee credits or reimbursements allowed shall not exceed Nine Hundred Eighty Seven Thousand Two Hundred Sixty Four Dollars (\$987,264.00). Developer will pay for any park improvement costs that exceed nine hundred thousand dollars. Payment shall be no later than one hundred twenty (120) days after completion of the Park Amenities providing there are adequate funds in the relevant Parc West Reimbursement Account. In addition to reimbursement rights, Developer shall have a right to apply the construction cost as a credit against any further liabilities for payment of all Park Facility Impact Fees for development within Parc West Project. Developer shall further be entitled to receive future payments of from the Relevant Citywide Reimbursement Account on an annual basis.

Section 5.7 Trails Adjacent to Major Streets.

(a) “Major Street Trail Improvement Securities” means securities that may be submitted by the Developer to the City, consistent with those specified in Fresno Municipal Code Section 15-3806, to secure construction of improvements the Trails Adjacent to Major Streets depicted on the MT-2 Revision Layout included in Exhibit “B-1” (the “Major Street Trail Amenities”). The amount of the Major Street Trails Improvement Securities shall be based on a City approved Engineer’s Estimate of the cost of completing the relevant phase of Major Street Trail Amenities. The Major Street Trail Amenities shall comply with applicable Existing City Requirements that govern public improvements that are required for subdivision development.

(b) If the Developer submits any Major Street Trail Improvement Securities, it shall then be provided a credit against payment of New Growth Area Major Street Impact Fees or the Regional Street Impact Fee in an amount equal to the Engineer’s Estimate of the differential in the costs of completing sidewalks and perimeter landscaping that would otherwise be required by the City’s standard design specifications, versus the improvements developed as part of the Major Street Trail Amenities (the “Major Street Trails Fee Credits”).

(c) When a relevant phase of completed Major Street Trail Amenities has been accepted by City, the Developer shall be provided, a right to receive reimbursements from the Relevant Parc West Reimbursement Accounts. Payment shall be no later than one hundred twenty (120) days after completion of the Major Street Trail Amenities providing there are adequate funds in the relevant Parc West Reimbursement Accounts.

(d) When a relevant phase of completed Major Street Trail Amenities has been accepted by City, the outstanding balance of the Major Street Trails Fee Credits shall then be adjusted to total the differential in Engineer’s Estimate of the costs of completing sidewalks and perimeter landscaping that would otherwise be required by the City’s standard design specifications, versus the Completion Costs of improvements developed as part of the relevant Major Street Trail Amenities, minus the amount of Major Street Trails Fee Credits previously applied against the payment of New Growth Area Major Street Impact Fees, minus any other reimbursements previously paid with respect to such Major Street Trails Fee Credits, and minus the amount of any Major Street Trails Fee Credits previously assigned by Developer (the “Completion Adjusted Major Street Trails Development Fee Credits”).

(e) Developer shall thereafter be entitled to receive future payments of reimbursements for the Major Street Trails Fee Credits from the relevant Citywide Reimbursement Accounts based on the Developer’s reimbursement priority status, consistent with the City’s standard reimbursement practices, as well as ongoing application of such Major Street Fee Credits against other impositions of New Growth Area Major Street Impact Fees.

Section 5.8 Major Streets and Major Street Fee Credits.

(a) Parc West Major Streets. City acknowledges that the improvements to Ashlan Avenue, Garfield Avenue, Gettysburg Avenue, and Veterans Boulevard are part of the City's network of Major Streets (the "Existing Parc West Major Streets"). The City covenants that it shall timely pursue including Grantland Avenue and the Collector Loop Street into the City's network of Major Streets (the "Future Parc West Major Streets"). The Existing Parc West Major Streets, and the Future Parc West Major Streets (conditioned upon their inclusion in the City's network of Major Streets are referred to herein collectively as the Parc West Major Streets.

(b) "Major Street Improvement Securities" means securities that may be submitted by the Developer to the City, consistent with those specified in Fresno Municipal Code Section 15-3806, to secure construction of the Parc West Major Streets required by the Parc West Project Approvals. The amount of the Major Street Improvement Securities shall be based on a City approved Engineer's Estimate of the cost of completing the relevant phase of Parc West Major Streets.

(c) If the Developer submits any Major Street Improvement Securities, it shall then be provided a credit against payment of New Growth Area Major Street Impact Fees in an amount equal to the City's approved Engineer's Estimates for the cost of constructing the relevant Parc West Major Streets (the "Major Street Fee Credits").

(d) When a relevant phase of completed Parc West Major Streets has been accepted by City, the Developer shall be entitled, to, and Major Street Fee Credits shall include, a right to receive payment of reimbursements from the Relevant Parc West Reimbursement Accounts. As part of such reimbursement rights, the Developer shall be entitled to be paid within one hundred twenty days (120) the total of all New Growth Area Major Street Impact Fees previously paid with respect to development within the Parc West Project (and not otherwise credited against fee payment obligations or previously reimbursed to Developer pursuant to this Agreement); or, (ii) the Completion Adjusted Major Street Fee Credits.

(e) When a relevant phase of completed Parc West Major Streets has been accepted by City, the outstanding balance of the Major Street Fee Credits shall then be adjusted to total the Completion Costs as verified by submittal of contractor's invoices supplied to the City Engineer of the completed Parc West Major Streets, minus the amount of credits previously applied against the payment of New Growth Area Major Street Impact Fees, minus any other reimbursements previously paid with respect to such Major Street Fee Credits, and minus the amount of any Major Street Fee Credits previously assigned by Developer (the "Completion Adjusted Major Street Fee Credits").

(f) Developer shall thereafter be entitled to receive future payments of reimbursements for the Major Street Fee Credits from the relevant Reimbursement Sources based on the Developer's reimbursement priority status, consistent with the City's standard reimbursement practices, as well as ongoing application of such Major Street Fee Credits against other impositions of New Growth Area Major Street Impact Fees. The foregoing provisions may be applied as part of each separate phase of the development of Parc West Major Streets.

Section 5.9

Traffic Signals.

(a) “Traffic Signal Improvement Securities” means securities that may be submitted by the Developer to the City, consistent with those specified in Fresno Municipal Code Section 15-3806, to secure the installation of traffic signals whose installation is a condition of the Parc West Project Approvals (the “Traffic Signal Installations”). The amount of the Traffic Signal Improvement Securities shall be based on a City approved Engineer’s Estimate of the cost of completing the relevant phase of the required Traffic Signal Installations.

(b) If the Developer submits any Traffic Signal Improvement Securities, it shall then be provided a credit against payment of TSMI Fees in an amount equal to the City’s approved Engineer’s Estimates for the cost of constructing the relevant Traffic Signal Installations (the “TSMI Fee Credits”).

(c) When a relevant Traffic Signal Installation has been accepted by City, the Developer shall be entitled to, and the TSMI Fee Credits shall include, a right to receive payment of reimbursements from the Relevant Parc West Reimbursement Account. As part of such reimbursement rights, the Developer shall be entitled to be paid within one hundred twenty days (120) the total of all TSMI Fees previously paid with respect to development within the Parc West Project (and not otherwise credited against fee payment obligations or previously reimbursed to Developer pursuant to this Agreement); or, (ii) the Completion Adjusted TSMI Fee Credits.

(d) When a relevant Traffic Signal Installation has been accepted by City, the outstanding balance of the TSMI Fee Credits shall then be adjusted to total the Completion Costs as verified by submittal of contractor’s invoices supplied to the City Engineer of the relevant Traffic Signal Installation, minus the amount of credits previously applied against the payment of TSMI Fees, minus any other reimbursements previously paid with respect to such TSMI Fee Credits, and minus the amount of any TSMI Fee Credits previously assigned by Developer (the “Completion Adjusted TSMI Fee Credits”).

(e) Developer shall thereafter be entitled to receive future payments of reimbursements for the TSMI Fee Credits from the relevant Reimbursement Sources based on the Developer’s reimbursement priority status, consistent with the City’s standard reimbursement practices, on not less than an annual basis, as well as ongoing application of such TSMI Fee Credits against other impositions of TSMI Fees.

Section 5.10 Application of Fee Credits. All fee credits related to the rights of reimbursement detailed in Sections 5.5 through 5.10 (the Parc West Fee Credits) may be applied to relevant impact fee obligations associated with future development of the Parc West Project Area, provided, however, that any Transferee (as defined below) of any rights under this Agreement shall only be entitled to the benefit of applicable Fee Credits for Parc West Project Area developed by such Transferee if the Assumption Agreement described in Section 12.2(b) makes a specific assignment of an allocation of Parc West Fee Credits to such Transferee.

(a) Costs of Construction. The “Cost of Construction” of the improvements related to the Parc West Fee Credits (other than with respect to the Well Development Improvements otherwise provided for in Section 5.5(b)) shall be determined in accordance with the following procedures. Within ninety (90) days of acceptance by the City of the relevant improvements or dedications, Developer shall submit to the City in electronic or hard copy format the permanent reproducible as-built or record plans of the accepted improvements, along with the project accounting reflecting final construction costs paid for such improvements and records confirming the cost of valuation of the real property dedications. Such construction costs may also include reasonable engineering, architectural and design fees as provided in the Implementing Policies for the Water Capacity Fees set forth in Fresno Municipal Code Section 6-513, and as provided in Fresno Municipal Code Article 4.10 and the Administrative Guidelines adopted pursuant to Fresno Municipal Code Section 4.1006 for the Citywide Regional Street and new Growth Area Major Street Impact Fees.

Section 5.11 Community Facilities District for Maintenance Services. Notwithstanding the conditions of approval for Maps 6212, 6276, 6350, 6378, or 6387, the maintenance obligations of public improvements developed within either Tract, and for any Subsequent Map, may be satisfied upon mutual agreement between City Developer, by the establishment of a stand-alone Community Facilities District, whose improvements will be maintained pursuant to service agreements arranged by the Developer, and which shall be guaranteed by service maintenance agreements. Such Community Facilities District special taxes may, at the request of Developer, also include funding for enhanced public safety services to the Parc West Project Area. City will cooperate with the Developer in the establishment of such stand-alone CFD. Notwithstanding the above, nothing in this Agreement shall create a legal duty of the City to form a stand-alone CFD and establishment of a stand-alone CFD shall be conditioned upon mutual agreement between the City and Developer as to its terms.

Section 5.12 Community Facilities District for Public Safety Services. Prior to the approval and recording of any final map, Developer shall either have the subject property included in the initial formation of a Public Safety Services CFD, or have the subject property annexed to an already-formed Public Safety Services CFD, should one be in existence. The maximum special tax for the Public Safety Services CFD shall be the same rate per dwelling unit as may be adopted by the City Council for other new developments in the new growth area west of State Route 99. Notwithstanding the above, nothing in this Agreement creates a legal duty of the City to form a stand-alone Public Safety Services CFD; establishment of such a stand-alone CFD shall be conditioned upon mutual agreement between the City and Developer as to its terms.

Section 5.13 City Application Fees. Developer shall pay to the City Application Fees chargeable in accordance with the City's Master Fee Schedule that is in effect at the time the relevant application for a City Permit is made; provided such City Application Fees are uniformly imposed by the City and any City Agency at similar stages of project development on all similar applications for development in the City.

Section 5.14 City Preparation Costs. Developer has paid the City the sum of \$26,530.00 which amount the City has determined to be the reasonable costs to be incurred by the City to negotiate, prepare and execute this Agreement (collectively, the City Preparation Costs). The Developer's liability for the city Preparation Costs is capped at the sum of \$28,535.00, and the City shall reimburse Developer for any unused portion of the previously paid City preparation Costs (which such unused portion based upon actually consumed staff time and City Attorney time, based upon reasonable imputed hourly rates).

ARTICLE 6. ACTIONS BY CITY

Section 6.1 Other Governmental Permits. The City agrees to cooperate with Developer in Developer's endeavors to obtain permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Parc West Project Area or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over transportation facilities and air quality issues) so long as the cooperation by the City will not require the City to incur any cost, liability or expense without adequate indemnity against or right of reimbursement therefore from Developer.

Section 6.2 Cooperation in Dealing with Legal Challenge. If any action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of this Agreement (collectively, a Third Party Action), the Parties shall cooperate in the defense of the Third Party Action to the maximum extent reasonably possible under the circumstances. The City shall timely take all actions which are necessary or required to uphold the validity and enforceability of this Agreement. The City shall not enter into any settlement with respect to a Third Party Action without the prior written consent of Developer.

ARTICLE 7. INDEMNITY AND INSURANCE

Section 7.1 Indemnification.

(a) To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or improvements by Developer and Developer's employees, officers, agents, contractors or

subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and improvements; or (v) City's granting, issuing or approving use of this Agreement.

(b) Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

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

(d) Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements hereinbefore specified, shall be at the sole and exclusive risk of Developer at all times prior to final acceptance by City of the completed street and other improvements thereon and therein. **Upon substantial completion of such completed streets and other improvements, Developer's obligations under paragraphs "a," "b," and "c" of this Section shall continue through the time limits specified in Code of Civil Procedure §§ 337.1 and 337.15.**

(e) This Section shall survive termination or expiration of this Agreement.

ARTICLE 8. BENEFITS

Section 8.1 Benefits to the City. The City has extensively reviewed the terms and conditions of this Agreement and, in particular, has specifically considered and approved the impact and benefits of the Parc West Project upon the regional welfare. The terms and conditions of this Agreement have been found by the City to be fair, just and reasonable, and to provide appropriate benefits to the City. This Agreement and the development of the Parc West Project will serve the best interests, and the public health, safety, and welfare of the residents and invitees, of the City and the general public. This Agreement will help provide effective and efficient development of Off-Site Improvements

and other Required Tract Map Exactions or Required Other Exactions in the vicinity of the Parc West Project Area; help maximize effective utilization of resources within the City; increase City tax revenues; and provide other substantial public benefits to the City and its residents by achieving the goals and purposes of the Development Agreement Laws, the Charter of the City of Fresno, the Fresno Municipal Code and the Fresno General Plan (as amended by the Plan Amendments). Without limiting the generality of the foregoing, this Agreement helps assure the timely construction and dedication of the Neighborhood Park, which is an important amenity in achieving the General Plan goals of a Complete Neighborhood development with respect to the Parc West Project.

Section 8.2 Benefits to the Developer. The Developer has expended and will continue to expend substantial amounts of time and money on the planning and development of the Park West Project. In addition, the Developer will expend substantial amounts of time and money for the construction of the Off-Site Improvements and other Required Exactions and for the payment of the Required Development Fees in connection with the Parc West Project, including the Neighborhood Park development. The Developer would not make such expenditures except in reliance upon this Agreement. The benefit to the Developer under this Agreement consists of the assurance the City will preserve the rights of Developer to develop the Parc West Project Area as planned and as set forth in the Parc West Approvals and this Agreement, and the right to obtain timely reimbursement and Fee Credits for certain Costs of Construction of specified improvements against subsequent Reimbursement Development Fees and Required Exactions.

ARTICLE 9. ANNUAL REVIEW OF COMPLIANCE

Section 9.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Parc West Project in accordance with the provisions of California Government Code Section 65865.1, Fresno Municipal Code Section 15-6008, and this ARTICLE 9. The Parties recognize this Agreement and the Parc West Approvals and City Permits referenced herein contain extensive requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the Parties' resources. Accordingly, Developer shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith compliance, as that term is used in Government Code, Section 65865.1, with the material provisions of this Agreement.

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

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

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

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

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

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

Section 9.7 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to Section 9.4 and takes any of the actions specified in ARTICLE 10 with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by the City Council pursuant to a legal action filed in accordance with Section 16.5.

Section 9.8 City Costs. In the event that the Planning Director concludes in its Staff Report pursuant to Section 9.3 of this Agreement, that Developer is not in good faith compliance with the material terms of this Agreement, then Developer shall reimburse the City for all of the City's reasonable costs, (including but not limited to, staff time, attorney's fees, and administrative costs) incurred in connection with Section 9.4 and Section 9.5 of this Agreement. Pursuant to this section, Developer shall remit payment to the City within thirty days of receiving an invoice from the City for its costs. Notwithstanding the foregoing, Developer shall have the right to contest any

determination by the Planning Director (pursuant to Section 9.4) or the City Council (pursuant to Section 9.7) that Developer is not in good faith compliance with the material terms of this Agreement, and if Developer prevails in such contest: (a) Developer shall have no reimbursement obligation under this Section 9.8; and (b) any monies previously reimbursed by Developer to the City pursuant to this Section 9.8 shall be returned to Developer by the City within thirty days after the conclusion of the contest.

ARTICLE 10. EVENTS OF DEFAULT; REMEDIES; ESTOPPEL CERTIFICATES

Section 10.1 Events of Default.

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

(b) Any Notice of Default to the defaulting Party pursuant to Section 10.1(a) shall satisfy the requirements of ARTICLE 15 of this Agreement and shall include a provision in at least fourteen face bold type as follows: "YOU HAVE FAILED TIMELY TO PERFORM OR RENDER AN APPROVAL OR TAKE AN ACTION REQUIRED UNDER THE DEVELOPMENT AGREEMENT: [SPECIFY IN DETAIL]. YOUR FAILURE TO COMMENCE TIMELY PERFORMANCE AND COMPLETE SUCH PERFORMANCE AS REQUIRED UNDER THE AGREEMENT OR RENDER SUCH APPROVAL TO TAKE SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE SHALL ENTITLE THE UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED UNDER THE AGREEMENT AS A RESULT OF THE FOREGOING CIRCUMSTANCES."

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

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

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

ARTICLE 11. MORTGAGEE PROTECTION

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

"Mortgage" means: (a) a mortgage or deed of trust, or other transaction, in which Developer conveys or pledges as security its interest in the Parc West Project or the Parc West Project Area, or a portion thereof, or interest therein, or any buildings or improvements thereon for the purpose of (i) financing the acquisition

of the Parc West Project Area or the development of the Parc West Project, or any portion thereof; (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering the Parc West Project or the Parc West Project Area or a portion thereof; and (b) a sale and leaseback arrangement, in which Developer sells and leases back concurrently therewith its interest in the Parc West Project, or a portion thereof, or interest therein, or improvements thereon for the purpose of (i) financing the acquisition of the Parc West Project Area, or the development of the Parc West Project, or any portion thereof; (ii) refinancing any of the foregoing, or (iii) obtaining financing proceeds by encumbering the Parc West Project or the Parc West Project Area or a portion thereof

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

Section 11.2 Mortgagee Protection. This Agreement and any covenants entered into between the Developer and City required for the approval of any Parc West Project Approvals shall be superior and senior to the conveyance of any Mortgage encumbering any interest in the Parc West Project or the Parc West Project Area. No Event of Default shall defeat, render invalid, diminish or impair the conveyance of any Mortgage made for value, but, subject to the provisions of Section 11.3, all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any Mortgagee) who acquires title to the Parc West Project Area or any portion thereof or interest therein or improvement thereon, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

Section 11.3 Mortgagee Not Obligated; Mortgagee as Transferee. No Mortgagee shall have any obligation or duty under this Agreement whatsoever, except that nothing contained in this Agreement shall be deemed to permit or authorize any Mortgagee to undertake any new construction or improvement in the Parc West Project Area, or to otherwise have the benefit of any rights of Developer, or to enforce any obligation of the City, under this Agreement, unless and until such Mortgagee elects to become a Transferee in the manner specified in Section 12.5. Any Mortgagee that affirmatively elects to become a Transferee shall be later released from all obligations and liabilities under this Agreement upon the subsequent Transfer by the Mortgagee of its interest as a Transferee to another Person.

Section 11.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If the City receives notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof (a Notice Request), then the City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default thereafter given to Developer. From and after the delivery of a Notice Request to the City by a Mortgagee, no Notice of Default delivered to the Developer shall be effective unless and until a copy of such Notice of Default is also delivered to the Mortgagee. Such Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed within the applicable time periods for cure specified in this Agreement. If, however, the Event of

Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project, or portion thereof, such Mortgagee shall seek to obtain possession with diligence and continuity (but in no event later than 180 days after a copy of the Notice of Default is given to Mortgagee) through a receiver or otherwise, and shall thereafter remedy or cure such Event of Default or noncompliance promptly and with diligence and dispatch after obtaining possession. Other than an Event of Default or noncompliance (i) for failure to pay money or (ii) that is reasonably susceptible of remedy or cure prior to a Mortgagee obtaining possession, so long as such Mortgagee is pursuing cure of the Event of Default or noncompliance in conformance with the requirements of this Section 11.4, the City shall not exercise any right or remedy under this Agreement on account of such Event of Default or noncompliance. When and if a Mortgagee acquires the interest of Developer encumbered by such Mortgagee's Mortgage and such Mortgagee becomes a Transferee pursuant to Section 12.5, then such Mortgagee shall promptly cure all monetary or other Events of Default or noncompliance then reasonably susceptible of being cured by such Mortgagee to the extent such that such Events of Default or noncompliance are not cured prior to such Mortgagee becoming a Transferee pursuant to Section 12.5.

Section 11.5 Priority of Mortgages. For purposes of exercising any remedy of a Mortgagee pursuant to this ARTICLE 11 or for becoming a Transferee in the manner specified in Section 12.5, the applicable laws of the State of California shall govern the rights, remedies and priorities of each Mortgagee, absent a written agreement between Mortgagees otherwise providing.

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

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

ARTICLE 12. TRANSFERS

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

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

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

"Common Control" means that two Persons are both controlled by the same other Person.

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

"Transfer" means the sale, assignment, or other transfer by Developer of this Agreement, or any right, duty or obligation of Developer under this Agreement, including by foreclosure, trustee sale, or deed in lieu of foreclosure, under a Mortgage, but excluding: (a) a dedication of any portion of the Parc West Project Area to the City or another governmental agency; (b) a Mortgage; (c) any Collateral Assignment of this Agreement to a Mortgagee; (d) ground leases, leases, subleases, licenses and operating agreements entered into by Developer with tenants or occupants of the Parc West Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases) in the Parc West Project, and any assignment or transfer of any such ground lease, lease, sublease, license or operating agreement by either party thereto; (e) any sale of a building pad and surrounding area in the Parc West Project Area to a future retail (or its affiliated entity) for the intended purpose of the development and occupancy of a building or improvement thereon; (f) and, except to the extent that any property owners association has incurred obligations, the purchaser of any lot that is both (i) not subject to further subdivision (other than a lot subject to a condominium map), and (ii) subject to the jurisdiction of the California Department of Real Estate, shall take title to such lot free and clear of any obligations arising under this Agreement, without the execution or recordation of any further document, when title to the lot transfers to such purchaser

"Transferee" means the Person to whom a Transfer is effected.

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

(a) No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

(b) Prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the Assumption Agreement) in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee (including, the extent, of any rights to the use Fee Credits assigned to such Transferee, if any); (b) the obligations of

Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer to be assumed by the Transferee in connection with the proposed Transfer. The Assumption Agreement shall be recorded in the Official Records concurrently with the consummation of the Transfer.

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

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

Section 12.4 Transfer to Lennar Homes. Notwithstanding the provisions of Section 12.2, Developer shall have the right to Transfer the rights, duties and obligations under this Agreement pertaining to the development of the Tract 6212 and/or Tract 6276, to Lennar Homes Lennar Homes of California, Inc., a California corporation ("Lennar"). Lennar shall become a Transferee upon: (a) the acquisition by Lennar of the property that comprises Tract 6212 and/or Tract 6276; (b) delivery to the City of an Assumption Agreement executed by Lennar pursuant to which Lennar assumes, from and after the date that Lennar so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. By virtue of its demonstrated status and recognizing that Transfers to Lennar will facilitate Developer's ability to develop the Parc West Project consistent with this Agreement, the City hereby consents to any Transfer to Lennar in accordance with this Section 12.4, and no further consent of the City shall be required for any Transfer by Developer to Lennar.

Section 12.5 Mortgagee as Transferee. No Mortgage (including the execution and delivery thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee

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

Section 12.6 Effect of Transfer. A Transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the Transfer and then only to the extent set forth in the Assumption Agreement delivered under Section 12.2(b), Section 12.3 and Section 12.5. When and if Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with Section 12.2(b), Section 12.3 and Section 12.5. Developer shall be released from any and all obligations accruing after the date of the Transfer under this Agreement. If Developer effectuates a Transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the Transfer which the Transferee assumes in the Assumption Agreement.

ARTICLE 13. ENFORCED DELAY; EXTENSION OF TIME OF PERFORMANCE; EXCUSED PERFORMANCE

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

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

ARTICLE 14.
PROJECT APPROVALS INDEPENDENT

Section 14.1 Except to the extent otherwise recognized by CEQA, all City Permits which may be granted pursuant to this Agreement, and all Plan Amendments, Zoning Amendments and Parc West Approvals which have been issued or granted by the City with respect to the Parc West Project, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement is Terminated for any reason, then such invalidity, unenforceability or Termination of this Agreement, or any part hereof, shall not affect the validity or effectiveness of any such City Permits or the Plan Amendments, Zoning Amendments, Parc West Approvals or approved Subsequent Maps. In such cases, such City Permits and Plan Amendments, Zoning Amendments, Parc West Approvals and Subsequent Maps will remain in effect pursuant to their own terms, provisions, and conditions of approval. As such, the City may place conditions of approval on all City Permits which may be granted pursuant to this Agreement, and all Plan Amendments, Zoning Amendments, Parc West Approvals and Subsequent Maps which have been issued or granted by the City with respect to the Parc West Project, so long as such conditions are consistent with the terms of this Agreement.

ARTICLE 15.
NOTICES

Section 15.1 Form of Notices; Addresses. All notices and other communications (the Notices) required or permitted to be given by any Party to another Party pursuant to this Agreement shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 15.2; and (c) sent to the Party (to which it is addressed at the address set forth below (with a copy to the appropriate entity as indicated below) or at such other address as such Party (or the addressee required to be sent a copy) may hereafter specify by at least five calendar days' prior written notice:

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

And to: City Attorney
 City of Fresno
 City Hall
 2600 Fresno Street
 Fresno, CA 93721-3600
 Attention: City Attorney
 Facsimile: (559) 488-1084

If to Developer: Parc West Development , Inc.
 1396 W. Herndon Ave. Ste. 101
 Fresno CA 93711
 Attention: Darius Assemi

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

ARTICLE 16. GENERAL PROVISIONS

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

Section 16.2 Amendment or Cancellation. Subject to meeting the notice and hearing requirements of Section 65867 of the California Government Code (and compliance with the procedures set forth in Fresno Municipal Code Section 15-6009(B), this Agreement may be amended from time to time, or canceled in whole or in part, by mutual written consent of the City and Developer, or their respective successors in interest in accordance with the provisions of Section 65868 of the California Government Code.

Section 16.3 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and referring expressly to this Section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

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

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

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

Section 16.7 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

Section 16.8 Limitation of Legal Acts. Except as provided in Section 16.7, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

Section 16.9 Validation. If so requested in writing by the Developer, the City agrees to initiate appropriate procedure under California Code of Civil Procedure Section 860 et seq., in order to validate this Agreement, and the obligations thereunder. Any validation undertaken at the request of the Developer shall be at the sole cost of the Developer.

Section 16.10 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

Section 16.11 Incorporation of Attachments. All recitals and attachments to this Agreement, including all Exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

Section 16.12 Negation of Partnership. The Parties specifically acknowledge the Parc West Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

Section 16.13 Not A Public Dedication. Except for Required Exactions specifically set forth in this Agreement and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Parc West Project Area or any buildings or improvements constructed in the Project, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Parc West Project Area as private property.

Section 16.14 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

Section 16.15 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

Section 16.16 Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

Section 16.17 Days. Unless otherwise specified in this Agreement, the term "days" means calendar days.

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

CITY

CITY OF FRESNO,
a municipal corporation

By: _____
Georgeanne White, City Manager

Dated: _____

ATTEST:
TODD STERMER
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
Rina M. Gonzales
Interim City Attorney

By: _____
Deputy

Dated: _____

DEVELOPER

Parc West Development, Inc., a California
corporation

By: _____
Darius Assemi, Its President

Dated: _____

By: _____
Jeffrey A. Russell, Its Secretary

Dated: _____

Exhibit "A"
Legal Description of
Parc West Project Area

BEGINNING at the South Quarter corner of Section 17, Township 13 South, Range 19 East, Mount Diablo Base and Meridian; thence North 00°01'18" West, a distance of 2,639.04 feet to the Center Quarter corner of said Section 17; thence North 00°26'26" West, along the West line of the Northeast Quarter of said Section 17, a distance of 30.00 feet to the intersection with a line parallel with and 30.00 feet North of the South line of said Northeast Quarter; thence North 89°33'34" East, along said parallel line, a distance of 2,646.13 feet to the intersection with the East line of said Northeast Quarter; thence South 00°01'14" West, a distance of 30.00 feet to the East Quarter corner of said Section 17; thence South 00°02'15" West, a distance of 2,637.90 feet to the Southeast corner of said Section 17; thence South 89°32'03" West, a distance of 2,643.18 feet to the Point of Beginning.

Containing an area of 162 acres, more or less.

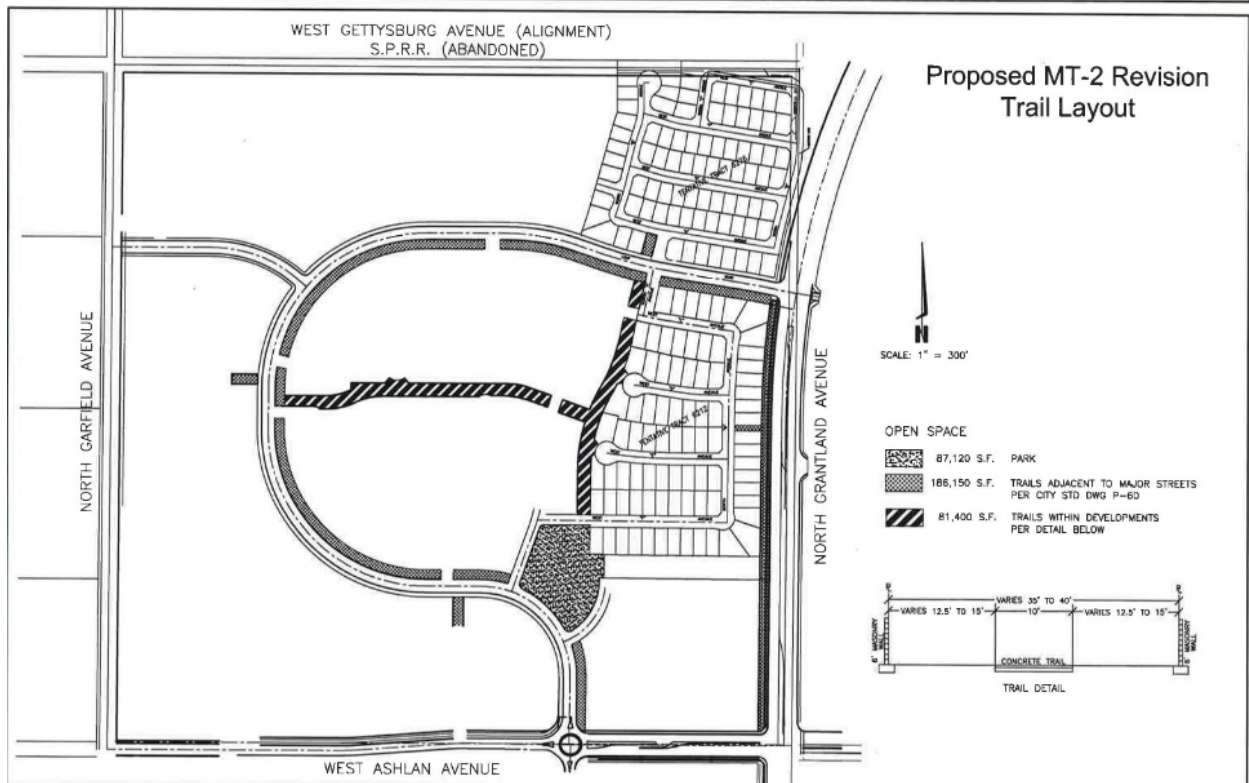
[illegible]

Exhibit "C-1"
Listing of Vested Uses

Map 6212	84 units of single family residence (either attached or detached) in an RS-5/UGM/cz Zone.
Map 6276	83 units of single family residence (either attached or detached) in an RS-5/UGM/cz Zone.
Map 6350	73 units of single family residence (either attached or detached) in an RS-5/UGM/cz Zone.
Map 6378	78 units of single family residence (either attached or detached) in an RS-5/UGM/cz Zone.
Map 6387	149 units of single family residence (either attached or detached) in an RS-5/UGM/cz Zone.
Remainder of RS-5/UGM/cz Zone.	±54.40 acres developable in accordance with the RS-5/UGM/cz Zone standards.
CC/UGM/cz Zone.	4.64 acres developable in accordance CC/UGM/cz Zone standards.

Exhibit "C-2"

Depiction of Vested Uses

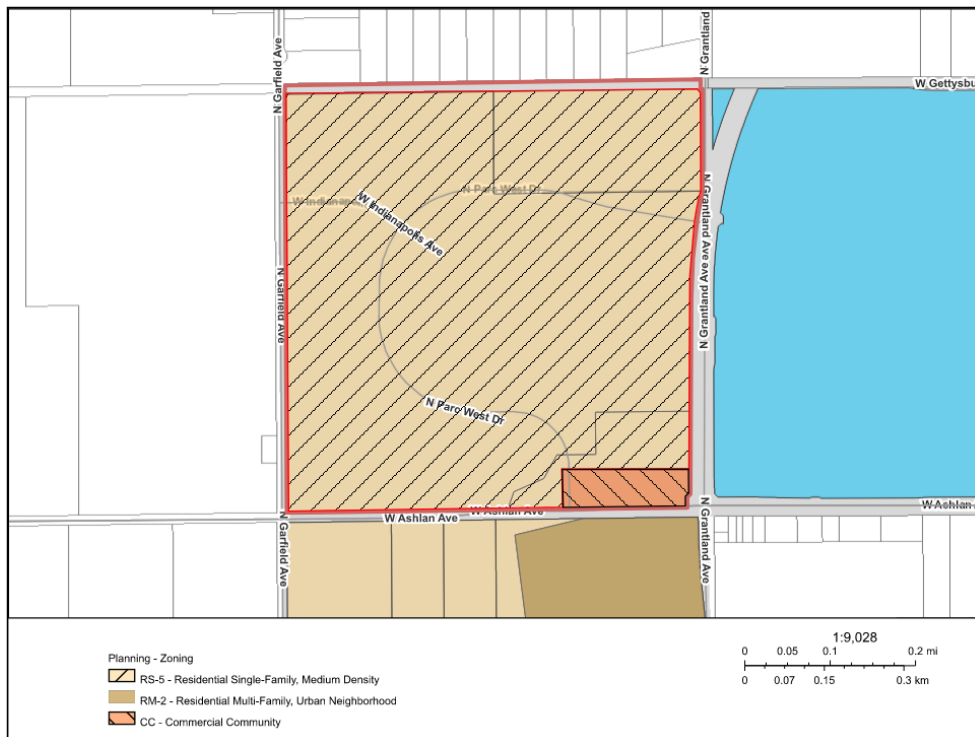
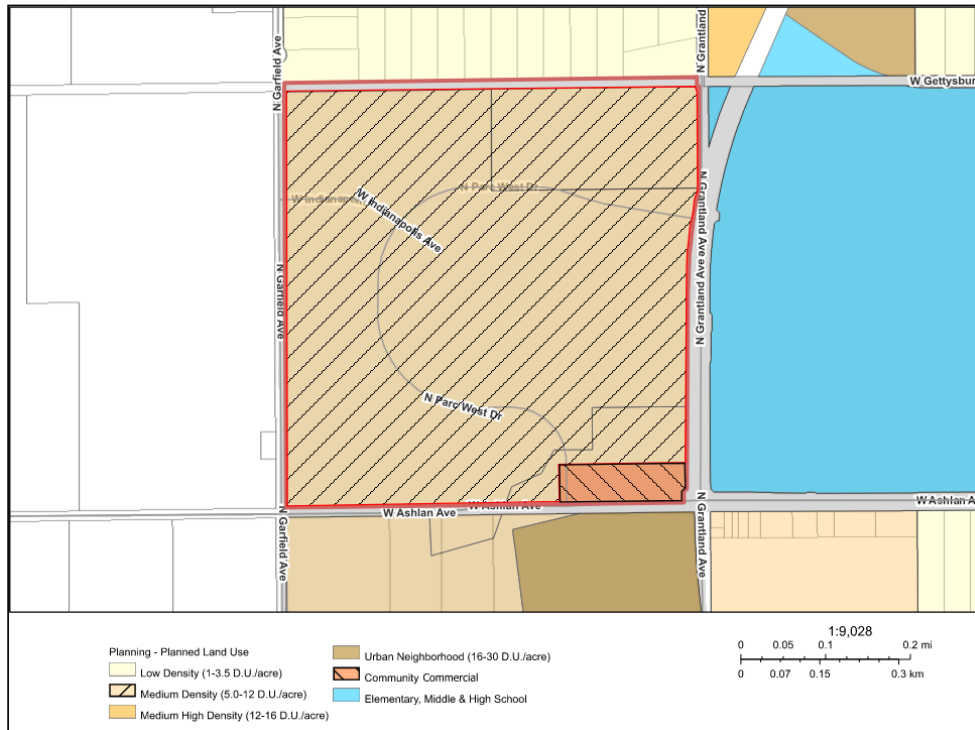


Exhibit "D-1"
Required Development Fees

With respect to Maps 6212 and 6276, the Required Fees payable pursuant to Section 5.4(b) are as follows:

Improvements and payments shall not be required on or in front of any undeveloped portion of a net acreage of ten acres or more which exists after the division of land. All improvements and payments to be completed with development.

<u>SEWER CONNECTION CHARGES</u>	<u>FEE RATE</u>
a. Lateral Sewer Charge [1]	\$0.10/sq. ft. (to 100' depth)
b. Oversize Charge [1]	\$0.05/sq. ft. (to 100' depth)
c. Trunk Sewer Charge [2] unit Service Area: Grantland	\$419/living unit
d. Wastewater Facilities Charge [3]	\$2,119/living unit
e. Fowler Trunk Sewer Interim Fee Surety [1]	N/A
f. House Branch Sewer Charge [2]	N/A
<u>WATER CONNECTION CHARGES</u>	<u>FEE RATE</u>
g. Service Connection Charge	Fee based on service(s) and meter(s) sizes specified by owner; fee for service(s) and Meter(s) established by the Master Fee Schedule adopted for Fiscal Year 2019/2020.
h. Frontage Charge [1]	\$6.50/lineal foot
i. Water Capacity Fee* [1] Single Family Residential Irrigation	\$4481/ 1" Meter/living unit \$5608/ 1½" Meter \$11201/ 2" Meter

* Fee based on meter size(s) specified by owner;

Exhibit "D-1"
Required Development Fees (cont.)

<u>CITYWIDE DEVELOPMENT IMPACT FEES</u>	<u>FEE RATE</u>
j. Fire Facilities Impact Fee – Citywide [4]	\$1893/living unit
k. Park Facility Impact Fee – Citywide [4] With Quimby obligation satisfied	\$2811/living unit
l. Quimby Parkland Dedication Fee [2]	\$1216/living unit
m. Police Facilities Impact Fee – Citywide [4]	\$618/living unit
n. Citywide Regional Street Fee [3]	\$8,083/adj. acre
o. New Growth Area Major Street Fee [3]	\$22,126/adj. acre
p. Traffic Signal Charge [1]	\$501/living unit

Notes:

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency approved Resolution No. 2009 – 01 requiring the payment of Regional Transportation Mitigation Fee. The effective date of this resolution is January 1, 2010. Contact the Council of Fresno County Governments (FCOG) to determine this fee obligation. Confirmation by the FCOG is required before the City of Fresno can issue building permits.

On December 8, 2016, Fresno, Fresno City Council adopted Resolution No. 2016-258, effective July 1, 2018, administratively updating the impact fees adjusted by the applicable Master Fee Resolution annually to the percentage change in the 20-City Construction Cost Index as reported in the Engineering News Record (ENR) for the 12-month period ending of May of the year of adjustment.

[1] Deferrable through Fee Deferral Covenant.

[2] Due at Final Map.

[3] Due at Building Permit.

[4] Due at Certificate of Occupancy.

Exhibit "D-2"
Required Development Fees (cont.)

With respect to Maps 6350, 6378, and 6387, Required Fees payable pursuant to Section 5.4(b) are as follows:

Improvements and payments shall not be required on or in front of any undeveloped portion of a net acreage of ten acres or more which exists after the division of land. All improvements and payments to be completed with development.

Improvements and payments shall not be required on or in front of any undeveloped portion of a net acreage of ten acres or more which exists after the division of land. All improvements and payments to be completed with development.

<u>SEWER CONNECTION CHARGES</u>	<u>FEE RATE</u>
a. Lateral Sewer Charge [1]	\$0.10/sq. ft. (to 100' depth)
b. Oversize Charge [1]	\$0.05/sq. ft. (to 100' depth)
c. Trunk Sewer Charge [2] unit Service Area: Grantland	\$419/living unit
d. Wastewater Facilities Charge [3]	\$2,119/living unit
e. Fowler Trunk Sewer Interim Fee Surety [1]	N/A
f. House Branch Sewer Charge [2]	N/A
<u>WATER CONNECTION CHARGES</u>	<u>FEE RATE</u>
g. Service Connection Charge	Fee based on service(s) and meter(s) sizes specified by owner; fee for service(s) and Meter(s) established by the Master Fee Schedule adopted for Fiscal Year 2020/2021.
h. Frontage Charge [1]	\$6.50/lineal foot
i. Water Capacity Fee* [1] Single Family Residential Irrigation	\$4658/ 1" Meter/living unit \$5823/ 1 ½" Meter \$11642/ 2" Meter

* Fee based on meter size(s) specified by owner;

Exhibit "D-2"
Required Development Fees (cont.)

<u>CITYWIDE DEVELOPMENT IMPACT FEES</u>	<u>FEE RATE</u>
j. Fire Facilities Impact Fee – Citywide [4]	\$1988/living unit
k. Park Facility Impact Fee – Citywide [4] With Quimby obligation satisfied	\$2992//living unit
l. Quimby Parkland Dedication Fee [2]	\$1264/living unit
m. Police Facilities Impact Fee – Citywide [4]	\$642/living unit
n. Citywide Regional Street Fee [3]	\$8,355/adj. acre
o. New Growth Area Major Street Fee [3]	\$22,998/adj. acre
p. Traffic Signal Charge [1]	\$521/living unit

Notes:

The Board of Directors of the Fresno County Regional Transportation Mitigation Fee Agency approved Resolution No. 2009 – 01 requiring the payment of Regional Transportation Mitigation Fee. The effective date of this resolution is January 1, 2010. Contact the Council of Fresno County Governments (FCOG) to determine this fee obligation. Confirmation by the FCOG is required before the City of Fresno can issue building permits.

On December 8, 2016, Fresno, Fresno City Council adopted Resolution No. 2016-258, effective July 1, 2018, administratively updating the impact fees adjusted by the applicable Master Fee Resolution annually to the percentage change in the 20-City Construction Cost Index as reported in the Engineering News Record (ENR) for the 12-month period ending of May of the year of adjustment.

[1] Deferrable through Fee Deferral Covenant.

[2] Due at Final Map.

[3] Due at Building Permit.

[4] Due at Certificate of Occupancy.